

ASSEMBLY BILL NO. 317—ASSEMBLYMAN SEGERBLOM

MARCH 18, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing arbitration of certain claims relating to residential property. (BDR 3-540)

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

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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 civil actions; revising provisions relating to the commencement of civil actions concerning certain claims relating to residential property after the completion of nonbinding arbitration of such claims; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires certain claims relating to residential property to be
2 submitted for mediation or arbitration with the Real Estate Division of the
3 Department of Business and Industry by filing a written claim with the Division as
4 a prerequisite to filing a civil action based on those claims. (NRS 38.310, 38.320)
5 Existing law further authorizes, under certain circumstances, any party to
6 nonbinding arbitration to commence a civil action concerning the claim which was
7 submitted for arbitration within 30 days after a decision and award have been
8 served upon the parties. (NRS 38.330) **Section 4** of this bill requires such a
9 decision and award to be both final and dispositive of any and all issues of the
10 claim which were submitted to nonbinding arbitration before such a party may
11 commence a civil action.

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

- 1 **Section 1.** (Deleted by amendment.)
2 **Sec. 2.** (Deleted by amendment.)
3 **Sec. 3.** (Deleted by amendment.)
4 **Sec. 4.** NRS 38.330 is hereby amended to read as follows:
5 38.330 1. If all parties named in a written claim filed
6 pursuant to NRS 38.320 agree to have the claim submitted for



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1 mediation, the parties shall reduce the agreement to writing and
2 shall select a mediator from the list of mediators maintained by the
3 Division pursuant to NRS 38.340. Any mediator selected must be
4 available within the geographic area. If the parties fail to agree upon
5 a mediator, the Division shall appoint a mediator from the list of
6 mediators maintained by the Division. Any mediator appointed must
7 be available within the geographic area. Unless otherwise provided
8 by an agreement of the parties, mediation must be completed within
9 60 days after the parties agree to mediation. Any agreement
10 obtained through mediation conducted pursuant to this section must,
11 within 20 days after the conclusion of mediation, be reduced to
12 writing by the mediator and a copy thereof provided to each party.
13 The agreement may be enforced as any other written agreement.
14 Except as otherwise provided in this section, the parties are
15 responsible for all costs of mediation conducted pursuant to this
16 section.

17 2. If all the parties named in the claim do not agree to
18 mediation, the parties shall select an arbitrator from the list of
19 arbitrators maintained by the Division pursuant to NRS 38.340. Any
20 arbitrator selected must be available within the geographic area. If
21 the parties fail to agree upon an arbitrator, the Division shall appoint
22 an arbitrator from the list maintained by the Division. Any arbitrator
23 appointed must be available within the geographic area. Upon
24 appointing an arbitrator, the Division shall provide the name of the
25 arbitrator to each party. An arbitrator shall, not later than 5 days
26 after the arbitrator's selection or appointment pursuant to this
27 subsection, provide to the parties an informational statement relating
28 to the arbitration of a claim pursuant to this section. The written
29 informational statement:

30 (a) Must be written in plain English;

31 (b) Must explain the procedures and applicable law relating to
32 the arbitration of a claim conducted pursuant to this section,
33 including, without limitation, the procedures, timelines and
34 applicable law relating to confirmation of an award pursuant to NRS
35 38.239, vacation of an award pursuant to NRS 38.241, judgment on
36 an award pursuant to NRS 38.243, and any applicable statute or
37 court rule governing the award of attorney's fees or costs to any
38 party; and

39 (c) Must be accompanied by a separate form acknowledging that
40 the party has received and read the informational statement, which
41 must be returned to the arbitrator by the party not later than 10 days
42 after receipt of the informational statement.

43 3. The Division may provide for the payment of the fees for a
44 mediator or an arbitrator selected or appointed pursuant to this



1 section from the Account for Common-Interest Communities and
2 Condominium Hotels created by NRS 116.630, to the extent that:

3 (a) The Commission for Common-Interest Communities and
4 Condominium Hotels approves the payment; and

5 (b) There is money available in the account for this purpose.

6 4. Except as otherwise provided in this section and except
7 where inconsistent with the provisions of NRS 38.300 to 38.360,
8 inclusive, the arbitration of a claim pursuant to this section must be
9 conducted in accordance with the provisions of NRS 38.231,
10 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At
11 any time during the arbitration of a claim relating to the
12 interpretation, application or enforcement of any covenants,
13 conditions or restrictions applicable to residential property or any
14 bylaws, rules or regulations adopted by an association, the arbitrator
15 may issue an order prohibiting the action upon which the claim is
16 based. An award must be made within 30 days after the conclusion
17 of arbitration, unless a shorter period is agreed upon by the parties to
18 the arbitration.

19 5. If all the parties have agreed to nonbinding arbitration, any
20 party to the nonbinding arbitration may, within 30 days after a *final*
21 decision and award *which are dispositive of any and all issues of*
22 *the claim which were submitted to nonbinding arbitration* have
23 been served upon the parties, commence a civil action in the proper
24 court concerning the claim which was submitted for arbitration. Any
25 complaint filed in such an action must contain a sworn statement
26 indicating that the issues addressed in the complaint have been
27 arbitrated pursuant to the provisions of NRS 38.300 to 38.360,
28 inclusive. If such an action is not commenced within that period,
29 any party to the arbitration may, within 1 year after the service of
30 the award, apply to the proper court for a confirmation of the award
31 pursuant to NRS 38.239.

32 6. If all the parties agree in writing to binding arbitration, the
33 arbitration must be conducted in accordance with the provisions of
34 this chapter. An award procured pursuant to such binding arbitration
35 may be vacated and a rehearing granted upon application of a party
36 pursuant to the provisions of NRS 38.241.

37 7. If, after the conclusion of binding arbitration, a party:

38 (a) Applies to have an award vacated and a rehearing granted
39 pursuant to NRS 38.241; or

40 (b) Commences a civil action based upon any claim which was
41 the subject of arbitration,

42 ➔ the party shall, if the party fails to obtain a more favorable award
43 or judgment than that which was obtained in the initial binding
44 arbitration, pay all costs and reasonable attorney's fees incurred by



1 the opposing party after the application for a rehearing was made or
2 after the complaint in the civil action was filed.

3 8. Upon request by a party, the Division shall provide a
4 statement to the party indicating the amount of the fees for a
5 mediator or an arbitrator selected or appointed pursuant to this
6 section.

7 9. As used in this section, "geographic area" means an area
8 within 150 miles from any residential property or association which
9 is the subject of a written claim submitted pursuant to NRS 38.320.

10 **Sec. 5.** (Deleted by amendment.)

11 **Sec. 6.** (Deleted by amendment.)

12 **Sec. 7.** (Deleted by amendment.)

