

ASSEMBLY BILL NO. 394—ASSEMBLYMAN OHRENSCHALL

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-346)

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; revising provisions governing the collection of past due financial obligations in common-interest communities; establishing limits on the amount which may be charged to a unit's owner to cover the costs of collecting a past due financial obligation; revising provisions governing an association's lien for assessments; revising provisions governing the foreclosure of an association's lien by sale; revising provisions governing the manner of collecting debts owed to an association; establishing a limit on the amount of the fee which may be charged to a unit's owner to record a transfer of the unit in the records of the association; revising various provisions relating to common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law establishes certain restrictions on the actions of an association of a
- 2 common-interest community with respect to regulating the use of a unit by a unit's
- 3 owner. (NRS 116.2111) **Section 3** of this bill prohibits an association from
- 4 prohibiting or unreasonably restricting a unit's owner from installing and using a
- 5 clothesline within the boundaries of his or her unit.
- 6 Existing law requires the Commission for Common-Interest Communities and
- 7 Condominium Hotels to adopt regulations establishing the amount of the fees that
- 8 may be charged to a unit's owner to cover the costs of collecting a past due
- 9 financial obligation owed to an association of a common-interest community. (NRS
- 10 116.310313) **Section 5** of this bill prohibits the association from charging a unit's
- 11 owner the costs of collecting a past due obligation unless two-thirds of the total
- 12 number of voting members of the association approve a collection policy for the



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13 association. **Section 5** requires the collection policy to establish the rates for the
14 costs of collecting a past due obligation and establishes limits on the amount a
15 unit's owner may be charged to cover the costs of collecting such obligations,
16 which are based on the amount of the outstanding balance of the past due
17 obligation. In addition, **section 5** establishes limits on the amount of the fee charged
18 to a unit's owner to transfer an account for collection and to change the name of the
19 unit's owner on such an account.

20 Under existing law, the association has a lien for certain amounts due the
21 association. This lien is prior to the lien of a first security interest on the unit to the
22 extent of charges incurred by the association to maintain certain units which are
23 being foreclosed and to the extent of a specified number of months of assessments.
24 (NRS 116.3116) **Section 8** of this bill provides that if the title to the unit is acquired
25 at a foreclosure sale or trustee's sale and the mortgage on the unit was insured by
26 the Federal Home Loan Mortgage Corporation or the Federal National Mortgage
27 Association, the amount secured by the lien given priority must not exceed the
28 amount of common expenses and assessments authorized to be given such priority
29 by the federal regulations or underwriting guidelines of the federal entity which
30 insured the debt.

31 Existing law authorizes the association to foreclose its lien by sale of the unit
32 and prescribes the procedures for such a foreclosure. (NRS 116.31162-116.31168)
33 **Sections 9 and 10** of this bill revise provisions governing such foreclosures by
34 prohibiting the association from: (1) foreclosing its lien by sale based on delinquent
35 assessments unless the amount of delinquent assessments exceeds a certain amount;
36 (2) foreclosing its lien by sale unless the executive board of the association
37 authorizes the foreclosure in an executive session after providing notice of the
38 meeting to a unit's owner; and (3) selling the unit and charging any costs of
39 collecting to a unit's owner if the sale does not occur within 120 days after the
40 association mails the notice of default and election to sell to the unit's owner.

41 Existing law requires the association to provide a statement of any transfer fees,
42 transaction fees or any other fees associated with the resale of a unit in the resale
43 package which is provided to a potential purchaser of a unit. (NRS 116.4109)
44 **Section 11** of this bill establishes a limit of not more than \$50 on a fee charged to a
45 unit's owner to record the transfer of a unit in the records of the association or its
46 community manager.

47 Existing law provides that a collection agency which violates the federal Fair
48 Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., or any regulation adopted
49 pursuant thereto violates the provisions in existing state law relating to collection
50 agencies. (NRS 649.370) Because the Fair Debt Collection Practices Act applies to
51 consumer debts owed by natural persons, it does not apply when a collection
52 agency collects any debt owed by an entity. (15 U.S.C. §§ 1692 et seq.) **Section 12**
53 of this bill provides that a collection agency which violates the federal Fair Debt
54 Collection Practices Act with respect to any debt owed to an association by a unit's
55 owner is deemed to violate existing state law relating to collection agencies.

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 a new section to read as follows:

3 *“Costs of collecting” includes any fee, charge or cost, by*
4 *whatever name, including, without limitation, any collection fee,*
5 *filing fee, recording fee, fee related to the preparation, recording*



1 *or delivery of a notice of default and election to sell or notice of*
2 *foreclosure sale or a rescission thereof, title search lien fee,*
3 *bankruptcy search fee, referral fee, fee for postage or delivery and*
4 *any other fee or cost that an association charges a unit's owner*
5 *for the investigation, enforcement or collection of a past due*
6 *obligation. The term does not include any costs incurred by an*
7 *association if a lawsuit is filed to enforce any past due obligation*
8 *or any costs awarded by a court.*

9 **Sec. 2.** 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 *section 1 of this act* have the meanings ascribed to them in those
14 sections.

