

CHAPTER.....

AN ACT relating to common-interest communities; revising provisions relating to the payment of fines by units' owners in common-interest communities; prohibiting community managers from being paid compensation, fees or other remuneration in certain ways; revising the definition of "collection agency" to include community managers under certain circumstances and to exclude unit-owners' associations and other persons under certain circumstances; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law regulates common-interest communities and the unit-owners' associations that govern those common-interest communities. (Chapter 116 of NRS) Existing law prohibits an association from taking a payment made by a unit's owner for any assessment, fee or other charge and using that payment from the unit's owner to pay for any fine imposed by the association against the unit's owner. (NRS 116.31145)

This bill clarifies the prohibition. This bill provides that an association may not apply, in whole or in part, any payment made by a unit's owner for an assessment, fee or other charge toward the payment of the outstanding balance of the fine or the costs of collecting the fine. However, this bill allows the unit's owner to provide written authorization to the association which directs the association to apply the payment toward the outstanding balance of the fine or the costs of collecting the fine. This bill also requires the association, in its books and records, to account for the fine separately from any assessment, fee or other charge paid by the unit's owner.

Existing law regulates community managers who contract with associations to provide management services for the common-interest community. (Chapter 116 of NRS) A community manager must comply with the standards of practice adopted by the Commission for Common-Interest Communities. (NRS 116.700) A community manager is prohibited from soliciting or accepting any type of compensation, gratuity or remuneration that would improperly influence the community manager or cause the appearance of a conflict of interest. (NRS 116.31185)

This bill prohibits a community manager from soliciting or accepting any type of compensation, fee or other remuneration that is based, in whole or in part, on the number or amount of fines imposed against or collected from units' owners or any percentage or proportion of those fines. However, this bill does not prohibit a community manager from being paid under a management contract with the association if the contract complies with the standards of practice adopted by the Commission for Common-Interest Communities, the payment is being made to the community manager for providing management services and the payment is not structured in a way that would violate the laws governing community managers.

Under existing law, an association has a lien on a unit for the amount of any unpaid and past due assessments, construction penalties or fines charged to the unit's owner. (NRS 116.3116) An association may foreclose on the lien after following certain procedures for a nonjudicial foreclosure sale. (NRS 116.31162-116.31168) Under existing law, a person generally must be licensed as a collection agency if the person engages in the collection of unpaid claims on behalf of

another. (NRS 649.020, 649.075) The Attorney General has given an opinion that an association and its board members, officers, employees, units' owners and community managers are not required to be licensed as collection agencies when collecting unpaid debts or conducting nonjudicial foreclosure sales on behalf of the association. (Att'y Gen. Op. 1999-38 (Dec. 1, 1999))

This bill provides that an association and its board members, officers, employees and units' owners are not required to be licensed as collection agencies when they are acting in accordance with the laws governing common-interest communities and the governing documents of the association. However, this bill provides that a community manager must be licensed as a collection agency if the community manager, or any employee, agent or affiliate of the community manager, performs or offers to perform any act associated with the nonjudicial foreclosure of a lien against a unit's owner.

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

Section 1. NRS 116.31145 is hereby amended to read as follows:

116.31145 ~~{An}~~ *If an association has imposed a fine against a unit's owner or a tenant or guest of a unit's owner pursuant to NRS 116.31031 for violations of the governing documents of the association, the association ~~{may}~~:*

1. Shall, in the books and records of the association, account for the fine separately from any assessment, fee or other charge; and

2. Shall not apply, in whole or in part, any payment made by the unit's owner for any assessment, fee or other charge ~~{that is paid by a}~~ toward the payment of the outstanding balance of the fine or any costs of collecting the fine, unless the unit's owner ~~{toward a fine imposed by}~~ provides written authorization which directs the association ~~{against}~~ to apply the payment made by the unit's owner ~~{}~~ in such a manner.

Sec. 2. NRS 116.31185 is hereby amended to read as follows:

116.31185 *1.* A member of an executive board, an officer of an association or a community manager shall not solicit or accept any form of compensation, gratuity or other remuneration that:

~~{1}~~ *(a)* Would improperly influence or would appear to a reasonable person to improperly influence the decisions made by those persons; or

~~{2}~~ *(b)* Would result or would appear to a reasonable person to result in a conflict of interest for those persons.

2. In addition to the limitations set forth in subsection 1, a community manager shall not solicit or accept any form of compensation, fee or other remuneration that is based, in whole or in part, on:

(a) The number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners pursuant to NRS 116.31031 for violations of the governing documents of the association; or

(b) Any percentage or proportion of those fines.

3. The provisions of this section do not prohibit a community manager from being paid compensation, a fee or other remuneration under the terms of a contract between the community manager and an association if:

(a) The scope of the respective rights, duties and obligations of the parties under the contract comply with the standards of practice for community managers adopted by the Commission pursuant to NRS 116.700;

(b) The compensation, fee or other remuneration is being paid to the community manager for providing management of the common-interest community; and

(c) The compensation, fee or other remuneration is not structured in a way that would violate the provisions of subsection 1 or 2.

Sec. 3. NRS 649.020 is hereby amended to read as follows:

649.020 1. "Collection agency" means ~~[and includes]~~ all persons engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another.

2. "Collection agency" does not include any of the following unless they are conducting collection agencies:

(a) Individuals regularly employed on a regular wage or salary, in the capacity of credit men or in other similar capacity upon the staff of employees of any person not engaged in the business of a collection agency or making or attempting to make collections as an incident to the usual practices of their primary business or profession.

(b) Banks.

(c) Nonprofit cooperative associations.

(d) Unit-owners' associations and the board members, officers, employees and units' owners of those associations when acting under the authority of and in accordance with chapter 116 of NRS and the governing documents of the association, except for those community managers included within the term "collection agency" pursuant to subsection 3.

(e) Abstract companies doing an escrow business.

~~[(e)]~~ (f) Duly licensed real estate agents ~~[-~~ ~~(f)]~~, *except for those real estate agents who are community managers included within the term "collection agency" pursuant to subsection 3.*

(g) Attorneys and counselors at law licensed to practice in this State, so long as they are retained by their clients to collect or to solicit or obtain payment of such clients' claims in the usual course of the practice of their profession.

3. *“Collection agency”:*

(a) *Includes a community manager while engaged in the management of a common-interest community if the community manager, or any employee, agent or affiliate of the community manager, performs or offers to perform any act associated with the foreclosure of a lien pursuant to NRS 116.31162 to 116.31168, inclusive; and*

(b) *Does not include any other community manager while engaged in the management of a common-interest community.*

4. *As used in this section:*

(a) *“Community manager” has the meaning ascribed to it in NRS 116.023.*

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

Sec. 4. This act becomes effective upon passage and approval.