
ASSEMBLY BILL NO. 240—ASSEMBLYMEN MOORE, SEAMAN, FIORE,
JONES, DOOLING; GARDNER, O’NEILL, OSCARSON AND SHELTON

MARCH 9, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing liens of a unit-owners’
association. (BDR 10-821)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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 enforcement and priority of a unit-owners’ association’s lien on a unit; repealing provisions authorizing the nonjudicial foreclosure of an association’s lien; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, a unit-owners’ association has a lien on a unit for certain
2 amounts due to the association. Generally, the association’s lien is prior to all other
3 liens on a unit, except: (1) liens recorded before the recordation of the declaration;
4 (2) the first security interest on the unit; and (3) liens for real estate taxes and other
5 governmental assessments or charges against the unit. However, the association’s
6 lien is prior to the first security interest on the unit to the extent of certain
7 maintenance and abatement charges and a certain amount of assessments for
8 common expenses. The portion of the association’s lien that is prior to the first
9 security interest is commonly referred to as the “super-priority lien.” (NRS
10 116.3116) Existing law authorizes a unit-owners’ association to foreclose its lien
11 through a nonjudicial foreclosure process. (NRS 116.31162-116.31168)

12 This bill repeals provisions authorizing a unit-owners’ association to foreclose
13 its lien through a nonjudicial foreclosure process and removes provisions granting
14 the association’s lien priority over other liens and encumbrances. **Section 4** of this
15 bill provides that the association may enforce its lien by recording a notice of lien
16 and commencing a judicial action to enforce its lien. Under **section 4**, the
17 association’s lien on a unit has no priority over other liens and encumbrances on the
18 unit that were recorded before the association recorded its notice of lien. **Section 8**
19 of this bill provides that the amendatory provisions of **section 4** apply to the
20 enforcement of the association’s lien unless the association has foreclosed its lien
21 by sale on or before June 30, 2015.



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

1 **Section 1.** NRS 116.12075 is hereby amended to read as
2 follows:

3 116.12075 1. The provisions of this chapter do not apply to a
4 nonresidential condominium except to the extent that the declaration
5 for the nonresidential condominium provides that:

6 (a) This entire chapter applies to the condominium;

7 (b) Only the provisions of NRS 116.001 to 116.2122, inclusive,
8 and 116.3116 ~~to 116.31168, inclusive,~~ apply to the condominium;
9 or

10 (c) Only the provisions of NRS 116.3116 ~~to 116.31168,~~
11 ~~inclusive,~~ apply to the condominium.

12 2. If this entire chapter applies to a nonresidential
13 condominium, the declaration may also require, subject to NRS
14 116.1112, that:

15 (a) Notwithstanding NRS 116.3105, any management,
16 maintenance operations or employment contract, lease of
17 recreational or parking areas or facilities and any other contract or
18 lease between the association and a declarant or an affiliate of a
19 declarant continues in force after the declarant turns over control of
20 the association; and

21 (b) Notwithstanding NRS 116.1104 and subsection 3 of NRS
22 116.311, purchasers of units must execute proxies, powers of
23 attorney or similar devices in favor of the declarant regarding
24 particular matters enumerated in those instruments.

25 **Sec. 2.** NRS 116.310312 is hereby amended to read as
26 follows:

27 116.310312 1. A person who holds a security interest in a
28 unit must provide the association with the person's contact
29 information as soon as reasonably practicable, but not later than 30
30 days after the person:

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

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

36 2. If an action or notice described in subsection 1 has been
37 filed or recorded regarding a unit and the association has provided
38 the unit's owner with notice and an opportunity for a hearing in the
39 manner provided in NRS 116.31031, the association, including its
40 employees, agents and community manager, may, but is not
41 required to, enter the grounds of the unit, whether or not the unit is



1 vacant, to take any of the following actions if the unit's owner
2 refuses or fails to take any action or comply with any requirement
3 imposed on the unit's owner within the time specified by the
4 association as a result of the hearing:

5 (a) Maintain the exterior of the unit in accordance with the
6 standards set forth in the governing documents, including, without
7 limitation, any provisions governing maintenance, standing water or
8 snow removal.