15 **Sec. 3.** NRS 116.2111 is hereby amended to read as follows:

16 116.2111 1. Except as otherwise provided in this section and
17 subject to the provisions of the declaration and other provisions of
18 law, a unit's owner:

19 (a) May make any improvements or alterations to his or her unit
20 that do not impair the structural integrity or mechanical systems or
21 lessen the support of any portion of the common-interest
22 community;

23 (b) May not change the appearance of the common elements, or
24 the exterior appearance of a unit or any other portion of the
25 common-interest community, without permission of the association;
26 and

27 (c) After acquiring an adjoining unit or an adjoining part of an
28 adjoining unit, may remove or alter any intervening partition or
29 create apertures therein, even if the partition in whole or in part is a
30 common element, if those acts do not impair the structural integrity
31 or mechanical systems or lessen the support of any portion of the
32 common-interest community. Removal of partitions or creation of
33 apertures under this paragraph is not an alteration of boundaries.

34 2. An association may not:

35 (a) Unreasonably restrict, prohibit or otherwise impede the
36 lawful rights of a unit's owner to have reasonable access to his or
37 her unit.

38 (b) Charge any fee for a person to enter the common-interest
39 community to provide services to a unit, a unit's owner or a tenant
40 of a unit's owner or for any visitor to the common-interest
41 community or invitee of a unit's owner or a tenant of a unit's owner
42 to enter the common-interest community.

43 (c) Unreasonably restrict, prohibit or withhold approval for a
44 unit's owner to add to a unit:



1 (1) Improvements such as ramps, railings or elevators that
2 are necessary to improve access to the unit for any occupant of the
3 unit who has a disability;

4 (2) Additional locks to improve the security of the unit;

5 (3) Shutters to improve the security of the unit or to reduce
6 the costs of energy for the unit; or

7 (4) A system that uses wind energy to reduce the costs of
8 energy for the unit if the boundaries of the unit encompass 2 acres or
9 more within the common-interest community.

10 (d) With regard to approving or disapproving any improvement
11 or alteration made to a unit, act in violation of any state or federal
12 law.

13 *(e) Prohibit or unreasonably restrict a unit's owner from*
14 *installing and using a clothesline within the boundaries of his or*
15 *her unit.*

16 3. Any improvement or alteration made pursuant to subsection
17 2 that is visible from any other portion of the common-interest
18 community must be installed, constructed or added in accordance
19 with the procedures set forth in the governing documents of the
20 association and must be selected or designed to the maximum extent
21 practicable to be compatible with the style of the common-interest
22 community.

23 4. An association may not unreasonably restrict, prohibit or
24 withhold approval for a unit's owner to add shutters to improve the
25 security of the unit or to reduce the costs of energy for the unit,
26 including, without limitation, rolling shutters, that are attached to a
27 portion of an interior or exterior window, interior or exterior door or
28 interior or exterior wall which is not part of the unit and which is a
29 common element or limited common element if:

30 (a) The portion of the window, door or wall to which the
31 shutters are attached is adjoining the unit; and

32 (b) The shutters must necessarily be attached to that portion of
33 the window, door or wall during installation to achieve the
34 maximum benefit in improving the security of the unit or reducing
35 the costs of energy for the unit.

36 5. If a unit's owner adds shutters pursuant to subsection 4, the
37 unit's owner is responsible for the maintenance of the shutters.

38 6. For the purposes of subsection 4, a covenant, restriction or
39 condition which does not unreasonably restrict the addition of
40 shutters and which is contained in the governing documents of a
41 common-interest community or a policy established by a common-
42 interest community is enforceable so long as the covenant,
43 restriction or condition was:

44 (a) In existence on July 1, 2009; or



1 (b) Contained in the governing documents in effect on the close
2 of escrow of the first sale of a unit in the common-interest
3 community.

4 7. A unit's owner may not add to the unit a system that uses
5 wind energy as described in subparagraph (4) of paragraph (c) of
6 subsection 2 unless the unit's owner first obtains the written consent
7 of each owner of property within 300 feet of any boundary of the
8 unit.

9 **Sec. 4.** NRS 116.310312 is hereby amended to read as
10 follows:

11 116.310312 1. A person who holds a security interest in a
12 unit must provide the association with the person's contact
13 information as soon as reasonably practicable, but not later than 30
14 days after the person:

15 (a) Files an action for recovery of a debt or enforcement of any
16 right secured by the unit pursuant to NRS 40.430; or

17 (b) Records or has recorded on his or her behalf a notice of a
18 breach of obligation secured by the unit and the election to sell or
19 have the unit sold pursuant to NRS 107.080.

20 2. If an action or notice described in subsection 1 has been
21 filed or recorded regarding a unit and the association has provided
22 the unit's owner with notice and an opportunity for a hearing in the
23 manner provided in NRS 116.31031, the association, including its
24 employees, agents and community manager, may, but is not
25 required to, enter the grounds of the unit, whether or not the unit is
26 vacant, to take any of the following actions if the unit's owner
27 refuses or fails to take any action or comply with any requirement
28 imposed on the unit's owner within the time specified by the
29 association as a result of the hearing:

30 (a) Maintain the exterior of the unit in accordance with the
31 standards set forth in the governing documents, including, without
32 limitation, any provisions governing maintenance, standing water or
33 snow removal.

