

SENATE BILL NO. 174—SENATOR HAMMOND

FEBRUARY 18, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing eligibility to be a member of the executive board or an officer of a unit-owners’ association. (BDR 10-617)

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 eligibility to be a member of the executive board or an officer of a unit-owners’ association; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides that, unless a person is appointed by the declarant, a
2 person may not be a member of the executive board or an officer of a unit-owners’
3 association if the person or certain other persons perform the duties of a community
4 manager for that association. (NRS 116.31034) This bill additionally excludes a
5 person, other than a person appointed by the declarant, from being a member of the
6 executive board or an officer of a unit-owners’ association if: (1) the person resides
7 with, is married to or domestic partners with or is related within the third degree of
8 consanguinity to a member of the board or an officer of the association; (2) the
9 person stands to gain any personal profit or compensation from a matter before the
10 board; or (3) the person owns more than one unit in the association. The exclusion
11 does not apply to a person who owns 75 percent or more of the units in an
12 association under certain circumstances.

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

1 **Section 1.** NRS 116.31034 is hereby amended to read as
2 follows:

3 116.31034 1. Except as otherwise provided in subsection 5 of
4 NRS 116.212, not later than the termination of any period of



1 declarant's control, the units' owners shall elect an executive board
2 of at least three members, all of whom must be units' owners. The
3 executive board shall elect the officers of the association. Unless the
4 governing documents provide otherwise, the officers of the
5 association are not required to be units' owners. The members of the
6 executive board and the officers of the association shall take
7 office upon election.

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

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

18 (a) Members of the executive board who are appointed by the
19 declarant; and

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

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

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

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



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

5 (2) The number of units' owners who submit such a
6 nomination causes the number of candidates nominated for
7 membership on the executive board to be greater than the number of
8 members to be elected to the executive board.

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

14 6. If the notice described in subsection 5 is given and if, at the
15 closing of the prescribed period for nominations for membership on
16 the executive board described in subsection 5, the number of
17 candidates nominated for membership on the executive board is
18 equal to or less than the number of members to be elected to the
19 executive board, then:

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

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

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

28 7. If the notice described in subsection 5 is given and if, at the
29 closing of the prescribed period for nominations for membership on
30 the executive board described in subsection 5, the number of
31 candidates nominated for membership on the executive board is
32 greater than the number of members to be elected to the executive
33 board, then the association shall:

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

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

38 8. Each person who is nominated as a candidate for
39 membership on the executive board pursuant to subsection 4 or 5
40 must:

41 (a) Make a good faith effort to disclose any financial, business,
42 professional or personal relationship or interest that would result or
43 would appear to a reasonable person to result in a potential conflict
44 of interest for the candidate if the candidate were to be elected to
45 serve as a member of the executive board; and



1 (b) Disclose whether the candidate is a member in good
2 standing. For the purposes of this paragraph, a candidate shall not be
3 deemed to be in “good standing” if the candidate has any unpaid and
4 past due assessments or construction penalties that are required to be
5 paid to the association.

6 ↪ The candidate must make all disclosures required pursuant to this
7 subsection in writing to the association with his or her candidacy
8 information. Except as otherwise provided in this subsection, the
9 association shall distribute the disclosures, on behalf of the
10 candidate, to each member of the association with the ballot or, in
11 the event ballots are not prepared and mailed pursuant to subsection
12 6, in the next regular mailing of the association. The association is
13 not obligated to distribute any disclosure pursuant to this subsection
14 if the disclosure contains information that is believed to be
15 defamatory, libelous or profane.

16 9. ~~Unless~~ *Except as otherwise provided in subsection 10,*
17 *unless* a person is appointed by the declarant:

18 (a) A person may not be a member of the executive board or an
19 officer of the association if ~~the~~:

20 *(1) The person resides in a unit with, is married to, is*
21 *domestic partners with, or is related by blood, adoption or*
22 *marriage within the third degree of consanguinity or affinity to*
23 *another person who is also a member of the executive board or is*
24 *an officer of the association;*

25 *(2) The person stands to gain any personal profit or*
26 *compensation of any kind from a matter before the executive*
27 *board of the association;*

28 *(3) The person owns more than one unit in the association;*
29 *or*

30 *(4) The person, the person’s spouse or the person’s parent or*
31 *child, by blood, marriage or adoption, performs the duties of a*
32 *community manager for that association.*

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

38 (1) That master association; or

39 (2) Any association that is subject to the governing
40 documents of that master association.