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

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

13 (2) Threatens the health or safety of the residents of the
14 common-interest community;

15 (3) Results in blighting or deterioration of the unit or
16 surrounding area; and

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

18 3. If a unit is vacant and the association has provided the unit's
19 owner with notice and an opportunity for a hearing in the manner
20 provided in NRS 116.31031, the association, including its
21 employees, agents and community manager, may enter the grounds
22 of the unit to maintain the exterior of the unit or abate a public
23 nuisance as described in subsection 2 if the unit's owner refuses or
24 fails to do so.

25 4. The association may order that the costs of any maintenance
26 or abatement conducted pursuant to subsection 2 or 3, including,
27 without limitation, reasonable inspection fees, notification and
28 collection costs and interest, be charged against the unit. The
29 association shall keep a record of such costs and interest charged
30 against the unit and has a lien on the unit for any unpaid amount of
31 the charges. ~~{The lien may be foreclosed under NRS 116.31162 to~~
32 ~~116.31168, inclusive.}~~

33 5. A lien described in subsection 4 bears interest from the date
34 that the charges become due at a rate determined pursuant to NRS
35 17.130 until the charges, including all interest due, are paid.

36 6. ~~{Except as otherwise provided in this subsection, a lien~~
37 ~~described in subsection 4 is prior and superior to all liens, claims,~~
38 ~~encumbrances and titles other than the liens described in paragraphs~~
39 ~~(a) and (c) of subsection 2 of NRS 116.3116. If the federal~~
40 ~~regulations of the Federal Home Loan Mortgage Corporation or the~~
41 ~~Federal National Mortgage Association require a shorter period of~~
42 ~~priority for the lien, the period during which the lien is prior and~~
43 ~~superior to other security interests shall be determined in accordance~~
44 ~~with those federal regulations. Notwithstanding the federal~~
45 ~~regulations, the period of priority of the lien must not be less than~~



1 ~~the 6 months immediately preceding the institution of an action to~~
2 ~~enforce the lien.~~

3 ~~—7.1~~ A person who purchases or acquires a unit at a foreclosure
4 sale pursuant to NRS 40.430 or a trustee’s sale pursuant to NRS
5 107.080 is bound by the governing documents of the association and
6 shall maintain the exterior of the unit in accordance with the
7 governing documents of the association. Such a unit may only be
8 removed from a common-interest community in accordance with the
9 governing documents pursuant to this chapter.

10 ~~18.1~~ 7. Notwithstanding any other provision of law, an
11 association, its directors or members of the executive board,
12 employees, agents or community manager who enter the grounds of
13 a unit pursuant to this section are not liable for trespass.

14 ~~19.1~~ 8. As used in this section:

15 (a) “Exterior of the unit” includes, without limitation, all
16 landscaping outside of a unit and the exterior of all property
17 exclusively owned by the unit owner.

18 (b) “Vacant” means a unit:

19 (1) Which reasonably appears to be unoccupied;

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

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

25 **Sec. 3.** NRS 116.31068 is hereby amended to read as follows:

26 116.31068 1. Except as otherwise provided in subsection 3,
27 an association shall deliver any notice required to be given by the
28 association under this chapter to any mailing or electronic mail
29 address a unit’s owner designates. Except as otherwise provided in
30 subsection 3, if a unit’s owner has not designated a mailing or
31 electronic mail address to which a notice must be delivered, the
32 association may deliver notices by:

33 (a) Hand delivery to each unit’s owner;

34 (b) Hand delivery, United States mail, postage paid, or
35 commercially reasonable delivery service to the mailing address of
36 each unit;

37 (c) Electronic means, if the unit’s owner has given the
38 association an electronic mail address; or

39 (d) Any other method reasonably calculated to provide notice to
40 the unit’s owner.

41 2. The ineffectiveness of a good faith effort to deliver notice by
42 an authorized means does not invalidate action taken at or without a
43 meeting.