34 (b) Remove or abate a public nuisance on the exterior of the unit
35 which:

36 (1) Is visible from any common area of the community or
37 public streets;

38 (2) Threatens the health or safety of the residents of the
39 common-interest community;

40 (3) Results in blighting or deterioration of the unit or
41 surrounding area; and

42 (4) Adversely affects the use and enjoyment of nearby units.

43 3. If a unit is vacant and the association has provided the unit's
44 owner with notice and an opportunity for a hearing in the manner
45 provided in NRS 116.31031, the association, including its



1 employees, agents and community manager, may enter the grounds
2 of the unit to maintain the exterior of the unit or abate a public
3 nuisance as described in subsection 2 if the unit's owner refuses or
4 fails to do so.

5 4. The association may order that the costs of any maintenance
6 or abatement conducted pursuant to subsection 2 or 3, including,
7 without limitation, reasonable inspection fees, notification and
8 collection costs and interest, be charged against the unit. The
9 association shall keep a record of such costs and interest charged
10 against the unit and has a lien on the unit for any unpaid amount of
11 the charges. The lien may be foreclosed under NRS 116.31162 to
12 116.31168, inclusive.

13 5. A lien described in subsection 4 bears interest from the date
14 that the charges become due at a rate determined pursuant to NRS
15 17.130 until the charges, including all interest due, are paid.

16 6. ~~[Except as otherwise provided in this subsection,]~~ *Subject to*
17 *the limitations provided in NRS 116.3116*, a lien described in
18 subsection 4 is prior and superior to all liens, claims, encumbrances
19 and titles other than the liens described in paragraphs (a) and (c) of
20 subsection 2 of NRS 116.3116. ~~[If the federal regulations of the~~
21 ~~Federal Home Loan Mortgage Corporation or the Federal National~~
22 ~~Mortgage Association require a shorter period of priority for the~~
23 ~~lien, the period during which the lien is prior and superior to other~~
24 ~~security interests shall be determined in accordance with those~~
25 ~~federal regulations. Notwithstanding the federal regulations, the~~
26 ~~period of priority of the lien must not be less than the 6 months~~
27 ~~immediately preceding the institution of an action to enforce the~~
28 ~~lien.]~~

29 7. A person who purchases or acquires a unit at a foreclosure
30 sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS
31 107.080 is bound by the governing documents of the association and
32 shall maintain the exterior of the unit in accordance with the
33 governing documents of the association. Such a unit may only be
34 removed from a common-interest community in accordance with the
35 governing documents pursuant to this chapter.

36 8. Notwithstanding any other provision of law, an association,
37 its directors or members of the executive board, employees, agents
38 or community manager who enter the grounds of a unit pursuant to
39 this section are not liable for trespass.

40 9. As used in this section:

41 (a) "Exterior of the unit" includes, without limitation, all
42 landscaping outside of a unit and the exterior of all property
43 exclusively owned by the unit owner.

44 (b) "Vacant" means a unit:

45 (1) Which reasonably appears to be unoccupied;



1 (2) On which the owner has failed to maintain the exterior to
2 the standards set forth in the governing documents the association;
3 and

4 (3) On which the owner has failed to pay assessments for
5 more than 60 days.

6 **Sec. 5.** NRS 116.310313 is hereby amended to read as
7 follows:

8 116.310313 1. An association may *not* charge a unit's owner
9 ~~[reasonable fees to cover]~~ the costs of collecting any past due
10 obligation ~~[-The Commission shall adopt regulations establishing~~
11 ~~the amount of the fees that an association may charge pursuant to~~
12 ~~this section.] unless:~~

13 (a) *The executive board proposes a collection policy which*
14 *includes, without limitation:*

15 (1) *The responsibility of the unit's owner to pay an*
16 *obligation in a timely manner;*

17 (2) *The association's rights concerning the collection of an*
18 *obligation if the unit's owner fails to pay the obligation in a timely*
19 *manner; and*

20 (3) *The rate established by the association for the costs of*
21 *collecting a past due obligation; and*

22 (b) *Units' owners constituting at least two-thirds of the total*
23 *number of voting members of the association approve the*
24 *collection policy proposed by the executive board.*

25 2. *Subject to the limitation set forth in subsection 3, if,*
26 *pursuant to subsection 1, the association is authorized to charge a*
27 *unit's owner the costs of collecting a past due obligation, the rate*
28 *established by the association for the costs of collecting the past*
29 *due obligation:*

30 (a) *May not exceed \$50, if the outstanding balance is less than*
31 *\$200.*

32 (b) *May not exceed \$75, if the outstanding balance is \$200 or*
33 *more but is less than \$500.*

34 (c) *May not exceed \$100, if the outstanding balance is \$500 or*
35 *more but is less than \$1,000.*

36 (d) *May not exceed \$250, if the outstanding balance is \$1,000*
37 *or more but is less than \$5,000.*

38 (e) *May not exceed \$500, if the outstanding balance is \$5,000*
39 *or more.*

40 3. *The rate established by the association for the costs of*
41 *collecting a past due obligation must provide that, during any 24-*
42 *month period, the association may not charge a unit's owner the*
43 *costs of collecting a past due obligation in an amount which*
44 *exceeds \$600 per unit.*



1 **4.** The provisions of this section apply to any costs of
2 collecting a past due obligation charged to a unit's owner, regardless
3 of whether the past due obligation is collected by the association
4 itself or by any person acting on behalf of the association, including,
5 without limitation, an officer or employee of the association, a
6 community manager or a collection agency.

