4. The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner pursuant to this section, make available to each unit's owner the policy established for the association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter. The policy must include, without limitation:

(a) The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

(b) The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

~~[Section 1.]~~ ***Sec. 2.*** NRS 116.3116 is hereby amended to read as follows:

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

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

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

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

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

➥ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the ***2 years immediately preceding institution of an action to enforce the lien if the unit is a single-family detached dwelling or during the*** 6 months ~~[2 years]~~ immediately preceding institution of an action to enforce the lien ~~[.]~~ ***if the unit is any other type of dwelling.*** This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

8. 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 or 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.

9. 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.

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

(1) 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.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
April 29, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:38 a.m. on Wednesday, April 29, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Mark E. Amodei

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus Conklin, Assembly District No. 37
Assemblywoman Ellen B. Spiegel, Assembly District No. 21

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Howard L. Skolnik, Director, Department of Corrections

Debra Gallo, Director, Government and State Regulatory Affairs, Southwest Gas Corporation
Judy Stokey, Director, Governmental Affairs, NV Energy
Garrett Gordon, Olympia Group
Angela Rock, Olympia Group
Robert Gastonguay, Executive Director, Nevada State Cable Telecommunications Association
Gary E. Milliken, Community Associations Institute
Sandra Duncan, Airpark Estates Homeowners' Association
Josh Griffin, American Nevada Company
Michael Trudell, Caughlin Ranch Homeowners' Association
Mike Randolph, Homeowner Association Services
Bill Uffelman, Nevada Bankers Association
George Ross, Bank of America

CHAIR CARE:
I will open the work session and address Assembly Bill (A.B.) 473 page 7, (Exhibit C, original is on file in the Research Library).

ASSEMBLY BILL 473: Revises provisions relating to medical and dental services for prisoners. (BDR 16-1128)

LINDA J. EISSMANN (Committee Policy Analyst):
Assembly Bill 473 requires the Department of Corrections to establish certain regulations regarding training and medical emergency response. While there was no specific opposition to the bill, Director Howard L. Skolnik indicated that legislation may not be necessary. They are already implementing some of the regulations provided for in the bill. The Committee had asked for documentation from Mr. Skolnik, including cost estimates, that are included in the work session binder, Exhibit C, pages 8 through 11. There was an amendment proposed by Lee Rowland of the American Civil Liberties Union of Nevada suggesting the adoption of standards should comply with the National Commission on Correctional Health Care. This amendment is not included in the work session document.

CHAIR CARE:
We have the memo dated April 22 from Rebecca Gasca that includes their amendment (Exhibit D).

GARY E. MILLIKEN (Community Associations Institute):
I agree with everything Ms. Gallo and Ms. Stokey said. The bottom of page 2 of the bill, the very last sentence says, "... owns the vehicle for the purpose of responding to requests for public utility services ... ." Do we need to add the words "first responder" or "emergency" in that situation?

CHAIR CARE:
I will close the hearing on A.B. 129 and open the hearing on A.B. 204.

ASSEMBLY BILL 204 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 21):
As a disclosure, I serve on the Board of the Green Valley Ranch Community Association. My participation on the Board gave me insight into this issue. I learned about some of these issues as I was going door-to-door speaking with constituents, and I did more research.

I am here to present A.B. 204, which can help stabilize Nevada's real estate market, preserve our communities and help protect our largest assets—our homes. Whether you live in a common-interest community or not, whether you like common-interest communities or hate them, and whether you live in an urban or rural area, the outcome of this bill will have an impact on you and your constituents.

In a nutshell, this bill does two things. First, it requires common-interest communities to implement and publicize their collection policies. This will increase the likelihood that associations will be able to collect their assessments or dues prior to foreclosures. Second, it makes it possible for common-interest communities to collect dues in arrears for up to two years at the time of foreclosure. This is necessary because foreclosures are now taking up to two years.

Everyone who buys into a common-interest community understands there are dues. Community budgets have historically been based on the assumption that nearly all of the regular assessments or dues will be collected. Communities are now facing severe hardships, and many are unable to meet their contractual obligations because they are not receiving the revenues owed to them. Others

are reducing their services and maybe simultaneously increasing their financial liabilities. They and their homeowners need our help.

I recognize there are some who are opposed to this bill, and you will hear from them later this morning. The objectives of the bill are to help homeowners, banks and investors maintain their property values; help common-interest communities mitigate the adverse effect of the mortgage foreclosure crisis; help homeowners avoid special assessments resulting from revenue shortfalls because fellow community members did not pay their required fees; and prevent cost shifting from common-interest communities to local governments. This bill is vital because our constituents are hurting. Our economic condition is bleak, and we must take action to address our State's critical needs.

Statewide, our individual property values continue to decline. Our urban areas are being hit the hardest. Everywhere in Nevada, we are having foreclosure problems. Clark County is the hardest hit. Between the second half of 2007 and the second half of 2008, property values declined in all zip codes in the Las Vegas Valley, except for one. The smallest decline was 13 percent, and the largest decline was 64 percent.

Our property values are being depressed because of a few factors. The increased inventory of housing due to foreclosures, abandoned homes and economic recession bring the pricing down. Consumer inability to acquire mortgages, increased neighborhood blight and the decreased ability of communities to provide obligated services also bring prices down. No one wants to buy into a blighted community unless it is at a bargain-basement price.

We all hoped the stimulus package would help, but help is not on the way for most Nevadans. We have the highest percentage of underwater mortgages in the nation. Twenty-eight percent of Nevadans owe more than 125 percent of their mortgage value, so they are not qualified for federal help. Nearly 60 percent of the homeowners in the Las Vegas Valley have negative equity in their homes.

What does this mean for homeowners in common-interest communities? There is decreased quality of life because there are fewer services provided by the associations. There is also increased vandalism and other crime. There is the potential for increased regular and special assessments to make up for revenue shortfalls. As a corollary to that, associations have liability exposure because, if

they say they are providing certain services, people may have bought in because of those services. If those services are not being provided, the association has liability for that. There is increased instability for communities and further declines in property values. Nevada Revised Statute 116.3107 requires associations to maintain, repair and replace the common elements. If the money is not there, it has to come from somewhere. Associations stop providing services or impose special assessments.

I conducted a survey and received responses from community association managers statewide. My responses covered 77,020 doors. Seventy-five common-interest communities responded—55 responded in Clark County and 20 in Washoe County. No one was opposed to the bill. I provided you with a summary of my testimony (Exhibit F, original is on file in the Research Library). The comments I received from the survey were enlightening, Exhibit F, pages 10 through 12.

Cost shifting is going on for some services. The costs are being shifted to local governments. For example, in my community, we have a company that does graffiti removal. Clark County also provides graffiti-removal services. If we needed to cut our budget for lack of funds, we could theoretically advise the homeowners to call Clark County, and they will come and take care of it. This cost would shift to the local government.

Code enforcement would be similar. If we have to cut back on inspections, local governments would have to take on those roles. The use of public pools and parks will increase because, if the communities are not able to maintain their pools, people will then go to the public pools and parks.

I was questioned about security patrols. My community experienced an increase in vandalism and problems along our walking paths. We could not afford to beef up our private security patrols. So, we turned to the City of Henderson. My community is open and ungated. The City of Henderson has increased patrols in my community. There is cost shifting going on because we cannot afford to hire the private companies we have traditionally relied on.

Another potential impact is when communities are having cash-flow issues and make late payments to local vendors—gardeners or small businesses that provide support services. This further contributes to the downfall of the area.

There are a few proposed amendments out there. You have received two of them by e-mail or regular mail. I put an amendment together that encapsulates one of the amendments and has some additional language (Exhibit G). My amendment does two things. The bill has excluded certain types of units because of Fannie Mae and Freddie Mac requirements. At the time, we thought the easiest way to do that would be to limit it to single-family homes. That excluded lots that have been purchased but not developed and other things that should be covered. We have made the language generic so those would be included where permissible.

There are some condominiums and attached townhomes on properties that were excluded in the version of the bill you have, and they do not fall under Fannie Mae and Freddie Mac requirements and provisions. Those should be included as well.

The other component of this amendment is that, if Fannie Mae and Freddie Mac requirements were to change so properties could be covered under them or the super priority could be extended under them, no additional legislation would be needed.

The Bankers Association has an amendment (Exhibit H). I do not support that amendment because it takes away from the intent of helping communities recover funds and make themselves whole so they can provide the services they need to provide.

I urge your support. Assembly Bill 204 supports Nevada communities and is vital for our recovery. It stabilizes communities; it will mitigate further declines in property values and local businesses; and it will help homeowners, families, banks and other investors.

CHAIR CARE:
We have two proposed amendments, one from Sandra Duncan (Exhibit I) and one from the Bankers Association, Exhibit H. Your mock-up, Exhibit G, would relate to all real property within the association, correct? Initially, it was the detached family dwelling.

ASSEMBLYWOMAN SPIEGEL:
Initially, it was all property. Then, we limited it to single-family dwellings in consideration of Fannie Mae and Freddie Mac because condominiums,

townhomes and other attached dwellings could not be included or they would not underwrite the mortgages. We thought that was acceptable because they underwrite approximately 80 percent of all mortgages. We did not want to create more problems for homeowners. However, we excluded lots such as Mrs. Duncan was concerned about.

