

SENATE BILL NO. 174—SENATOR HAMMOND

FEBRUARY 18, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing eligibility to be a candidate for or 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 candidate for or 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 candidate for
6 or member of the executive board or an officer of a unit-owners’ association if: (1)
7 the person resides with, is married to or domestic partners with or is related within
8 the third degree of consanguinity to a member of the board or an officer of the
9 association; or (2) the person stands to gain any personal profit or compensation
10 from a matter before the board. The exclusion does not apply: (1) to a person who
11 owns 75 percent or more of the units in an association under certain circumstances;
12 or (2) to a candidate for the executive board if the number of candidates nominated
13 for membership on the executive board is less than or equal to the number of
14 members to be elected. Lastly, this bill provides that if a person is not eligible to be
15 a candidate for or member of the executive board or an officer of an association, the
16 association: (1) must not place the person’s name on the ballot; and (2) must
17 prohibit such a person from serving as a member of the executive board or an
18 officer of the association.



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

1 **Section 1.** NRS 116.31034 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
5 declarant's control, the units' owners shall elect an executive board
6 of at least three members, all of whom must be units' owners. The
7 executive board shall elect the officers of the association. Unless the
8 governing documents provide otherwise, the officers of the
9 association are not required to be units' owners. The members of
10 the executive board and the officers of the association shall take
11 office upon election.

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

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

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

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

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

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



1 the election, then the secretary or other officer specified in the
2 bylaws of the association will cause notice to be given to each unit's
3 owner informing each unit's owner that:

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

24 9. ~~Unless~~ *Except as otherwise provided in subsections 10*
25 *and 11, unless* a person is appointed by the declarant:

26 (a) A person may not be a *candidate for or* member of the
27 executive board or an officer of the association if ~~the~~ :

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

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

36 (3) *The person, the person's spouse or the person's parent*
37 *or child, by blood, marriage or adoption, performs the duties of a*
38 *community manager for that association.*

39 (b) A person may not be a *candidate for or* member of the
40 executive board of a master association or an officer of that master
41 association if the person, the person's spouse or the person's parent
42 or child, by blood, marriage or adoption, performs the duties of a
43 community manager for:

44 (1) That master association; or



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

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

5 (a) *Be a candidate for or member of the executive board or an*
6 *officer of the association; and*

7 (b) *Reside in a unit with, be married to, be domestic partners*
8 *with, or be related by blood, adoption or marriage within the third*
9 *degree of consanguinity or affinity to another person who is also a*
10 *member of the executive board or is an officer of the association,*

11 *↪ unless the person owning 75 percent or more of the units in the*
12 *association and the other person would constitute a majority of the*
13 *total number of seats on the executive board.*

14 11. *A person, other than a person appointed by the declarant,*
15 *may:*

16 (a) *Be a candidate for or member of the executive board; and*

17 (b) *Reside in a unit with, be married to, be domestic partners*
18 *with, or be related by blood, adoption or marriage within the third*
19 *degree of consanguinity or affinity to another person who is also a*
20 *member of the executive board or is an officer of the association,*

21 *↪ if the number of candidates nominated for membership on the*
22 *executive board is less than or equal to the number of members to*
23 *be elected to the executive board.*

24 12. *If a person is not eligible to be a candidate for or member*
25 *of the executive board or an officer of the association pursuant to*
26 *any provision of this chapter, the association:*

27 (a) *Must not place his or her name on the ballot; and*

28 (b) *Must prohibit such a person from serving as a member of*
29 *the executive board or an officer of the association.*

30 13. An officer, employee, agent or director of a corporate
31 owner of a unit, a trustee or designated beneficiary of a trust that
32 owns a unit, a partner of a partnership that owns a unit, a member or
33 manager of a limited-liability company that owns a unit, and a
34 fiduciary of an estate that owns a unit may be an officer of the
35 association or a member of the executive board. In all events where
36 the person serving or offering to serve as an officer of the
37 association or a member of the executive board is not the record
38 owner, the person shall file proof in the records of the association
39 that:

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

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



1 ~~14.1~~ 14. Except as otherwise provided in subsection 6 or NRS
2 116.31105, the election of any member of the executive board must
3 be conducted by secret written ballot in the following manner:

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

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

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

14 (d) Only the secret written ballots that are returned to the
15 association may be counted to determine the outcome of the
16 election.

17 (e) The secret written ballots must be opened and counted at a
18 meeting of the association. A quorum is not required to be present
19 when the secret written ballots are opened and counted at the
20 meeting.

21 (f) The incumbent members of the executive board and each
22 person whose name is placed on the ballot as a candidate for
23 membership on the executive board may not possess, be given
24 access to or participate in the opening or counting of the secret
25 written ballots that are returned to the association before those secret
26 written ballots have been opened and counted at a meeting of the
27 association.

28 ~~15.1~~ 15. An association shall not adopt any rule or regulation
29 that has the effect of prohibiting or unreasonably interfering with a
30 candidate in the candidate's campaign for election as a member of
31 the executive board, except that the candidate's campaign may be
32 limited to 90 days before the date that ballots are required to be
33 returned to the association.

34 ~~16.1~~ 16. A candidate who has submitted a nomination form
35 for election as a member of the executive board may request that the
36 association or its agent either:

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

- 42 (1) Must be no longer than a single, typed page;
43 (2) Must not contain any defamatory, libelous or profane
44 information; and



1 (3) May be sent with the secret ballot mailed pursuant to
2 subsection ~~14~~ 14 or in a separate mailing; or

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

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

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

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

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

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

40 ~~14~~ 17. An association and its directors, officers, employees
41 and agents are immune from criminal or civil liability for any act or
42 omission which arises out of the publication or disclosure of any
43 information related to any person and which occurs in the course of
44 carrying out any duties required pursuant to subsection ~~13~~.

45 ~~15~~ 16.



1 **18.** Each member of the executive board shall, within 90 days
2 after his or her appointment or election, certify in writing to the
3 association, on a form prescribed by the Administrator, that
4 the member has read and understands the governing documents of
5 the association and the provisions of this chapter to the best of his or
6 her ability. The Administrator may require the association to submit
7 a copy of the certification of each member of the executive board of
8 that association at the time the association registers with the
9 Ombudsman pursuant to NRS 116.31158.

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