7 **5.** *An association or a community manager may not charge a*
8 *unit's owner, or require a unit's owner to pay, a fee of more than:*

9 **(a)** *Fifty dollars for transferring an account for the collection*
10 *of a past due obligation to another person; and*

11 **(b)** *Twenty-five dollars for changing the name of the unit's*
12 *owner on the account for the collection of a past due obligation.*

13 ~~6.~~ **6.** As used in this section:

14 **(a)** ~~“Costs of collecting” includes any fee, charge or cost, by~~
15 ~~whatever name, including, without limitation, any collection fee,~~
16 ~~filing fee, recording fee, fee related to the preparation, recording or~~
17 ~~delivery of a lien or lien rescission, title search lien fee, bankruptcy~~
18 ~~search fee, referral fee, fee for postage or delivery and any other fee~~
19 ~~or cost that an association charges a unit's owner for the~~
20 ~~investigation, enforcement or collection of a past due obligation.~~
21 ~~The term does not include any costs incurred by an association if a~~
22 ~~lawsuit is filed to enforce any past due obligation or any costs~~
23 ~~awarded by a court.~~

24 ~~(b)~~ **(b)** “Obligation” means any assessment, fine, construction
25 penalty, fee, charge or interest levied or imposed against a unit's
26 owner pursuant to any provision of this chapter or the governing
27 documents.

28 **(b)** *“Outstanding balance” means the amount of a past due*
29 *obligation that remains unpaid before any interest, charges for*
30 *late payment or costs of collecting the past due obligation are*
31 *added.*

32 **Sec. 6.** NRS 116.31085 is hereby amended to read as follows:

33 116.31085 1. Except as otherwise provided in this section, a
34 unit's owner may attend any meeting of the units' owners or of the
35 executive board and speak at any such meeting. The executive board
36 may establish reasonable limitations on the time a unit's owner may
37 speak at such a meeting.

38 2. An executive board may not meet in executive session to
39 open or consider bids for an association project as defined in NRS
40 116.31086, or to enter into, renew, modify, terminate or take any
41 other action regarding a contract.

42 3. An executive board may meet in executive session only to:

43 **(a)** Consult with the attorney for the association on matters
44 relating to proposed or pending litigation if the contents of the



1 discussion would otherwise be governed by the privilege set forth in
2 NRS 49.035 to 49.115, inclusive.

3 (b) Discuss the character, alleged misconduct, professional
4 competence, or physical or mental health of a community manager
5 or an employee of the association.

6 (c) Except as otherwise provided in subsection 4, discuss a
7 violation of the governing documents, including, without limitation,
8 the failure to pay an assessment.

9 (d) Discuss the alleged failure of a unit's owner to adhere to a
10 schedule required pursuant to NRS 116.310305 if the alleged failure
11 may subject the unit's owner to a construction penalty.

12 *(e) Discuss an authorization to foreclose the association's lien*
13 *by sale pursuant to paragraph (b) of subsection 1 of NRS*
14 *116.31162. The vote of each member of the executive board*
15 *concerning whether to authorize the foreclosure of the*
16 *association's lien by sale must be recorded in the minutes of the*
17 *meeting.*

18 4. An executive board shall meet in executive session to hold a
19 hearing on an alleged violation of the governing documents unless
20 the person who may be sanctioned for the alleged violation requests
21 in writing that an open hearing be conducted by the executive board.
22 If the person who may be sanctioned for the alleged violation
23 requests in writing that an open hearing be conducted, the person:

24 (a) Is entitled to attend all portions of the hearing related to the
25 alleged violation, including, without limitation, the presentation of
26 evidence and the testimony of witnesses;

27 (b) Is entitled to due process, as set forth in the standards
28 adopted by regulation by the Commission, which must include,
29 without limitation, the right to counsel, the right to present witnesses
30 and the right to present information relating to any conflict of
31 interest of any member of the hearing panel; and

32 (c) Is not entitled to attend the deliberations of the executive
33 board.

34 5. The provisions of subsection 4 establish the minimum
35 protections that the executive board must provide before it may
36 make a decision. The provisions of subsection 4 do not preempt any
37 provisions of the governing documents that provide greater
38 protections.

39 6. Except as otherwise provided in this subsection, any matter
40 discussed by the executive board when it meets in executive session
41 must be generally noted in the minutes of the meeting of the
42 executive board. The executive board shall maintain minutes of any
43 decision made pursuant to subsection 4 concerning an alleged
44 violation and, upon request, provide a copy of the decision to the



1 person who was subject to being sanctioned at the hearing or to the
2 person's designated representative.

3 7. Except as otherwise provided in subsection 4, a unit's owner
4 is not entitled to attend or speak at a meeting of the executive board
5 held in executive session.