CHAIR CARE:
The way your amendment, Exhibit G, is drafted, it says, "... unless the federal regulations ... ," Exhibit G, page 2, line 15. It goes on to say, "... If the federal regulations ... ." There are already federal regulations. Is this in anticipation of federal regulations being adopted?

ASSEMBLYWOMAN SPIEGEL:
I understand there are regulations or requirements that say for loans Fannie Mae and Freddie Mac underwrite, there is no more than a six-month super priority associated with that. The second part of the language says, if they were to change their regulations to whatever period they would designate, that would apply here as well.

CHAIR CARE:
Apparently, discussions like that are taking place in Washington, D.C.?

ASSEMBLYWOMAN SPIEGEL:
They are either taking place or are imminent.

CHAIR CARE:
If they were adopted, I do not know if we need the language.

SENATOR PARKS:
Detaching condominiums and townhouses is a problem for me and a number of my constituents. Something has to be in this bill addressing their issues. The existing language appears to include single-family, condominiums and townhouses, whereas the revised language appears to me to only include single-family detached dwellings.

ASSEMBLYWOMAN SPIEGEL:
The original version of the bill did include townhomes and condominiums. The amended version to address the Fannie Mae and Freddie Mac issue was limited to single-family homes. My amendment, Exhibit G, would extend it to

condominiums, townhomes and other types of property wherever possible because Fannie Mae and Freddie Mac's federal regulations take precedence over Nevada law.

CHAIR CARE:
Section 1 of the bill, page 3, line 24 through 27, says the executive board will make the policy established available to each unit's owner. Does that mean it is available upon request, or is there a requirement contemplated here that policy would be given to the unit owners as a matter of course?

ASSEMBLYWOMAN SPIEGEL:
Under NRS 116, the boards are required to mail the budget to each homeowner within their association for approval and ratification of the budget. This provision would require the collections policy to be included in that packet.

SANDRA DUNCAN (Airpark Estates Homeowners' Association):
I had submitted a proposed amendment, Exhibit I. However, the language in Assemblywoman Spiegel's amendment, Exhibit G, is better than what I had suggested. I am in favor of her bill. We have at least one homeowner who is seriously delinquent. The process of foreclosure is taking considerably longer than the six months. This extension of the super-priority lien would help avoid other homeowners having to make up for the amount of money we are losing. Even though we are small, our association has a collections policy. We mail that out annually to our homeowners. If you pass Assemblywoman Spiegel's amendment, Exhibit G, I will withdraw my amendment.

JOSH GRIFFIN (American Nevada Company):
We support this bill and Assemblywoman Spiegel's amendment. American Nevada Company has built and developed the two largest condominium projects in that section of Green Valley in Assembly District No. 21.

MS. ROCK:
Olympia Group supports this bill. It is valuable. The lack of the ability to collect assessments puts a burden on government agencies. Southern Highlands, which is our largest master-planned community, is located in the southwest area of Las Vegas. The Las Vegas Metropolitan Police Department (Metro), Southwest Area Command services that area. On any shift, they generally have between 11 and 16 vehicles on the road. They cover 250,000 rooftops. That is approximately one Metro vehicle to 20,000 homes. We have 7,000 homes in

Southern Highlands and 4 security vehicles. That is 1 security vehicle for every 1,700 homes. On a daily basis, when calls come into Metro, they call our security force to be a first response for backup if there are vehicular accidents. Master-planned communities provide vital services that take the burden off law enforcement agencies. But it is a nonessential service and is something considered to be cut when there is a lack of funds.

MICHAEL TRUDELL (Caughlin Ranch Homeowners' Association):
We support this bill. I had some concerns about the amendment approved on the other side because, as a manager, we have to interpret these provisions, and we disagree with title companies or Realtors regarding our interpretation. This amendment, Exhibit G, clarifies the intent of the bill and the provisions that would exclude those houses from the two-year super-priority lien to the six-month in a way that satisfies our concerns.

MIKE RANDOLPH (Homeowner Association Services):
I am in favor of this bill. I am glad to see the requirement to send the collection policy annually. It should also be sent with all welcome packages and resale packages.

Condominium and townhouse associations have a high foreclosure rate. The costs not paid during the super-priority lien raises fees to other members who are struggling to stay in their homes. If we can include the condominiums, townhouses and mobile home communities, it would be great for Nevada and all homeowners.

BILL UFFELMAN (Nevada Bankers Association):
I am a representative to the Summerlin North Community Association. We modified our policy to specifically emphasize the ability of the association to do collections outside the lien process. They could bring an action.

The irony is that homeowners' associations, in many cases, are the first one to know a homeowner is in trouble. They have not missed their mortgage payment but miss their HOA payment. If the association stays on top of that and exercises its right under the law, there is self help there.

You processed a bill from Senator Parks talking about the foreclosure owner filing within 30 days; they are the new owner. The association will know who the new owner is. On May 5, you will hear a bill from

Assemblyman Richard McArthur, Assembly District No. 4, which talks about a homeowners' association entering properties in the association to do minimal maintenance so it is not an eyesore.

That lien, because it is an assessment, will survive and be part of the foreclosure and would be paid. The new owner of that property has an obligation to maintain the property at the HOA standards.

In foreclosures, a bank or the lender does not have any title or right to that property until the foreclosure sale. You have a 21-day notice that there is going to be a sale. You have to give a 90-day notice of default and the intent to exercise rights to sell. Typically, you do not get the 90-day notice until you have missed payments for 3 months. The reality is, in approximately 210 days, the lender may become the owner at the foreclosure sale, or a third party may purchase the property. That is where the six-month look back on homeowner assessments comes in.

Until you start missing payments, the lender has no idea what your situation is. The bill is retroactive. As the bill is written, prospectively, we can pick and choose among the dwellings this will apply to in a homeowners' association because it would apply if someone's loan is a Fannie Mae or Freddie Mac conforming loan. If Fannie Mae or Freddie Mac own the loan, their rules would apply. If it is another mortgage-backed security, you would have another set of rules if it forecloses another time.

The bill is disruptive of the lending process. Lenders, when a bundle of mortgages is offered, have to evaluate what they are buying. This is in part what got us where we are because the people who were supposed to do that evaluation were not paying attention to their job.

My amendment, Exhibit H, is to strike section 2. That will keep the law at the six-month look back on homeowners' association dues. It takes advantage of the provision, saying HOAs must get serious about managing their association. With Senator Parks' bill and Assemblyman McArthur's bill, you are attacking the core of the problem. In many ways, there is a reward for homeowners' associations where the association management has not exercised their right. The purchaser at the foreclosure is going to pay—the financial institution that is foreclosing or a third-party purchaser at the foreclosure sale.

The Nevada Bankers Association is opposed to section 2 of this bill and ask that you strike it from the bill.

CHAIR CARE:
Were you stating there are people who are making their mortgage payments but skipping the general assessments? The property manager or HOA is aware of that. I do not know the degree of tolerance for that.

MR. UFFELMAN:
My association tightened down its collection policy. Before that, you were allowed about six-months slippage before they attacked you. Now they attack more aggressively and quicker. They give you 30 days to cure, and if you do not cure, you no longer get the option of monthly payments; you have to pay a year ahead. They made it clear they have a right to sue in civil court under the contract. You have a contract with your homeowners' association and have a contractual obligation to pay the fees. You could get a judgment against you. That could all be triggered before you miss your first mortgage payment.

CHAIR CARE:
You gave us the 200-day scheme, which gave rise to the 6 months currently on the books. The testimony was that foreclosures are now taking up to two years.

MR. UFFELMAN:
I do not know whether they are taking two years. One of the ironies is that around Thanksgiving, Fannie Mae and Freddie Mac dictated a moratorium that they were not allowing any more foreclosures for about 90 days. So, we had a big spike in foreclosure filings in March. That was because Fannie Mae and Freddie Mac's foreclosure moratorium expired.

Those who service the mortgages—receive the payments and distribute them to paper holders, mortgage-backed securities or the bank—the system got bound up. We have worked through those things. There are lenders who have not pursued foreclosures. Once I have become the owner, I have an obligation under Nevada law, and as further emphasized by Assemblyman McArthur's bill and Senator Parks' bill, to maintain that property to the association's standards. That is going forward after the foreclosure. I have no control over what happens up to the time of the sale.

There is the situation where an investor purchases a home and intends to flip that home to make money. Perhaps he sat on it for a year and did no maintenance. Assemblyman McArthur's bill speaks to that situation. Senator Parks' bill speaks to the situation that, once it is sold, the association will know who the owner of the property is. Then the association would pursue the new owner to do what he is required by law to do. As lenders, we have no control of it until we own it.

GEORGE ROSS (Bank of America):
Bank of America opposes A.B. 204, at least section 2. The time of six months should not be extended to two years. Bank of America works with those with whom it has mortgages to try to keep them in their properties. Those people are beginning to exhibit signs that they may fall behind. If they do fall behind, miss payments or make late payments, Bank of America makes every effort to contact that person and find out what is happening. Bank of America tries to find out what it can do to adjust the mortgage, forgive payments for six months or redo their mortgage. Similarly, Bank of America is now in a nationwide program to redo hundreds of thousands of mortgages. Six thousand or more people work directly on this.