41 10. *A person, other than a person appointed by the declarant,*
42 *who owns 75 percent or more of the units in an association may:*

43 *(a) Be a member of the executive board or an officer of the*
44 *association; and*



1 *(b) Reside in a unit with, be married to, be domestic partners*
2 *with, or be related by blood, adoption or marriage within the third*
3 *degree of consanguinity or affinity to another person who is also a*
4 *member of the executive board or is an officer of the association,*
5 *unless the person owning 75 percent or more of the units in the*
6 *association and the other person would constitute a majority of the*
7 *total number of seats on the executive board.*

8 **11.** An officer, employee, agent or director of a corporate
9 owner of a unit, a trustee or designated beneficiary of a trust that
10 owns a unit, a partner of a partnership that owns a unit, a member or
11 manager of a limited-liability company that owns a unit, and a
12 fiduciary of an estate that owns a unit may be an officer of the
13 association or a member of the executive board. In all events where
14 the person serving or offering to serve as an officer of the
15 association or a member of the executive board is not the record
16 owner, the person shall file proof in the records of the association
17 that:

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

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

23 ~~11.1~~ **12.** Except as otherwise provided in subsection 6 or NRS
24 116.31105, the election of any member of the executive board must
25 be conducted by secret written ballot in the following manner:

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

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

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

36 (d) Only the secret written ballots that are returned to the
37 association may be counted to determine the outcome of the
38 election.

39 (e) The secret written ballots must be opened and counted at a
40 meeting of the association. A quorum is not required to be present
41 when the secret written ballots are opened and counted at the
42 meeting.

43 (f) The incumbent members of the executive board and each
44 person whose name is placed on the ballot as a candidate for
45 membership on the executive board may not possess, be given



1 access to or participate in the opening or counting of the secret
2 written ballots that are returned to the association before those secret
3 written ballots have been opened and counted at a meeting of the
4 association.

5 ~~[H2-]~~ 13. An association shall not adopt any rule or regulation
6 that has the effect of prohibiting or unreasonably interfering with a
7 candidate in the candidate's campaign for election as a member of
8 the executive board, except that the candidate's campaign may be
9 limited to 90 days before the date that ballots are required to be
10 returned to the association.

11 ~~[H3-]~~ 14. A candidate who has submitted a nomination form
12 for election as a member of the executive board may request that the
13 association or its agent either:

14 (a) Send before the date of the election and at the association's
15 expense, to the mailing address of each unit within the
16 common-interest community or to any other mailing address
17 designated in writing by the unit's owner a candidate informational
18 statement. The candidate informational statement:

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

20 (2) Must not contain any defamatory, libelous or profane
21 information; and

22 (3) May be sent with the secret ballot mailed pursuant to
23 subsection ~~[H4]~~ 12 or in a separate mailing; or

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

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

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

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

38 (II) The voting rights of those owners are not exercised by
39 delegates or representatives, the mailing address of the association
40 established pursuant to NRS 119A.520. If the mailing address of the
41 association is provided to the candidate pursuant to this sub-
42 subparagraph, the association must send to each owner of a time
43 share within the time share plan the campaign material provided by
44 the candidate. If the campaign material will be sent by mail, the
45 candidate who provides the campaign material must provide to the



1 association a separate copy of the campaign material for each owner
2 and must pay the actual costs of mailing before the campaign
3 material is mailed. If the campaign material will be sent by
4 electronic transmission, the candidate must provide to the
5 association one copy of the campaign material in an electronic
6 format.

7 ↪ The information provided pursuant to this paragraph must not
8 include the name of any unit's owner or any tenant of a unit's
9 owner. If a candidate who makes a request for the information
10 described in this paragraph fails or refuses to provide a written
11 statement signed by the candidate which states that the candidate is
12 making the request to allow the candidate to communicate campaign
13 material directly to units' owners and that the candidate will not use
14 the information for any other purpose, the association or its agent
15 may refuse the request.

16 ~~14.~~ 15. An association and its directors, officers, employees
17 and agents are immune from criminal or civil liability for any act or
18 omission which arises out of the publication or disclosure of any
19 information related to any person and which occurs in the course of
20 carrying out any duties required pursuant to subsection ~~13.~~

21 ~~15.~~ 14.

22 16. Each member of the executive board shall, within 90 days
23 after his or her appointment or election, certify in writing to the
24 association, on a form prescribed by the Administrator, that
25 the member has read and understands the governing documents of
26 the association and the provisions of this chapter to the best of his or
27 her ability. The Administrator may require the association to submit
28 a copy of the certification of each member of the executive board of
29 that association at the time the association registers with the
30 Ombudsman pursuant to NRS 116.31158.