6 **Sec. 7.** NRS 116.31151 is hereby amended to read as follows:

7 116.31151 1. Except as otherwise provided in subsection 2
8 and unless the declaration of a common-interest community imposes
9 more stringent standards, the executive board shall, not less than 30
10 days or more than 60 days before the beginning of the fiscal year of
11 the association, prepare and distribute to each unit's owner a copy
12 of:

13 (a) The budget for the daily operation of the association. The
14 budget must include, without limitation, the estimated annual
15 revenue and expenditures of the association and any contributions to
16 be made to the reserve account of the association.

17 (b) The budget to provide adequate funding for the reserves
18 required by paragraph (b) of subsection 2 of NRS 116.3115. The
19 budget must include, without limitation:

20 (1) The current estimated replacement cost, estimated
21 remaining life and estimated useful life of each major component of
22 the common elements and any other portion of the common-interest
23 community that the association is obligated to maintain, repair,
24 replace or restore;

25 (2) As of the end of the fiscal year for which the budget is
26 prepared, the current estimate of the amount of cash reserves that
27 are necessary, and the current amount of accumulated cash reserves
28 that are set aside, to repair, replace or restore the major components
29 of the common elements and any other portion of the common-
30 interest community that the association is obligated to maintain,
31 repair, replace or restore;

32 (3) A statement as to whether the executive board has
33 determined or anticipates that the levy of one or more special
34 assessments will be necessary to repair, replace or restore any major
35 component of the common elements or any other portion of the
36 common-interest community that the association is obligated to
37 maintain, repair, replace or restore or to provide adequate funding
38 for the reserves designated for that purpose; and

39 (4) A general statement describing the procedures used for
40 the estimation and accumulation of cash reserves pursuant to
41 subparagraph (2), including, without limitation, the qualifications of
42 the person responsible for the preparation of the study of the
43 reserves required by NRS 116.31152.

44 2. In lieu of distributing copies of the budgets of the
45 association required by subsection 1, the executive board may



1 distribute to each unit's owner a summary of those budgets,
2 accompanied by a written notice that:

3 (a) The budgets are available for review at the business office of
4 the association or some other suitable location within the county
5 where the common-interest community is situated or, if it is situated
6 in more than one county, within one of those counties but not to
7 exceed 60 miles from the physical location of the common-interest
8 community; and

9 (b) Copies of the budgets will be provided upon request.

10 3. Within 60 days after adoption of any proposed budget for
11 the common-interest community, the executive board shall provide a
12 summary of the proposed budget to each unit's owner and shall set a
13 date for a meeting of the units' owners to consider ratification of the
14 proposed budget not less than 14 days or more than 30 days after the
15 mailing of the summaries. Unless at that meeting a majority of all
16 units' owners, or any larger vote specified in the declaration, reject
17 the proposed budget, the proposed budget is ratified, whether or not
18 a quorum is present. If the proposed budget is rejected, the periodic
19 budget last ratified by the units' owners must be continued until
20 such time as the units' owners ratify a subsequent budget proposed
21 by the executive board.

22 4. The executive board shall, at the same time and in the same
23 manner that the executive board makes the budget available to a
24 unit's owner pursuant to this section, make available to each unit's
25 owner the *collection* policy ~~[established]~~ for the association
26 ~~[concerning the collection of any fees, fines, assessments or costs~~
27 ~~imposed against a unit's owner pursuant to this chapter. The policy~~
28 ~~must include, without limitation:~~

29 ~~—(a) The responsibility of the unit's owner to pay any such fees,~~
30 ~~fines, assessments or costs in a timely manner; and~~

31 ~~—(b) The association's rights concerning the collection of such~~
32 ~~fees, fines, assessments or costs if the unit's owner fails to pay the~~
33 ~~fees, fines, assessments or costs in a timely manner.] *adopted*~~
34 ~~*pursuant to NRS 116.310313.*~~

35 **Sec. 8.** NRS 116.3116 is hereby amended to read as follows:

36 116.3116 1. The association has a lien on a unit for a unit for any
37 construction penalty that is imposed against the unit's owner
38 pursuant to NRS 116.310305, any assessment levied against that
39 unit or any fines imposed against the unit's owner from the time the
40 construction penalty, assessment or fine becomes due. Unless the
41 declaration otherwise provides, any penalties, fees, charges, late
42 charges, fines and interest charged pursuant to paragraphs (j) to (n),
43 inclusive, of subsection 1 of NRS 116.3102 are enforceable as
44 assessments under this section. If an assessment is payable in



1 installments, the full amount of the assessment is a lien from the
2 time the first installment thereof becomes due.