Sometimes, these efforts do not work, and the home is ultimately foreclosed. This can take time, up to two years. What we are seeing here is that because we worked with these people for a period of time to try to keep them in their home, we will be penalized for 18 more months of homeowner dues. If we work with these people and are then penalized with homeowner dues, that is not a good economic calculation.

You will get several bills from the Assembly having to do with helping renters in foreclosed situations and bills helping those who are getting mortgages. Assembly Bill 149 will set up a mediation process for those who are afraid to go to their lender. Those are progressive bills. But this bill sends the wrong message to a bank who may be trying to help people stay in their homes.

ASSEMBLY BILL 149 (1st Reprint): Revises provisions governing foreclosures on property. (BDR 9-824)

CHAIR CARE:
I will close the hearing on A.B. 204. We will go back to work session and address A.B. 59, Exhibit C, page 2.

CHAIR CARE:
There being nothing further to come before the Senate Committee on Judiciary, we are adjourned at 10:22 a.m.

RESPECTFULLY SUBMITTED:

_____
Kathleen Swain,
Committee Secretary

APPROVED BY:

_____
Senator Terry Care, Chair

DATE:_____

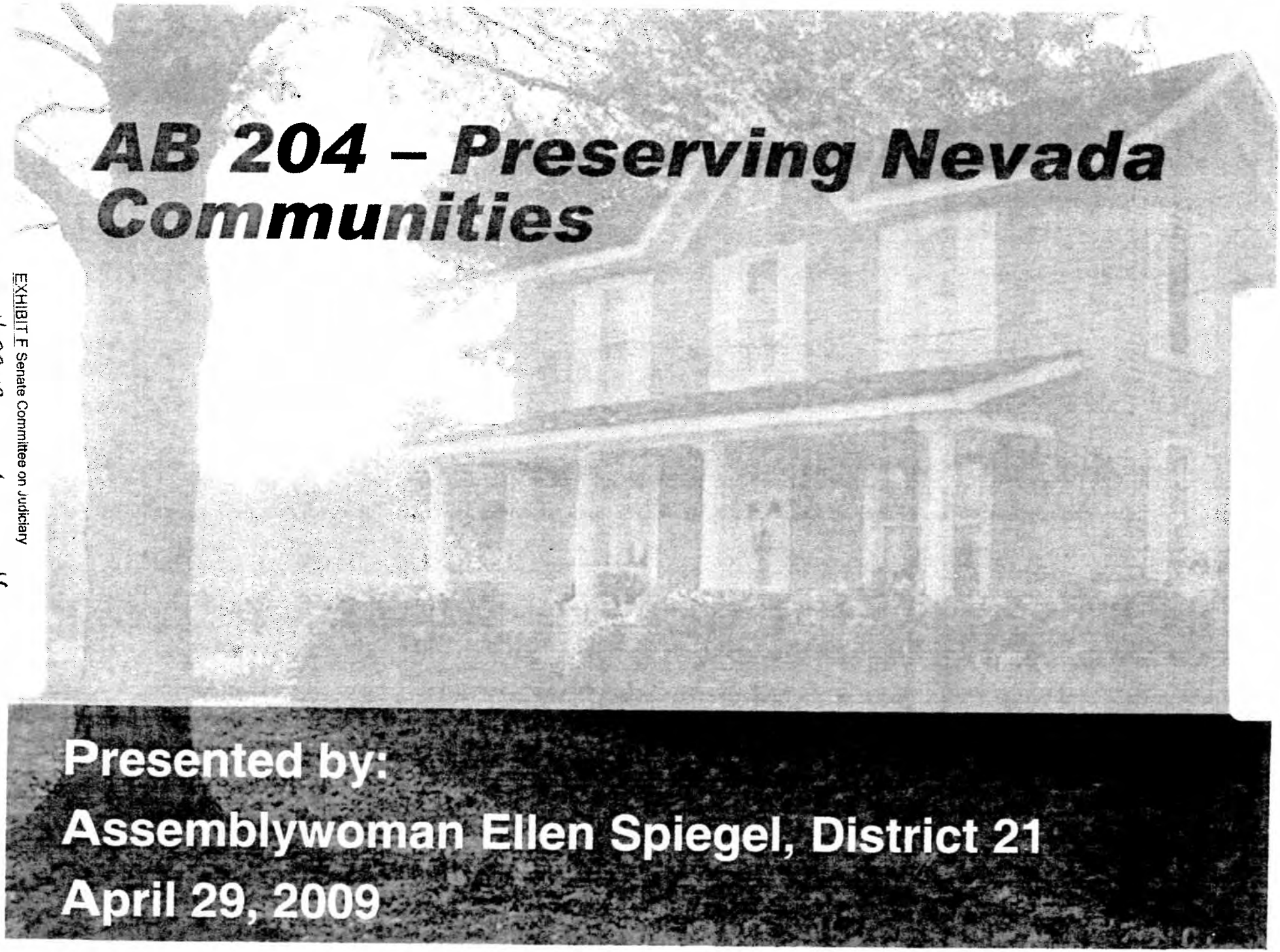
DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.



AB 204 – Preserving Nevada Communities

Presented by:
Assemblywoman Ellen Spiegel, District 21
April 29, 2009

AB 204 Summary

Revises provisions relating to the priority of certain liens against units in common-interest communities (BDR 10-920): requiring associations to implement collections policies and increasing the super priority from six months to two years.

Fiscal Notes:

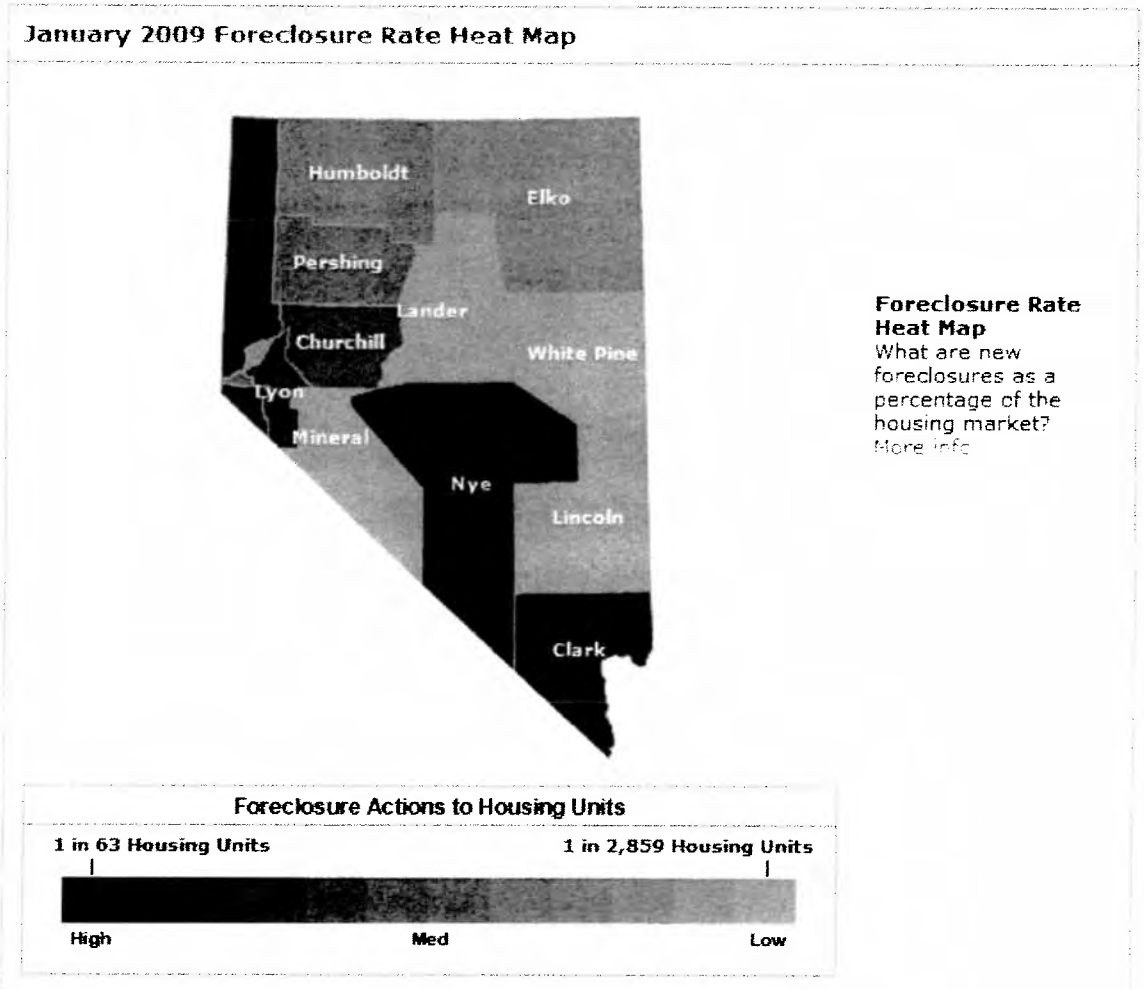
- Effect on Local Government: No
- Effect on the State: No