44 3. The provisions of this section do not apply:



1 (a) To a notice required to be given pursuant to NRS 116.3116 ;
2 ~~{to 116.31168, inclusive;} or~~

3 (b) If any other provision of this chapter specifies the manner in
4 which a notice must be given by an association.

5 **Sec. 4.** NRS 116.3116 is hereby amended to read as follows:

6 116.3116 1. The association has a lien on a unit for any
7 construction penalty that is imposed against the unit's owner
8 pursuant to NRS 116.310305, any assessment levied against that
9 unit or any fines imposed against the unit's owner from the time the
10 construction penalty, assessment or fine becomes due. Unless the
11 declaration otherwise provides, any penalties, fees, charges, late
12 charges, fines and interest charged pursuant to paragraphs (j) to (n),
13 inclusive, of subsection 1 of NRS 116.3102 are enforceable as
14 assessments under this section. If an assessment is payable in
15 installments, the full amount of the assessment is a lien from the
16 time the first installment thereof becomes due.

17 2. ~~{A lien under this section is prior to all other liens and~~
18 ~~encumbrances on a unit except:~~

19 ~~—(a) Liens and encumbrances recorded before the recordation of~~
20 ~~the declaration and, in a cooperative, liens and encumbrances which~~
21 ~~the association creates, assumes or takes subject to;~~

22 ~~—(b) A first security interest on the unit recorded before the date~~
23 ~~on which the assessment sought to be enforced became delinquent~~
24 ~~or, in a cooperative, the first security interest encumbering only the~~
25 ~~unit's owner's interest and perfected before the date on which the~~
26 ~~assessment sought to be enforced became delinquent; and~~

27 ~~—(c) Liens for real estate taxes and other governmental~~
28 ~~assessments or charges against the unit or cooperative.~~

29 ~~→ The lien is also prior to all security interests described in~~
30 ~~paragraph (b) to the extent of any charges incurred by the~~
31 ~~association on a unit pursuant to NRS 116.310312 and to the extent~~
32 ~~of the assessments for common expenses based on the periodic~~
33 ~~budget adopted by the association pursuant to NRS 116.3115 which~~
34 ~~would have become due in the absence of acceleration during the 9~~
35 ~~months immediately preceding institution of an action to enforce the~~
36 ~~lien, unless federal regulations adopted by the Federal Home Loan~~
37 ~~Mortgage Corporation or the Federal National Mortgage~~
38 ~~Association require a shorter period of priority for the lien. If federal~~
39 ~~regulations adopted by the Federal Home Loan Mortgage~~
40 ~~Corporation or the Federal National Mortgage Association require a~~
41 ~~shorter period of priority for the lien, the period during which the~~
42 ~~lien is prior to all security interests described in paragraph (b) must~~
43 ~~be determined in accordance with those federal regulations, except~~
44 ~~that notwithstanding the provisions of the federal regulations, the~~
45 ~~period of priority for the lien must not be less than the 6 months~~



~~1 immediately preceding institution of an action to enforce the lien.
2 This subsection does not affect the priority of mechanics' or
3 materialmen's liens, or the priority of liens for other assessments
4 made by the association.~~

~~5 —3.— The holder of the security interest described in paragraph (b)
6 of subsection 2 or the holder's authorized agent may establish an
7 escrow account, loan trust account or other impound account for
8 advance contributions for the payment of assessments for common
9 expenses based on the periodic budget adopted by the association
10 pursuant to NRS 116.3115 if the unit's owner and the holder of that
11 security interest consent to the establishment of such an account. If
12 such an account is established, payments from the account for
13 assessments for common expenses must be made in accordance with
14 the same due dates as apply to payments of such assessments by a
15 unit's owner.~~

~~16 —4.— Unless the declaration otherwise provides, if two or more
17 associations have liens for assessments created at any time on the
18 same property, those liens have equal priority.~~

~~19 —5.— Recording of the declaration constitutes record notice and
20 perfection of the lien. No further recordation of any claim of lien for
21 assessment under this section is required.~~

*22 —6.1 To perfect its lien, the association must record a notice of
23 lien in the office of the county recorder of the county in which the
24 unit or some part thereof is located. An association may not record
25 a notice of lien unless the amounts listed in subsection 1 are more
26 than 90 days past due.*

*27 3. A notice of lien recorded pursuant to subsection 2 must be
28 verified by the oath of the person designated in the declaration or
29 by the association for that purpose or, if no one is designated, by
30 the president of the association, and must contain:*

31 (a) A statement of the amount of the association's lien;

*32 (b) The name and last known address of the record owner of the
33 unit; and*

34 (c) A description of the unit against which the lien is imposed.