3 2. A lien under this section is prior to all other liens and
4 encumbrances on a unit except:

5 (a) Liens and encumbrances recorded before the recordation of
6 the declaration and, in a cooperative, liens and encumbrances which
7 the association creates, assumes or takes subject to;

8 (b) A first security interest on the unit recorded before the date
9 on which the assessment sought to be enforced became delinquent
10 or, in a cooperative, the first security interest encumbering only the
11 unit's owner's interest and perfected before the date on which the
12 assessment sought to be enforced became delinquent; and

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

15 ~~{→}~~

16 3. The lien *under this section* is also prior to all security
17 interests described in paragraph (b) *of subsection 2* to the extent of
18 any charges incurred by the association on a unit pursuant to NRS
19 116.310312 and to the extent of the assessments for common
20 expenses based on the periodic budget adopted by the association
21 pursuant to NRS 116.3115 which would have become due in the
22 absence of acceleration during the 9 months immediately preceding
23 institution of an action to enforce the lien, unless federal regulations
24 *or underwriting guidelines* adopted by the Federal Home Loan
25 Mortgage Corporation or the Federal National Mortgage
26 Association require a shorter period of priority for the lien. If federal
27 regulations *or underwriting guidelines* adopted by the Federal
28 Home Loan Mortgage Corporation or the Federal National
29 Mortgage Association require a shorter period of priority for the
30 lien, the period ~~{during which the lien is prior to all security interests~~
31 ~~described in paragraph (b)}~~ *of priority* must be determined in
32 accordance with those federal regulations ~~{}~~ *or underwriting*
33 *guidelines*, except that notwithstanding the provisions of the federal
34 regulations ~~{}~~ *or underwriting guidelines*, the period of priority for
35 the lien must not be less than the 6 months immediately preceding
36 institution of an action to enforce the lien. ~~{This subsection does}~~ *If*
37 *title to a unit is acquired by a sale conducted pursuant to NRS*
38 *40.430 or 107.080 to obtain payment of a debt secured by a*
39 *security interest described in paragraph (b) of subsection 2 and*
40 *that debt was insured by the Federal Home Loan Mortgage*
41 *Corporation or the Federal National Mortgage Association, the*
42 *amount secured by the lien given priority over the security*
43 *interests described in paragraph (b) of subsection 2 must not*
44 *exceed the amount of common expenses and assessments*
45 *authorized to be given such priority by the federal regulations or*



1 *underwriting guidelines adopted by the entity which insured the*
2 *debt.*

3 **4. The provisions of subsections 2 and 3 do** not affect the
4 priority of mechanics' or materialmen's liens, or the priority of liens
5 for other assessments made by the association.

6 ~~[3-]~~ **5.** Unless the declaration otherwise provides, if two or
7 more associations have liens for assessments created at any time on
8 the same property, those liens have equal priority.

9 ~~[4-]~~ **6.** Recording of the declaration constitutes record notice
10 and perfection of the lien. No further recordation of any claim of
11 lien for assessment under this section is required.

12 ~~[5-]~~ **7.** A lien for unpaid assessments is extinguished unless
13 proceedings to enforce the lien are instituted within 3 years after the
14 full amount of the assessments becomes due.

15 ~~[6-]~~ **8.** This section does not prohibit actions to recover sums
16 for which subsection 1 creates a lien or prohibit an association from
17 taking a deed in lieu of foreclosure.

18 ~~[7-]~~ **9.** A judgment or decree in any action brought under this
19 section must include costs and reasonable attorney's fees for the
20 prevailing party.

21 ~~[8-]~~ **10.** The association, upon written request, shall furnish to a
22 unit's owner a statement setting forth the amount of unpaid
23 assessments against the unit. If the interest of the unit's owner is real
24 estate or if a lien for the unpaid assessments may be foreclosed
25 under NRS 116.31162 to 116.31168, inclusive, the statement must
26 be in recordable form. The statement must be furnished within 10
27 business days after receipt of the request and is binding on the
28 association, the executive board and every unit's owner.

29 ~~[9-]~~ **11.** In a cooperative, upon nonpayment of an assessment
30 on a unit, the unit's owner may be evicted in the same manner as
31 provided by law in the case of an unlawful holdover by a
32 commercial tenant, and:

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

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

38 (1) May be foreclosed as a security interest under NRS
39 104.9101 to 104.9709, inclusive; or

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

42 **Sec. 9.** NRS 116.31162 is hereby amended to read as follows:

43 116.31162 1. Except as otherwise provided in ~~[subsection]~~
44 *subsections 4 [3-] and 5 and paragraph (a) of subsection 2 of NRS*
45 *116.31164*, in a condominium, in a planned community, in a



1 cooperative where the owner's interest in a unit is real estate under
2 NRS 116.1105, or in a cooperative where the owner's interest in a
3 unit is personal property under NRS 116.1105 and the declaration
4 provides that a lien may be foreclosed under NRS 116.31162 to
5 116.31168, inclusive, the association may foreclose its lien by sale
6 after all of the following occur:

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

15 (b) *Before the association records the notice of default and*
16 *election to sell in the manner required by paragraph (c), the*
17 *executive board authorizes the foreclosure of the association's lien*
18 *by sale by a majority vote of the members of the executive board*
19 *which is recorded in the minutes of the meeting at which such*
20 *action is taken. Except as otherwise provided in this paragraph, if*
21 *the lien is imposed against a unit which is occupied by the unit's*
22 *owner, not later than 20 days before the meeting, the association*
23 *must provide to the unit's owner or his or her successor in interest*
24 *by personal delivery notice that the executive board will determine*
25 *whether to authorize the foreclosure of the association's lien by*
26 *sale of the unit. If the lien is imposed against a unit which is not*
27 *occupied by the unit's owner, the association may provide the*
28 *notice by first-class mail to the last known mailing address of the*
29 *unit's owner.*

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

38 (1) Describe the deficiency in payment.