Legislative Intent/Objectives

- Help homeowners, banks and investors maintain their property values;
- Help common interest communities mitigate the adverse effects of the mortgage/foreclosure crisis;
- Help homeowners avoid special assessments resulting from revenue shortfalls due to fellow community members who did not pay required fees; and,
- Prevent cost-shifting from common-interest communities to local governments

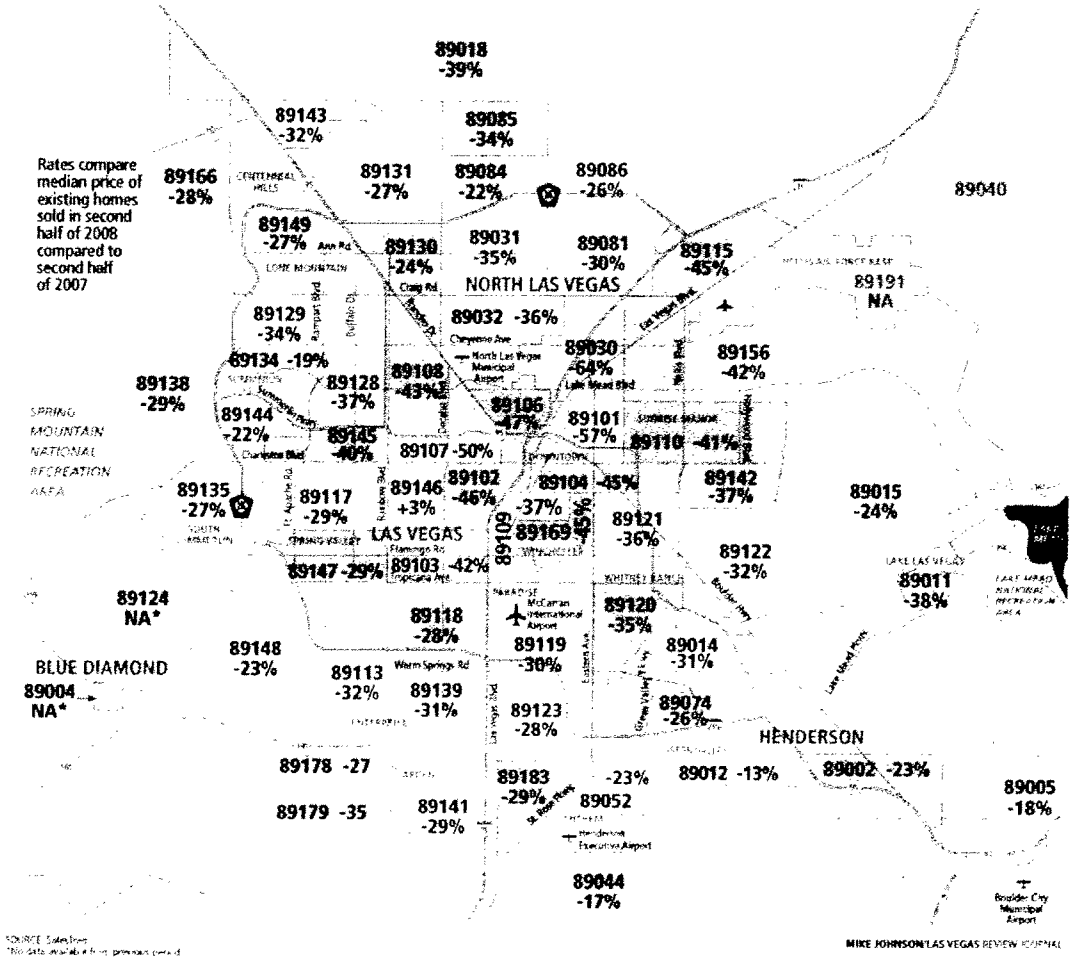
F3

Currently: Individual Property Values Decline



Source: http://www.realtytrac.com/TrendCenter/default.aspx?address=Nevada

Clark County is Hardest Hit



Between the 2nd Half of 2007 and the 2nd Half of 2008, Property Values Declined in All Las Vegas Valley Zip Codes Except One (89146)

- The Smallest Decline was 13% (89012)
- The Largest Decline was 64% (89030)

Property Values Impacted by:

- Increased Inventory of Housing Stock due to Foreclosures, Abandoned Homes, and Economic Recession;
- Consumer Inability to Acquire Mortgages;
- Increased Neighborhood Blight; and,
- Decreased Ability for Communities to Provide Obligated Services

Help is <u>Not</u> on the Way for Most Nevadans

- Nevada has the Highest Percentage of "Underwater" Mortgage Holders in the Nation
  - 28% of Nevadans Owe More than 125% of their Home's Value
  - Nearly 60% of Homeowners in the Las Vegas Valley Have Negative Equity in their Homes

- President Barack Obama's Homeowner Affordability and Stability Plan Restricts Refinancing Aid to Borrowers Whose First Mortgage Does Not Exceed 105% of the Current Market Value of their Homes

Source: Las Vegas Review Journal 3/5/09

What Does This Mean to Homeowners In Common-Interest Communities?

- Decreased Quality of Life
  - Fewer Services Provided by Association
  - Increased Vandalism and Other Crime
- Potential for Increased Regular and Special Assessments to Make Up for Revenue Shortfalls and Association Liability Exposure; Increased Instability for Communities; and,
- Further Declines in Property Values

81

Survey of Community Managers

- 77,020 "Doors";
- 75 Common-Interest Community Managers Responded to Survey:
  - 55 in Clark County
  - 20 in Washoe County
- No Respondent Opposition to the Bill
- Comments Enlightening

64

Comments

- *"Dollars not collected directly impact future assessment rates to compensate for the loss of projected income. Also, there is less operating cash to fund reserves or maintain the common area."*

  Dale H. Collins, CMCA
  Siena Community Association (2,001 homes in Las Vegas)

- *"Our cash reserves are severely underfunded...and we have some serious landscaping needs."*

  Cathy Walters, Treasurer
  Skyline View Associations (129 homes in Reno)

Comments *(continued)*

- *"Increase in bad debt expense [over $100,000 per year] has frustrated the majority of the owners who are now having to pay for those who are not paying, including the lenders who have foreclosed."*

Donna Erwin, AMS, LSM, PCAM

Red Rock Country Club Homeowners Association (1,117 homes in Las Vegas)

Comments *(continued)*

"The impact is that the HOA is cutting all services that are not mandated (water, trash and other utilities). The impact is that drug dealers are moving into the complex and homicides are on the rise and the place looks horrible.

"Special Assessments won't work. Those that are paying will stop paying if they are increased.

"The current owners are so angry that they are footing the bill for the dead beat investors that they no longer have any pride or care for their units.

"I support this bill 100%. The assessments are an obligation and should not be reduced."

Amy Groves

Nevada's Finest Properties (Managers of Several Associations in Las Vegas)

Additional Potential Impact

- Cost-Shifting to Local Government:
  - Graffiti Removal
  - Code Enforcement/Inspections
  - Use of Public Pools/Parks
  - Security Patrols
- Late Payments to Local Vendors Impedes Business Stability

F13

Additional Proposed Amendments

- Two concepts being incorporated:
  - Extends to all units, unless precluded by Fannie Mae or Freddie Mac requirements
  - If superpriority-related provisions are increased for Fannie Mae/Freddie Mac-underwritten properties, those provisions would apply in Nevada upon passage.
- Nevada Bankers' Association amendment not accepted

AB204 Supports Nevada Communities And is Vital for Recovery

- Stabilize Communities
- Mitigate Further Declines In:
  - Property Values
  - Local Businesses
- Helps Homeowners:
  - Families
  - Banks
  - Other Investors

FIS

The Bottom Line

...Home Means Nevada

F16

Let's work together to preserve our equity, our communities and our quality of life

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
May 2, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:09 a.m. on Saturday, May 2, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblywoman Ellen B. Spiegel, Assembly District No. 21

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Garrett Gordon, Olympia Group
Judy Stokey, Director, Governmental Affairs, NV Energy
George Flint, Wedding Chapels

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
Existing law already addresses that issue. If someone damages a common area, the person is already required to reimburse the association, generally speaking. Almost all the driveways are owned by the unit owner, although there may be some circumstances where it is otherwise.

CHAIR CARE:
We will not mess with section 1, even though that remains in S.B. 183. We have the amendment we just heard addressed, Exhibit C, page 8. I wanted to add some language saying you may park in the driveway, but only if the vehicle cannot go inside the garage. It is true that people buy into associations thinking they are not going to see vehicles like this on the street or in the driveway.

SENATOR AMODEI:
My recollection from testimony was this was not like a company car. This is an on-call situation. The context was that an employee is not driving this vehicle and parking at home every day. There are people who store items in their garage, and do not park vehicles in their garage. We would be telling them they cannot store items in their garage because during the time they are on call, they have to put the service vehicle in their garage.

I like the language in the amendment, Exhibit C, page 8, in section 6, indicating the association may request whatever confirmation they want rather than the individual companies determining what each individual association may want.

> SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED A.B. 129 WITH THE AMENDMENT CONTAINED IN EXHIBIT C, PAGE 8.
>
> SENATOR WIENER SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
We will address A.B. 204, Exhibit C, page 10.