*35 4. The association shall serve a copy of the notice of lien
36 upon the unit's owner not later than 30 days after recording the
37 notice of lien pursuant to subsection 2 by:*

*38 (a) Personally delivering a copy of the notice of lien to the
39 unit's owner; or*

*40 (b) Mailing a copy of the notice of lien to the unit's owner or
41 his or her successor in interest by certified mail, return receipt
42 requested, at his or her address, if known, and at the address of
43 the unit.*

*44 5. Not earlier than 90 days after the date on which a copy of
45 the notice of lien is served on the unit's owner pursuant to*



1 subsection 4, a notice of lien under this section may be enforced
2 by an action in any court of competent jurisdiction that is located
3 within the county where the unit subject to the notice of lien or
4 any portion thereof is located, on setting out in the complaint the
5 particulars of the demand, with a description of the unit to be
6 charged with the lien. At the time of filing the complaint and
7 issuing the summons, the association or other person authorized
8 by the association to enforce the lien shall file a notice of
9 pendency of the action in the manner provided in NRS 14.010.

10 6. In an action to enforce a lien under this section, the court
11 shall:

12 (a) Enter judgment according to the right of the parties.

13 (b) Upon ascertaining the amount of the association's lien
14 under this section, cause the property to be sold in satisfaction of
15 the lien and costs of sale. An association in whose favor judgment
16 may be rendered may cause the unit to be sold within the time and
17 in the manner provided for sales on execution, issued out of any
18 district court, for the sale of real property.

19 7. If the proceeds of a sale pursuant to subsection 6, after
20 payment of the costs of sale, are not sufficient to satisfy the
21 association's lien, the association is entitled to a personal
22 judgment for the amount remaining due against the unit's owner.
23 If the proceeds of the sale amount to more than the association's
24 lien and the cost of sale, the remainder must be paid over to the
25 unit's owner.

26 8. As soon as practicable, but not later than 10 days after a
27 notice of lien upon a unit is fully satisfied or discharged, the
28 association shall cause to be recorded a discharge or release of the
29 notice of lien. If the association fails to comply with this section,
30 the association is liable in a civil action to the unit's owner or his
31 or her successor in interest for any actual damages caused by the
32 association's failure to comply with the provisions of this
33 subsection or \$100, whichever is greater, and for reasonable
34 attorney's fees and the costs of bringing the action.

35 9. A lien for unpaid assessments is extinguished unless
36 proceedings to enforce the lien are ~~instituted~~ commenced in a
37 court of competent jurisdiction within ~~3 years after the full amount~~
38 ~~of the assessments becomes due.~~

39 ~~—7.~~ 1 year after the date on which the notice of lien is
40 recorded pursuant to subsection 3.

41 10. This section does not prohibit ~~actions to~~ an association
42 from bringing or maintaining a civil action to recover sums for
43 which subsection 1 creates a lien . ~~for prohibit an association from~~
44 ~~taking a deed in lieu of foreclosure.~~



~~8. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.~~

~~9. 11.~~ The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate, ~~for if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive,~~ the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

~~10. 12.~~ In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:

(a) In a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, the association's lien may be ~~foreclosed under NRS 116.31162 to 116.31168, inclusive,~~ **enforced pursuant to this section.**

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

~~(1) May~~ **may** be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive. ~~;~~ **or**

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

~~11. 13.~~ In an action by an association to collect assessments or to ~~foreclose~~ **enforce** a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116.3115.