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

41 (3) Contain, in 14-point bold type, the following warning:
42

43 **WARNING! IF YOU FAIL TO PAY THE AMOUNT**
44 **SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR**
45 **HOME, EVEN IF THE AMOUNT IS IN DISPUTE!**



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

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

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

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

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

15 ↪ whichever date occurs later.

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

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

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

24 ***5. The association may not foreclose a lien by sale based on a
25 delinquent assessment unless the amount of the delinquent
26 assessment, excluding acceleration and any interest, charges for
27 late payment or costs of collecting the assessment:***

28 (a) *Is more than \$1,800; or*

29 (b) *Is equal to or greater than the assessments for common
30 expenses based on the periodic budget adopted by the association
31 pursuant to NRS 116.3115 which became due during the 12
32 months immediately preceding institution of the foreclosure.*

33 **Sec. 10.** NRS 116.31164 is hereby amended to read as
34 follows:

35 116.31164 1. The sale must be conducted in the county in
36 which the common-interest community or part of it is situated, and
37 may be conducted by the association, its agent or attorney, or a title
38 insurance company or escrow agent licensed to do business in this
39 State, except that the sale may be made at the office of the
40 association if the notice of the sale so provided, whether the unit is
41 located within the same county as the office of the association or
42 not. The association or other person conducting the sale may from
43 time to time postpone the sale by such advertisement and notice as it
44 considers reasonable or, without further advertisement or notice, by



1 proclamation made to the persons assembled at the time and place
2 previously set and advertised for the sale.

3 2. *If the sale does not occur within 120 days after the date on*
4 *which a copy of the notice of default and election to sell was*
5 *personally delivered or mailed to the unit's owner or his or her*
6 *successor in interest in the manner required by paragraph (b) of*
7 *subsection 1 of NRS 116.31162, the association and any person*
8 *acting on behalf of the association may not:*

9 (a) *Foreclose the association's lien by sale; or*

10 (b) *Charge to, or collect from, the unit's owner or his or her*
11 *successor in interest any costs of collecting the past due obligation*
12 *to which the notice of default relates unless the unit's owner or his*
13 *or her successor in interest has agreed to a payment plan which*
14 *includes the payment, in whole or in part, of the costs of collecting*
15 *the past due obligation.*

16 3. On the day of sale originally advertised or to which the sale
17 is postponed, at the time and place specified in the notice or
18 postponement, the person conducting the sale may sell the unit at
19 public auction to the highest cash bidder. Unless otherwise provided
20 in the declaration or by agreement, the association may purchase the
21 unit and hold, lease, mortgage or convey it. The association may
22 purchase by a credit bid up to the amount of the unpaid assessments
23 and any permitted costs, fees and expenses incident to the
24 enforcement of its lien.

25 ~~3.~~ 4. After the sale, the person conducting the sale shall:

26 (a) Make, execute and, after payment is made, deliver to the
27 purchaser, or his or her successor or assign, a deed without warranty
28 which conveys to the grantee all title of the unit's owner to the unit;

29 (b) Deliver a copy of the deed to the Ombudsman within 30
30 days after the deed is delivered to the purchaser, or his or her
31 successor or assign; and

32 (c) Apply the proceeds of the sale for the following purposes in
33 the following order:

34 (1) The reasonable expenses of sale;

35 (2) The reasonable expenses of securing possession before
36 sale, holding, maintaining, and preparing the unit for sale, including
37 payment of taxes and other governmental charges, premiums on
38 hazard and liability insurance, and, to the extent provided for by the
39 declaration, reasonable attorney's fees and other legal expenses
40 incurred by the association;

41 (3) Satisfaction of the association's lien;

42 (4) Satisfaction in the order of priority of any subordinate
43 claim of record; and

44 (5) Remittance of any excess to the unit's owner.



1 **Sec. 11.** NRS 116.4109 is hereby amended to read as follows:

2 116.4109 1. Except in the case of a sale in which delivery of
3 a public offering statement is required, or unless exempt under
4 subsection 2 of NRS 116.4101, a unit's owner or his or her
5 authorized agent shall, at the expense of the unit's owner, furnish to
6 a purchaser a resale package containing all of the following:

7 (a) A copy of the declaration, other than any plats, the bylaws,
8 the rules or regulations of the association and the information
9 statement required by NRS 116.41095;

10 (b) A statement setting forth the amount of the monthly
11 assessment for common expenses and any unpaid assessment of any
12 kind currently due from the selling unit's owner;

13 (c) A copy of the current operating budget of the association and
14 current year-to-date financial statement for the association, which
15 must include a summary of the reserves of the association required
16 by NRS 116.31152 and which must include, without limitation, a
17 summary of the information described in paragraphs (a) to (e),
18 inclusive, of subsection 3 of NRS 116.31152;

19 (d) A statement of any unsatisfied judgments or pending legal
20 actions against the association and the status of any pending legal
21 actions relating to the common-interest community of which the
22 unit's owner has actual knowledge;

23 (e) A statement of any transfer fees, transaction fees or any other
24 fees associated with the resale of a unit; and

25 (f) In addition to any other document, a statement describing all
26 current and expected fees or charges for each unit, including,
27 without limitation, association fees, fines, assessments, late charges
28 or penalties, interest rates on delinquent assessments, additional
29 costs for collecting past due fines and charges for opening or closing
30 any file for each unit.