ASSEMBLY BILL 204 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

MS. EISSMANN:
At the hearing, Assemblywoman Spiegel proposed an amendment, Exhibit C, page 13. Since the hearing, Assemblywoman Spiegel provided a letter to this Committee, Exhibit C, page 11. The letter relates to testimony provided by Bill Uffelman, who had an amendment to delete section 2 of the bill, Exhibit C, page 16. Sandra Duncan from Dayton withdrew her amendment in favor of Assemblywoman Spiegel's amendment. Assemblywoman Spiegel provided an article today regarding foreclosures (Exhibit D).

CHAIR CARE:
I was copied on correspondence regarding the effective date of this bill.

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 21):
I was not sure if the proponent of the proposed amendment relating to the effective date was going to present it or if they wanted me to present it. Either way, I am fine with their proposed amendment, which is changing the effective date to January 1, 2010.

CHAIR CARE:
That would be January 1, 2010, as opposed to October 1.

ASSEMBLYWOMAN SPIEGEL:
That would be the effective date just for section 1 of the bill.

SENATOR AMODEI:
We have a few bills dealing with foreclosure. I support the bill. Is there an objection to rolling it to the next work session? I have a question on how this fits with some of the other foreclosure bills. We can take a global approach to make sure we are consistent between what happens in a common-interest community for past-due fees or assessments and what we are doing on the foreclosure front for single-family dwellings. We need to make sure we have not created something that provides for different treatment in an association versus single-family dwellings out of an association.

CHAIR CARE:
We should get a matrix listing all the Senate bills we have had on common-interest communities and all the Assembly bills we have had, the ones we have heard testimony on and the ones we have yet to hear testimony on.

MS. EISSMANN:
I can provide the Committee with floor statements that summarize the bills.

SENATOR AMODEI:
On the record, for Assemblywoman Spiegel, I support A.B. 204.

ASSEMBLYWOMAN SPIEGEL:
Assembly Bill 204 only relates to fees that are due to associations by people who live in common-interest communities. People who do not live in common-interest communities by definition would not be part of an association and would not have assessments due to a common-interest community association.

SENATOR AMODEI:
I want to make sure that, to the extent this leads to someone potentially losing their home, we have thought about that, and where it is different than people out of an association, because it should be.

CHAIR CARE:
We will address A.B. 262, Exhibit C, page 22.

ASSEMBLY BILL 262 (1st Reprint): Makes various changes concerning the issuance of marriage licenses. (BDR 11-961)

MS. EISSMANN:
Nothing I know of has changed since the hearing. We have two written amendments. One was from Margaret Flint, Exhibit C, page 26. The other one was from Shirley Parraguirre, Exhibit C, page 28. I also added some comments Mr. Glover mentioned during the hearing, Exhibit C, page 23. He said if the bill were to move, he had some suggestions regarding the requirement of regulations in counties that choose to participate, as well as tying licensing agents to the chapel where they are employed.

CHAIR CARE:
The Committee members received a letter from Amy Harvey, Washoe County Clerk, whose name was mentioned during the hearing. Someone from her office testified. I am not going to make the letter part of the record.

CHAIR CARE:
If Senator Washington has withdrawn the second, does someone else want to second Senator Copening's motion?

THE MOTION FAILED FOR LACK OF A SECOND.

* * * * *

CHAIR CARE:
We will put this on work session on Tuesday. There being nothing further to come before the Senate Committee on Judiciary, we are adjourned at 9:07 a.m.

RESPECTFULLY SUBMITTED:

_____
Kathleen Swain,
Committee Secretary

APPROVED BY:

_____
Senator Terry Care, Chair

DATE:_____

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Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

Assemblywoman Spiegel
AB 204

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13 ACTION NEWS Las Vegas | www.ktnv.com

Foreclosed community a mess for residents

Posted: April 9, 2009 04:58 PM PDT

With houses getting foreclosed on all over the Valley, we've seen some messy properties left behind-so what happens when an unfinished development gets foreclosed on? Who's responsible for the neighborhood upkeep for the people who still live there?

Neatly trimmed grass and promising signs line a private park in the Hillside community at Cheyenne and the 215, but initial appearances can be deceiving.

Grafitti, broken windows, ripped-out stall doors and not a sparkling pool, but a green one.

And in case you want to sunbathe at the bottom of the pool, there's lawn furniture in there for you.

Resident Lorette Chrystal says, "we'd like to have it cleaned because spring and summer's coming around, we'd like to use our pool."

Her neighbor, Damon Lindsay tells us, "it's not safe for kids in our community to be out here playing in the park when there's broken glass and feces and everything else."

This vandalism didn't happen yesterday. Residents tell us it's been like this for over a month.

"You're frustrated, you're frustrated as hell," Chrystal says. So she emailed us for help.

We learned quickly that the solution isn't simple.

The property is no longer owned by the builder, Astoria Homes. It was foreclosed on by one of Astoria's lendors KeyBank, back in December when still in the early stages of development.

Out of the 370 homes planned for Hillside, only 57 were actually built.

Astoria President, Tom McCormick tells Action news, "no one expected what happened to be as bad as it is," he continues, "it's crushing."

McCormick tells us Astoria was helping the property management company maintain Hillside's pool and park before they lost the property. Now, that money isn't coming in, and the community areas are really suffering.

McCormick says "this is not your typical neighborhood where you can take it over and just let it sit."

But residents are still paying $32 per month in Homeowner's Association fees and they want to know where their money's going.

Lindsay tells us, "we pay good money to the HOA every month for them to come out and make sure our grounds are kept clean and unfortunately we're not getting what we paid for."

Property management company Terra West President Deborah Ogilvie argues, "we're paying all that we can pay."

Terra West says they now collect less than $2,000 dollars a month total in HOA fees which they say, doesn't

even cover basic costs.

They tell us just paying the insurance, water and electric for Hillside costs them $2,100 monthly. That means there's nothing left to clean up the vandalism or pay for the pool.

Ogilvie says the new owner needs to do its part, "KeyBank has done when i say absolutely nothing they have done absolutely nothing."

In a statement KeyBank told us:*Key cannot comment on the specifics of actual or anticipated disputes.*

The foreclosure on Astoria homes and its unfinished residential development is truly an unfortunate situation for all involved. Key exercised its legal rights through the foreclosure and took possession of the hillside. While it is never a lender's intention to acquire assets in this manner, key obviously has an interest in protecting its collateral.

Astoria President Tom McCormick responds to the statement saying, "we told them what was happening, we told them this thing is going to need some maitenance and they said well again, we'll deal with that when it happnes. Again, i cant speak for the bank but it doesnt look like it's happened."

As for the residents, they just want someone to step in and clean up their community.

Terra West tells us they are draining the pool next week.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
May 6, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:25 a.m. on Wednesday, May 6, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblyman Bernie Anderson, Assembly District No. 31
Assemblyman John C. Carpenter, Assembly District No. 33
Assemblyman William Horne, Assembly District No. 34
Assemblyman Richard McArthur, Assembly District No. 4
Assemblyman Harvey J. Munford, Assembly District No. 6

STAFF MEMBERS PRESENT:

Nick Anthony, Deputy Legislative Counsel
Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry

Barry Smith, Executive Director, Nevada Press Association, Inc.
Bill Uffelman, President and CEO, Nevada Bankers Association
Randy Robison, Nevada Credit Union League
John Radocha
Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry
Florence Jones
Ben Graham, Administrative Office of the Courts
Connie S. Bisbee, M.S., Chair, State Board of Parole Commissioners
Teresa Werner
Lee Rowland, American Civil Liberties Union of Nevada
Patricia Hines
Lucy Flores, External Affairs and Development Specialist, Office of the Vice President for Diversity and Inclusion, University of Nevada, Las Vegas
Katie Monroe, Executive Director, Rocky Mountain Innocence Center
Sam Bateman, Nevada District Attorneys Association
Jason Frierson, Office of the Public Defender, Clark County
Orrin Johnson, Office of the Public Defender, Washoe County
Tonja Brown, Advocate for the Innocent
Ron Titus, Director and State Court Administrator, Administrative Office of the Courts
Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce
Mark Woods, Deputy Chief, Northern Command, Division of Parole and Probation, Department of Public Safety

CHAIR CARE:
I will open the hearing on Assembly Bill (A.B.) 207.

ASSEMBLY BILL 207 (1st Reprint): Makes various changes concerning common-interest communities. (BDR 10-694)

ASSEMBLYMAN JOHN C. CARPENTER (Assembly District No. 33):
I am here to introduce A.B. 207, which makes a number of changes to the requirements pertaining to common-interest communities. Section 1 exempts a rural agricultural, residential common-interest community from paying the $3 fee as required pursuant to chapter 116.31155 of the *Nevada Revised Statutes* (NRS) regarding the Office of the Ombudsman.

ASSEMBLYMAN MCARTHUR:
That was changed in the amendment. I am not sure why, when the wording is technical. An HOA can include high-rise condominiums. If you go to common-interest communities, it refers to the single-family detached dwellings. That was probably added to coincide with the wording on page 1 where my original bill had HOAs, and they changed to common-interest communities. Those are common-interest communities; that is why the wording was changed.