Sec. 5. NRS 116.4105 is hereby amended to read as follows:

116.4105 If the declaration provides that ownership or occupancy of any units, is or may be in time shares, the public offering statement shall disclose, in addition to the information required by NRS 116.4103 and 116.41035:

1. The number and identity of units in which time shares may be created;
2. The total number of time shares that may be created;
3. The minimum duration of any time shares that may be created; and



1 4. The extent to which the creation of time shares will or may
2 affect the enforceability of the association's lien for assessments
3 provided in NRS 116.3116. ~~and 116.31162.~~

4 **Sec. 6.** NRS 278A.170 is hereby amended to read as follows:

5 278A.170 The procedures for enforcing payment of an
6 assessment for the maintenance of common open space provided in
7 NRS 116.3116 ~~to 116.31168, inclusive,~~ are also available to any
8 organization for the ownership and maintenance of common open
9 space established other than under this chapter or chapter 116 of
10 NRS and entitled to receive payments from owners of property for
11 such maintenance under a recorded declaration of restrictions, deed
12 restriction, restrictive covenant or equitable servitude which
13 provides that any reasonable and ratable assessment thereon for the
14 organization's costs of maintaining the common open space
15 constitutes a lien or encumbrance upon the property.

16 **Sec. 7.** NRS 649.020 is hereby amended to read as follows:

17 649.020 1. "Collection agency" means all persons engaging,
18 directly or indirectly, and as a primary or a secondary object,
19 business or pursuit, in the collection of or in soliciting or obtaining
20 in any manner the payment of a claim owed or due or asserted to be
21 owed or due to another.

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

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

30 (b) Banks.

31 (c) Nonprofit cooperative associations.

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

38 (e) Abstract companies doing an escrow business.

39 (f) Duly licensed real estate brokers, except for those real estate
40 brokers who are community managers included within the term
41 "collection agency" pursuant to subsection 3.

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



1 3. "Collection agency":

2 (a) Includes a community manager while engaged in the
3 management of a common-interest community or the management
4 of an association of a condominium hotel if the community
5 manager, or any employee, agent or affiliate of the community
6 manager, performs or offers to perform any act associated with the
7 ~~foreclosure~~ enforcement of a lien pursuant to NRS ~~116.31162 to~~
8 ~~116.31168, inclusive,~~ 116.3116 or the foreclosure of a lien
9 pursuant to NRS 116B.635 to 116B.660, inclusive; and

10 (b) Does not include any other community manager while
11 engaged in the management of a common-interest community or the
12 management of an association of a condominium hotel.

13 4. As used in this section:

14 (a) "Community manager" has the meaning ascribed to it in
15 NRS 116.023 or 116B.050.

16 (b) "Unit-owners' association" has the meaning ascribed to it in
17 NRS 116.011 or 116B.030.

18 **Sec. 8.** The provisions of NRS 116.3116, as amended by
19 section 4 of this act, apply to the enforcement of a lien of a unit-
20 owner's association pursuant to that section unless the association
21 has foreclosed its lien by sale on or before June 30, 2015.

22 **Sec. 9.** NRS 116.31162, 116.31163, 116.311635, 116.31164,
23 116.31166 and 116.31168 are hereby repealed.

24 **Sec. 10.** This act becomes effective on July 1, 2015.

LEADLINES OF REPEALED SECTIONS

116.31162 Foreclosure of liens: Mailing of notice of delinquent assessment; recording of notice of default and election to sell; period during which unit's owner may pay lien to avoid foreclosure; limitations on type of lien that may be foreclosed.

116.31163 Foreclosure of liens: Mailing of notice of default and election to sell to certain interested persons.

116.311635 Foreclosure of liens: Providing notice of time and place of sale; service of notice of sale; contents of notice of sale; proof of service.

116.31164 Foreclosure of liens: Procedure for conducting sale; purchase of unit by association; execution and delivery of deed; use of proceeds of sale.

116.31166 Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper application of purchase



money; title vested in purchaser without equity or right of redemption.

116.31168 Foreclosure of liens: Requests by interested persons for notice of default and election to sell; right of association to waive default and withdraw notice or proceeding to foreclose.

③



* A B 2 4 0 *

