
SENATE BILL NO. 153—SENATORS HARDY, SCHNEIDER, TOWNSEND,
NOLAN, BEERS, AMODEI, COFFIN, LEE, MCGINNESS AND TITUS

MARCH 2, 2005

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to management of
common-interest communities. (BDR 10-830)

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 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:

1 Existing law regulates common-interest communities and the unit-owners’
2 associations that govern those common-interest communities. (Chapter 116 of
3 NRS) Existing law prohibits an association from taking a payment made by a unit’s
4 owner for any assessment, fee or other charge and using that payment from the
5 unit’s owner to pay for any fine imposed by the association against the unit’s
6 owner. (NRS 116.31145)
7 This bill clarifies the prohibition. This bill provides that an association may not
8 apply, in whole or in part, any payment made by a unit’s owner for an assessment,
9 fee or other charge toward the payment of the outstanding balance of the fine or the
10 costs of collecting the fine. However, this bill allows the unit’s owner to provide
11 written authorization to the association which directs the association to apply the
12 payment toward the outstanding balance of the fine or the costs of collecting the
13 fine. This bill also requires the association, in its books and records, to account for
14 the fine separately from any assessment, fee or other charge paid by the unit’s
15 owner.



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

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

33 Under existing law, an association has a lien on a unit for the amount of any
34 unpaid and past due assessments, construction penalties or fines charged to the
35 unit's owner. (NRS 116.3116) An association may foreclose on the lien after
36 following certain procedures for a nonjudicial foreclosure sale. (NRS 116.31162-
37 116.31168) Under existing law, a person generally must be licensed as a collection
38 agency if the person engages in the collection of unpaid claims on behalf of
39 another. (NRS 649.020, 649.075) The Attorney General has given an opinion that
40 an association and its board members, officers, employees, units' owners and
41 community managers are not required to be licensed as collection agencies when
42 collecting unpaid debts or conducting nonjudicial foreclosure sales on behalf of the
43 association. (Att'y Gen. Op. 1999-38 (Dec. 1, 1999))

44 This bill provides that an association and its board members, officers,
45 employees and units' owners are not required to be licensed as collection agencies
46 when they are acting in accordance with the laws governing common-interest
47 communities and the governing documents of the association. However, this bill
48 provides that a community manager must be licensed as a collection agency if the
49 community manager, or any employee, agent or affiliate of the community
50 manager, performs, offers to perform or assists another person in performing any
51 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:

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

3 116.31145 ~~{An}~~ *If an association has imposed a fine against*
4 *a unit's owner or a tenant or guest of a unit's owner pursuant to*
5 *NRS 116.31031 for violations of the governing documents of the*
6 *association, the association ~~{may}~~:*

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

10 *2. Shall not apply, in whole or in part, any payment made by*
11 *the unit's owner for any assessment, fee or other charge ~~{that is}~~*



1 ~~paid by a~~ toward the payment of the outstanding balance of the
2 fine or any costs of collecting the fine, unless the unit's owner
3 ~~[toward a fine imposed by]~~ provides written authorization which
4 directs the association ~~[against]~~ to apply the payment made by the
5 unit's owner ~~[]~~ in such a manner.

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

7 116.31185 1. A member of an executive board, an officer of
8 an association or a community manager shall not solicit or accept
9 any form of compensation, gratuity or other remuneration that:

10 ~~[1-]~~ (a) Would improperly influence or would appear to a
11 reasonable person to improperly influence the decisions made by
12 those persons; or

13 ~~[2-]~~ (b) Would result or would appear to a reasonable person to
14 result in a conflict of interest for those persons.

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

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

23 (b) Any percentage or proportion of those fines.

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

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

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

35 (c) The compensation, fee or other remuneration is not
36 structured in a way that would violate the provisions of subsection
37 1 or 2.

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

39 649.020 1. "Collection agency" means ~~[and includes]~~ all
40 persons engaging, directly or indirectly, and as a primary or a
41 secondary object, business or pursuit, in the collection of or in
42 soliciting or obtaining in any manner the payment of a claim owed
43 or due or asserted to be owed or due to another.



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

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

9 (b) Banks.

10 (c) Nonprofit cooperative associations.

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

17 (e) Abstract companies doing an escrow business.

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

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

26 3. "Collection agency":

27 (a) *Includes a community manager while engaged in the*
28 *management of a common-interest community if the community*
29 *manager, or any employee, agent or affiliate of the community*
30 *manager, performs, offers to perform or assists another person in*
31 *performing any act associated with the foreclosure of a lien*
32 *pursuant to NRS 116.31162 to 116.31168, inclusive; and*

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

35 4. As used in this section:

36 (a) "Community manager" *has the meaning ascribed to it in*
37 *NRS 116.023.*

38 (b) "Unit-owners' association" *has the meaning ascribed to it*
39 *in NRS 116.011.*

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