CHAIR CARE:
We had A.B. 204, and I am looking at a note indicating the amendment was added to avoid conflict with federal laws. I recall some connection to the Federal National Mortgage Association (Fannie Mae).

ASSEMBLY BILL 204 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

ASSEMBLYMAN MCARTHUR:
There were some Fannie Mae and lookback problems when you went further than the six-month lookback. That was part of complying with those laws.

SENATOR WIENER:
Mr. Chair, to respond to your question about subjective determination, on page 2, line 33, "adversely affects the use and enjoyment." An abandoned or vacant property does not always have to be sight, it could be odor or something deteriorating on the premises which would ... you might not see it, but you can smell its presence.

Assemblyman McArthur, on page 3, section 1, subsection 9, paragraph (c), it says "has failed to pay assessments for more than 30 days." When does the clock start ticking on the 30 days? Is it on the date due or within a 10-day grace period?

ASSEMBLYMAN MCARTHUR:
I would assume right at the beginning when it is due.

SENATOR PARKS:
I also saw 30 days and thought it seemed a fairly short period of time. A 60-day period would be more appropriate.

ASSEMBLYMAN MCARTHUR:
I agree with you, but that 30 days was not in my original bill. I would be happy to make it 60 days.

SENATOR PARKS:
Mr. Chair, I would say if we are looking at an amendment, we may want to address that.

CHAIR CARE:
That is fine. Thank you, Senator Parks. Any additional questions?

BILL UFFELMAN (President and CEO, Nevada Bankers Association):
I am in support of the bill. In the fall, Assemblyman McArthur and I talked about the problem. I suggested the lender has no right of entry until after the foreclosure sale, at which time the lender, for better or worse, winds up being the winner. I suggested this remedy was perhaps the way to deal with these things. As he has noted, we do not want to view this as a license for the association to make it the most pristine house on the block.

The questions you had regarding what is blight or deterioration were good ones. I suspect when you see it, you will know it. Over the weekend, there was a story in the paper that relates to the concept of affecting the enjoyment. A colony of bees had moved onto a property. The next-door neighbor was allergic to bee stings, and the roses in her yard drew the bees. The neighbors, out of their own pockets, had the bees removed. Those situations hopefully will be remedied under this bill. Some members asked why we have to notify them that we have filed the notice of default with the election to sell when it is a public document. I have suggested they might want to go along to get along. There are technical issues, but everybody is going to have to roll with this to make it work.

You are correct in the reference to the single-family designation. If you are in a condominium, their obligation includes the maintenance of the exterior and the common grounds. All those things are supposed to be recovered from their fees, whereas this special assessment is relative to the single-family homes and would carry into the foreclosure and be an obligation to be paid, unlike A.B. 204, the extension and lookback. Extending the 30 days to 60 days makes sense.

RANDY ROBISON (Nevada Credit Union League):
We signed in opposed, but are in complete support of the bill. Assemblyman McArthur did meet with our group before the Session and talked about how to get a situation where lending institutions and HOAs were talking about the issue much sooner in the process. However, many of the Committee members have already spoken to some of our concerns with the way the bill has been crafted?

Our issue is not with maintenance, maintaining a property, the landscaping, that type of thing. It is to the HOA's benefit as well as to the eventual owner to have that done in terms of market value and appraisal. That is not our issue. We are concerned it is crafted too broadly, particularly when we are talking about who bears the responsibility for cost recovery and those issues. A few points other Committee members have spoken to in section 1, subsection 2, paragraph (b), subparagraphs (3) and (4), lines 31 through 33, are subjective, although we understand what they are trying to get at. That might be too broad for our comfort.

CHAIR CARE:
The testimony was this language may already exist elsewhere in statute or local ordinance in North Las Vegas.

ASSEMBLYMAN MCARTHUR:
Yes. That is what I remember. I am not sure that is in our statute.

CHAIR CARE:
Since Senator Parks proposed an amendment, rather than doing anything today, this goes on work session—if we can verify the language is elsewhere in law.

MR. ROBISON:
One of our other considerations is further clarifying the limit to the application of the authority the HOA has to maintain. Perhaps that might be done by a high-dollar cap on allowable expenditures. Another way to do that may be to require documentation that shows when the costs were incurred and what they were incurred for, so when you present an order for payment, the payee has a record of those expenses.

On page 3, section 1, subsection 9, is the definition of "vacant." We were concerned about the broadness and subjectivity of the definition in terms of

subsection 9, paragraph (a), "Which appears unoccupied." We also had the 30-day concern on paragraph (c). I will use a personal example. When I come to the Legislative Session, I bring my family with me, shut down the house, turn off the lights, and we are gone for four and one-half to five months. The way we are situated in our HOA, we have one neighbor. The other side is open space all around us. At night, if you are driving by on a regular basis, it could appear the house is vacant. However, we go home a few times a Session to pull weeds. We are paid up on our assessments, but there seems to be some wiggle room that may be tightened up.

Those are our concerns. We support the concept of the bill. Assembly members have mentioned the air play between this and A.B. 204. I apologize and thank Assemblyman McArthur; he did meet with us before this Session. We spent time with him last week on some of our concerns. Comments he made in his testimony helped in terms of clarifying the intent. We did want to get on the record with those further concerns.

CHAIR CARE:
You had the same discussion on the Assembly side?

MR. ROBISON:
Unfortunately, we did not. We came to this party a little late, and I will take full responsibility for not getting over to the other side.

CHAIR CARE:
You are here representing the Nevada Credit Union League, and I do not think of credit unions as home lenders or getting in the business of refinancing homes. What is the role of credit unions when it comes to HOAs and foreclosure?

MR. ROBISON:
A significant portion of our portfolios do home mortgages. With all of the mortgage and foreclosure discussions occurring the last several months, our position is we did not do some of the risky, questionable lending on the front end because our structure does not allow us to in terms of risk or portfolio assets. Our problem as the economy has further deteriorated is many members are now losing their jobs and having difficulty paying their mortgage. In credit union land, if you miss your mortgage payment, the first time you miss it you are likely to get a call from a kind customer service representative at one of our institutions who says, hey, we see you missed your payment, is everything

okay, is there something we can do to help, has your situation changed? If so, come in and talk about it—as opposed to other institutions that may take three months before it is even flagged, and then there is another lag time to address the situation.

We do not have a problem with the intent of the bill, as we typically do that already. We know much sooner than most when one of our members is in what is going to be financial trouble. If they have to walk away from a home and we go through the foreclosure process, we already go in and start to maintain the property and the landscape. We do not like to be in the lawn-cutting business, but we figure out a way to get it done.

To answer your question, Mr. Chair, there is limited application and impact to credit unions because of our size and structure. Sometimes, that is more magnified than in other, larger financial institutions.

SENATOR WASHINGTON:
You mentioned one of your concerns about the bill is either hard-copy documentation of the cost incurred or a cap. Which would your association prefer?

MR. ROBISON:
As the League was looking at the bill, the hard-dollar cap was what they saw first. As they discussed it more, it became clear that may not work in all situations because different HOAs have varied levels of assessments and requirements in the covenants, conditions and restrictions (CC&Rs). An alternative or perhaps a conjunctive measure would be reporting when that order for costs is presented. You could sit down and have a discussion about what was done to the lawn that died. Some of this other stuff may have been beyond the scope of what we were talking about.

SENATOR WASHINGTON:
Would you want that documentation of incurred costs before the services are rendered or after?

MR. ROBISON:
We are talking in terms of after the order is issued because we do not want to limit the association in maintaining the minimums according to the CC&Rs. But

trying to balance the interests of maintaining versus getting beyond the scope of minimum maintenance may help us trim some of that cost.

ASSEMBLYMAN MCARTHUR:
I will say that we are both the same on the intent of this bill to just maintain, not add anything on. The whole idea of this bill is to make sure we get the HOAs, the lending institutions and real estate people comfortable. It looks like most of our interests are covered, but if there is something they would like to see tightened up, I would be happy to do so if we amend it anyway.

CHAIR CARE:
Mr. Robison, if you have anything, please share it with Assemblyman McArthur.

SENATOR COPENING:
Assemblyman McArthur, regarding subsection 9 where you talk about the vacancy, is there a period when somebody walks away in which the HOA could enter the property, but the banking institution will not have known that person has walked away yet?

ASSEMBLYMAN MCARTHUR:
Usually the HOAs are the first to know if somebody has just walked away. They know that their assessments and dues have not been paid and the place is deteriorating. It may have been deteriorating several months before they walked away. The problem has always been the lending institutions do not know about it, and there has been no way for them to get together. Hopefully, this way the HOAs and lending institutions will get together and talk about it, even though the lending institutions have not started paperwork for the default process.

SENATOR COPENING:
If an HOA enters the home, perhaps because of a broken window and they need to enter the premises, or they need to deal with the landscape, who assumes liability should something happen to that property? For example, a fire starts in the house or a sprinkler system breaks. Who actually has the liability for that home during that time?

ASSEMBLYMAN MCARTHUR:
The unit owner still owns the property. All this bill does is let the HOAs go on the property and maintain the property. If there is some major damage, someone

still owns it. But the whole problem is they walk away, you cannot find them and the lending institutions may not be aware of it.