31 2. The purchaser may, by written notice, cancel the contract of
32 purchase until midnight of the fifth calendar day following the date
33 of receipt of the resale package described in subsection 1, and the
34 contract for purchase must contain a provision to that effect. If
35 the purchaser elects to cancel a contract pursuant to this subsection,
36 the purchaser must hand deliver the notice of cancellation to the
37 unit's owner or his or her authorized agent or mail the notice of
38 cancellation by prepaid United States mail to the unit's owner or his
39 or her authorized agent. Cancellation is without penalty, and all
40 payments made by the purchaser before cancellation must be
41 refunded promptly. If the purchaser has accepted a conveyance of
42 the unit, the purchaser is not entitled to:

43 (a) Cancel the contract pursuant to this subsection; or

44 (b) Damages, rescission or other relief based solely on the
45 ground that the unit's owner or his or her authorized agent failed to



1 furnish the resale package, or any portion thereof, as required by this
2 section.

3 3. Within 10 days after receipt of a written request by a unit's
4 owner or his or her authorized agent, the association shall furnish all
5 of the following to the unit's owner or his or her authorized agent
6 for inclusion in the resale package:

7 (a) Copies of the documents required pursuant to paragraphs (a)
8 and (c) of subsection 1; and

9 (b) A certificate containing the information necessary to enable
10 the unit's owner to comply with paragraphs (b), (d) and (e) of
11 subsection 1.

12 4. If the association furnishes the documents and certificate
13 pursuant to subsection 3:

14 (a) The unit's owner or his or her authorized agent shall include
15 the documents and certificate in the resale package provided to the
16 purchaser, and neither the unit's owner nor his or her authorized
17 agent is liable to the purchaser for any erroneous information
18 provided by the association and included in the documents and
19 certificate.

20 (b) The association may charge the unit's owner a reasonable
21 fee to cover the cost of preparing the certificate furnished pursuant
22 to subsection 3. Such a fee must be based on the actual cost the
23 association incurs to fulfill the requirements of this section in
24 preparing the certificate. The Commission shall adopt regulations
25 establishing the maximum amount of the fee that an association may
26 charge for preparing the certificate.

27 (c) The association may charge the unit's owner a reasonable
28 fee, not to exceed 25 cents per page, to cover the cost of copying the
29 other documents furnished pursuant to subsection 3.

30 (d) Except for the fees allowed pursuant to paragraphs (b) and
31 (c), the association may not charge the unit's owner any other fees
32 for preparing or furnishing the documents and certificate pursuant to
33 subsection 3.

34 5. Neither a purchaser nor the purchaser's interest in a unit is
35 liable for any unpaid assessment or fee greater than the amount set
36 forth in the documents and certificate prepared by the association. If
37 the association fails to furnish the documents and certificate within
38 the 10 days allowed by this section, the seller is not liable for the
39 delinquent assessment.

40 6. Upon the request of a unit's owner or his or her authorized
41 agent, or upon the request of a purchaser to whom the unit's owner
42 has provided a resale package pursuant to this section or his or her
43 authorized agent, the association shall make the entire study of the
44 reserves of the association which is required by NRS 116.31152
45 reasonably available for the unit's owner, purchaser or authorized



1 agent to inspect, examine, photocopy and audit. The study must be
2 made available at the business office of the association or some
3 other suitable location within the county where the common-interest
4 community is situated or, if it is situated in more than one county,
5 within one of those counties.

6 *7. An association or a community manager may not charge a*
7 *unit's owner, and may not require a unit's owner to pay, a fee of*
8 *more than \$50 to cover the cost of recording in the books and*
9 *records of the association or community manager the transfer of*
10 *the ownership of the unit.*

11 **Sec. 12.** NRS 649.370 is hereby amended to read as follows:

12 649.370 *1.* A violation of any provision of the federal Fair
13 Debt Collection Practices Act, 15 U.S.C. §§ ~~H682~~ *1692* et seq., or
14 any regulation adopted pursuant thereto, shall be deemed to be a
15 violation of this chapter.

16 *2. Even if a claim is not governed by the federal Fair Debt*
17 *Collection Practices Act, 15 U.S.C. §§ 1692 et seq., a violation of*
18 *any provision of that Act, or any regulation adopted pursuant*
19 *thereto, with respect to collecting or attempting to collect a claim*
20 *owed to a unit-owners' association by a unit's owner shall be*
21 *deemed to be a violation of this chapter.*

22 **Sec. 13.** The amendatory provisions of sections 9 and 10 of
23 this act apply only if a notice of default and election to sell is
24 recorded pursuant to NRS 116.31162 on or after July 1, 2011.

25 **Sec. 14.** This act becomes effective on July 1, 2011.