SENATOR COPENING:
If an injury happens on that premises, even though that person has walked away and the HOA has chosen to go onto that property, it is still the responsibility of the owner of that home, even though they did not give permission?

ASSEMBLYMAN MCARTHUR:
That is my understanding. They can go on the property to maintain it, not for anything else.

MR. UFFELMAN:
Normally, an insurance clause in your mortgage says you will maintain an insurance policy as the owner of the property. If you defaulted on the loan and defaulted on your insurance payments too, the mortgage company has a right to purchase insurance to insure the property even though they have not gone into default during the 90-day period. There is a presumption that somebody related to the property is maintaining insurance. Whether that is 912 percent of the time, we cannot guarantee that, but the property insurance requirement is built into a mortgage.

CHAIR CARE:
Let us go to Las Vegas. Mr. Radocha, you had wanted to say a few words about A.B. 361, and Mr. Buckley, you will follow Mr. Radocha.

JOHN RADOCHA:
I am a homeowner. I know you have heard enough about good and bad boards, and the most precious commodity of the homeowner is his home, but I want to reference page 3, section 2, subsection 1, paragraph (a) and line 42. I believe this has taken the homeowner's bill of rights from him. It is like giving these guys a blank check on a board. Yes, they let you speak at a board meeting if you have an association meeting, but it is like a kangaroo court. I have seen people speak and I have seen people going through papers not even paying attention. I would like to know if that provision could be stricken from this bill because it gives them the right to do whatever they want. Where do we get the vote? This is what is bothering me. It does not say put it on a ballot.

The association CC&Rs say there will be no campers or trailers seen above the walls. A guy comes in, he gets on the board and the next thing you know there are campers and trailers above the walls. There is a rule no diesel trucks, and all of a sudden a guy comes in, he gets on the board, and the next thing you know there it is, and they say, oh no, that has been changed, that has been amended.

We the people do not have a say. Everything is up to the board, and if they can get enough people at a meeting to go along with them, they say it passes. A lot of the time the president will say, I am in favor of this, anybody else? The board puts up their hands and, by golly, it passes. I do not think that is fair. I would like for homeowners to have more voting power. This bill says do any and all of the following: adopt and amend bylaws, rules and regulations. I think this should be stricken.

CHAIR CARE:
We had about a half dozen common-interest communities (CIC) or HOA bills, and we have an equal amount coming over from the Assembly. The passage you have cited in NRS 116.3102 is existing law; it is in here because it has to be. The proposal is to change a subsection to that section but not that particular language. I need you to understand that.

Your proposal would be, if the Committee had appetite, to strike from the statutes a provision you have cited, "adopt and amend bylaws, rules and regulations." Is that correct?

MR. RADOCHA:
That is correct. You could leave it in, but you need to give homeowners a provision to vote. Some boards take advantage of this. That is a big loophole. I cited some examples. Another example is they want to change something. The board people will knock on doors and say, we want you to do this, and if you do not do it, four or five days later you get a letter that says you have some three-inch weeds or you have a grease spot on your driveway. They can come up with any thing they want and you are powerless. Let the people vote on what they want to do. That is all I want to see.

CHAIR CARE:
Thank you. I am sorry you did not get to testify on A.B. 207.

MR. RADOCHA:
May I ask a question on A.B. 207? Is some of this stuff going to come up later?

CHAIR CARE:
There are other bills coming. Whatever Website you are consulting, keep watching; there will be others.

Mr. Buckley, you have heard the proposed amendment from Senator Parks as to the person holding the security interest providing the association—it would be 60 days as opposed to 30 days—and then the comments from Mr. Robison. You probably had prepared testimony, but you may want to comment anyway.

MICHAEL BUCKLEY (Chair, Commission for Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry):
I have worked with Assemblyman McArthur on the language in the bill and did not have any prepared testimony, but I would make four points for the benefit of the Committee.

The first thing is—if you look at page 2, section 1, subsection 2, paragraph (b), line 25 and then subparagraph (4), line 32—to notice the word "and." All four of those things have to be present. It is not if you are blighted or if you adversely affect, it is all of those things. That is the way the bill is written.

You will also see on page 3, subsection 9, paragraph (b), line 35 the word "and." It is not only that it is unoccupied, but it is not maintained and the assessments are not paid. So it is all three of those things. That may address some concerns of the Senators and the people who spoke.

The other thing is in reference to Mr. Robison's concerns. The association would use the standards in the community to maintain the property. It would naturally defer to whatever standards, so it would not be something out of the ordinary. If it was provided, it would be in accordance with the standards. That is what the association would do anyway.

As far as records and what money is spent, the association has to maintain records of what it spends. Under NRS 116.31175 and NRS 116.31177, unit owners are entitled to look at those records. Concerns about seeing how much the association spends are already built into NRS 116.

For an explanation on page 6, section 3, subsection 2, paragraph (c), line 7 with regard to single-family detached dwelling, yes, the issue was that Fannie Mae and Federal Home Mortgage Corporation (Freddie Mac) guidelines prohibit a superpriority lien from going beyond six months. The thought was that a single-family detached home would not be a condominium. But A.B. 204 was changed to refer to the federal regulations instead. That would be a good change in section 1, subsection 6.

Lastly, this is more a question for perhaps Assemblyman McArthur. The intent in section 1, subsection 7 is even though people may say because you acquire property at a foreclosure sale, you take free and clear of the governing documents, that is not the case. Once the property is sold to an owner, the unit is subject to the governing documents until the governing documents are amended, the community terminated or whatever. Subsection 7 creates a problem because in one sense it states what is in the law, but then it says the person would maintain the unit in accordance with the governing documents. There are many other obligations under the governing documents. The question is whether the intent of subsection 7 was to state what is already the case—which probably makes it unnecessary—or to create a statutory duty, which would be a reason to keep it in and probably change it. The person is bound by the governing documents, and it cannot be removed except in accordance with the governing documents.

I suppose a related issue is the bill states the association has a lien. The question arises what is the remedy for that lien? Is it just a lien that the association would sue on, or is it something that could be foreclosed as an assessment lien? The beginning of the bill references following a procedure for fines and providing that an association cannot foreclose for a fine but can foreclose on an assessment. There should be some clarity in the bill as what is the remedy for the lien, whether it can be included as an assessment to be foreclosed or exactly what would happen.

Those were my comments. I passed some technical comments on to Assemblyman McArthur and the bill drafter.

CHAIR CARE:
You are working with Assemblyman McArthur, and we are not going to put this bill on for work session until next week. I note the amendment that came out of the Assembly made six changes. This is a work in progress; we want to get it

right. Mr. Buckley, if you continue discussions with Assemblyman McArthur, then we can get something for the work session detailing the concerns and possible resolutions.

MR. BUCKLEY:
Happy to do so.

ASSEMBLYMAN MCARTHUR:
Yes. I deferred a lot to Mr. Buckley in his technical changes. The changes we made before is clarifying language, and he made the bill technically and legally stronger.

FLORENCE JONES:
I wear many hats in this situation. I am on a board of directors in Utah, and my primary home is in two homeowners' associations in Las Vegas. I would like to thank the Senator from my district, Allison Copening. I appreciate the work you and Assemblyman McArthur are doing. Both of you represent the area of my primary home in Sun City Summerlin.

To the gentleman who is concerned about having homeowner rights, the bylaws and the CC&Rs give us an annual meeting where homeowners have a great deal to say. The board of directors meeting is for business. In the one I sit on, homeowners may submit in writing whatever they may want to have addressed and be given a time through this venue under the Open Meeting Law statute. However, at the homeowners' annual meeting, the homeowners have a time to transact the business of the homeowners' association. He needs to look back to his bylaws and find out when his annual meeting is, gather his neighbors together and get whatever he wants accomplished done.

The bill as it stands is a work in progress, and I concur with the 60-day amendment that Senator Parks has suggested. I am concerned that formal mail needs to be directed to the homeowner, such as a certified registered letter with a return receipt, so there has been proper notice by the association and we do not have people taking over.

I get to my primary residence once every six months, but I have a lighting system that comes on at dusk and goes off at dawn. My courtyard is covered with sprinklers and I have people who do my landscaping. I could see where this might be misused if there are not some tight controls.

There will be a workshop next. I want to relate to this Committee that one of the realtors who I participate with on my other board has asked me to put on the record that there is some issue going on right now with foreclosures in the Las Vegas area where we have attorneys who have created their own collection agencies. They are picking up the ball from the HOA and running with it. When a home is put on the block for foreclosure, in addition to assessments, huge fees running $5,000 to $10,000 are now added to the price of the foreclosed home the realtors are dealing with. They are trying to get people into these homes or back onto the market and homes that are a blight back into use. There is a great deal of concern among the realtors of the Las Vegas area. I do not know if this is going on in other areas. I am thankful we are having the workshop because I have alerted the folks in Las Vegas who are concerned. They are in the process of e-mailing Assemblyman McArthur.

This is a great step in getting the language and protection for our neighborhoods in this time of people being forced to move on. But those of us who are left behind want to be sure our absence is not misunderstood. Even though our bills are paid, we might not be there for long periods of time. Assemblyman McArthur spoke to that clearly; some of us have more than one residence in this wonderful time of retirement.

CHAIR CARE:
I remind everyone this is Assemblyman McArthur's bill and will remain so. We will close the hearing on A.B. 361.

Earlier, when Senators Copening, McGinness and I met as a Subcommittee, we asked Chair Dennis Neilander of the State Gaming Control Board about the amendment from the Assembly for Senate Bill (S.B.) 83.

SENATE BILL 83 (2nd Reprint): Makes various changes relating to the regulation of gaming. (BDR 41-311)

The three of us meeting as a Subcommittee recommended we concur with the Assembly amendment. The amendment was in section 19 of the bill: They had added the language in the bill saying an heir to an interest regulated by the Gaming authorities would have one year to submit the application for compliance to get a license. The Probate Section of the Nevada State Bar was concerned that under certain circumstances, one year may not be sufficient, so

I will close the hearing on A.B. 271. Mr. Graham, regarding A.B. 117, you might be wondering how a bill that passed 41 to 0 could run into what it did this morning. I suggest you talk to Assemblyman Munford. We are not going to revisit or reopen the hearing on A.B. 424, but he has offered an amendment. As a member of the Legislature, he is welcome to do that.

Committee members, you should have the matrix (Exhibit P) Senator Amodei requested regarding where we are with all of the CIC and HOA bills. That came up in the hearing on A.B. 204.

The Committee is adjourned at 11:06 a.m.

RESPECTFULLY SUBMITTED:

_____
Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

_____
Senator Terry Care, Chair

DATE: _____

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
May 7, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:38 a.m. on Thursday, May 7, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington

COMMITTEE MEMBERS ABSENT:

Senator Mark E. Amodei (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Joseph M. Hogan, Assembly District No. 10
Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1
Assemblyman Mark A. Manendo, Assembly District No. 18
Assemblywoman Peggy Pierce, Assembly District No. 3

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Marion Ainsworth
Jon Sasser, Washoe Legal Services
Rocky Finseth, Nevada Association of Realtors
Randy Soltero, Sheet Metal Workers Union Local 88; Sheet Metal Workers Union Local 26
Jan Gilbert, Progressive Leadership Alliance of Nevada
Julianna Ormsby, Nevada Women's Lobby
Ernest K. Nielsen, Washoe County Senior Law Project
Shaun Griffin, Executive Director, Community Chest
Gail Tuzzolo, Nevada State AFL-CIO
Rhea Gertken, Nevada Legal Services, Inc.
Robert Correa, Southern Nevada Apartment Association
Susan Fisher, Northern Nevada Motel Association; Southern Nevada Multi-Housing Association
Roberta Ross, Northern Nevada Motel Association
Linda Howe, Manager, The Ross Manor
Gregory Peek, Northern Nevada Apartment Association
Dan Wulz, Legal Aid Center of Southern Nevada, Inc.
Bill Uffelman, Nevada Bankers Association
Stefanie Ebbens, Legal Aid Center of Southern Nevada, Inc.
Dan Musgrove, Sure Deposit
Dan Rudd, Sure Deposit
Ryan J. Works, Sure Deposit
Kim Robinson, Nevada Legal Services
George Ross, Bank of America
John Sande IV, Nevada Collectors Association
Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce
Robin Keith, President, Nevada Rural Hospital Partners
Brett Kandt, Office of the Attorney General

CHAIR CARE:
I will open the hearing on Assembly Bill (A.B.) 251.

ASSEMBLY BILL 251 (2nd Reprint): Revises provisions relating to common-interest communities. (BDR 10-555)

violence but other issues. When we mandate certain things, it is hard to retract it once it is placed into statute. I will vote against the motion.

THE MOTION FAILED. (SENATORS COPENING, McGINNESS AND WASHINGTON VOTED NO.)

* * * * *

CHAIR CARE:
We will put A.B. 204 and A.B. 233 on another work session.

ASSEMBLY BILL 204 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

ASSEMBLY BILL 233 (1st Reprint): Makes various changes concerning scrap metal. (BDR 54-53)

CHAIR CARE:
There being nothing further to come before the Senate Committee on Judiciary, we are adjourned at 11:10 a.m.

RESPECTFULLY SUBMITTED:

_____
Kathleen Swain,
Committee Secretary

APPROVED BY:

_____
Senator Terry Care, Chair

DATE:_____

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
May 8, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:40 a.m. on Friday, May 8, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblyman Tom Grady, Assembly District No. 38
Assemblyman John Hambrick, Assembly District No. 2
Assemblyman Ellen M. Koivisto, Assembly District No. 14
Assemblywoman Bonnie Parnell, Assembly District No. 40
Assemblyman Tick Segerblom, Assembly District No. 9
Assemblywoman Ellen B. Spiegel, Assembly District No. 21
Assemblyman Lynn Stewart, Assembly District No. 22

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Nathan Ring, Extern to Assemblyman Horne
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

OTHERS PRESENT:

Nancy E. Hart, Nevada Network Against Domestic Violence
Mark J. Krueger, Assistant District Attorney, Office of the District Attorney, Lyon County
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety
Donna Coleman
Barbara Calwell
Tom Roberts, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Jason Frierson, Office of the Public Defender, Clark County
Orrin J. H. Johnson, Deputy Public Defender, Office of the Public Defender, Washoe County
Rebecca Gasca, American Civil Liberties Union of Nevada
Flo Jones
Neil A. Rombardo, District Attorney, Carson City
Lucy Flores
Brett Kandt, Executive Director, Advisory Council for Prosecuting Attorneys, Office of the Attorney General
Tonja Brown
Allen Lichtenstein, American Civil Liberties Union of Nevada
Keith G. Munro, Assistant Attorney General, Office of the Attorney General
Karen Hughes, Las Vegas Metropolitan Police Department
Dr. Lois Lee, President, Children of the Night
Joseph Murrin
Stephanie Parker, Executive Director, Nevada Child Seekers
Terri Miller

CHAIR CARE:
We will open the hearing on Assembly Bill (A.B.) 309.

ASSEMBLY BILL 309 (1st Reprint): Revises provisions relating to the crime of stalking. (BDR 15-994)

ASSEMBLYWOMAN ELLEN M. KOIVISTO (Assembly District No. 14):
Assembly Bill 309 was presented at the request of the family of Jana Adams who was murdered by a stalker. You have a packet (Exhibit C) containing a picture of Jana and e-mail messages from Jana's family. She was a young

injunctions, but history has shown they are subject to litigation. There are several examples of these injunctions where an individual who went to a job fair in a neighborhood under an injunction was arrested. Individuals subject to these injunctions have not necessarily been found by a court to be members of a gang but rather identified by law enforcement as being associated with this gang activity. Heightened scrutiny should be taken with this type of bill.

CHAIR CARE:
Mr. Rombardo, you have to file a complaint to obtain the injunction. Addressing Ms. Gasca's point, is there a way to name specific gang members as opposed to just the name of the gang?

MR. ROMBARDO:
The language requires we name the gang members and the gang. We are enjoining specific members and the gang to which they belong. The other three states list the name of the gang and the names of the gang members in the injunction and the actual criminal activity. You do not have a right to commit criminal activity. There is no freedom being taken away.

CHAIR CARE:
Ms. Gasca, please send me a memo on your freedom of association concerns for work session.

MS. GASCA:
Thank you. We will address some of the comments made earlier about how difficult it would be for enforcement to know whether individuals on a street corner are chatting about dinner or planning criminal activity.

CHAIR CARE:
We will close the hearing on A.B. 335 and open the hearing on A.B. 204.

ASSEMBLY BILL 204 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

MS. EISSMANN:
Not much has changed since we last considered A.B. 204, but Assemblywoman Spiegel did provide subsequent comments from Alan Crandall with one of the divisions of Mutual of Omaha Bank. His comments are included in your work session documents (Exhibit H, original is on file in the Research

Library). You asked staff to prepare a table itemizing and summarizing the various common-interest community bills. A version is in your work session documents, Exhibit H.

CHAIR CARE:
Section 1 remains the same. One thing that bothers me about section 2 is the duty of the association to enforce the liens, but I understand the argument with the economy and the high rate of delinquencies not only to mortgage payments but monthly assessments. Bill Uffelman, speaking for the Nevada Bankers Association, broke it down to a 210-day scheme that went into the current law of six months. Even though you asked for two years, I looked at nine months, thinking the association has a duty to move on these delinquencies.

SENATOR COPENING:
Having served as president of a large homeowners association (HOA) for three years, I will tell you that HOAs can get strapped in their budgets. Today, these community associations are experiencing foreclosures that can take up to two years, and somebody has to pay the cost. Members of the association maintain those properties through special assessments. I am in favor of the bill with Assemblywoman Spiegel's one amendment because it is already difficult for these associations to keep up with the presence of their communities due to foreclosures.

CHAIR CARE:
So you would take the amendment as offered by Assemblywoman Spiegel?

> SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED A.B. 204.
>
> SENATOR WIENER SECONDED THE MOTION.

CHAIR CARE:
Is there any discussion on the motion?

SENATOR WASHINGTON:
What if members of the association cannot afford the additional assessment to maintain the upkeep of a property in foreclosure?

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 21):
Assessments covered under A.B. 204 are the regular monthly or quarterly dues for their home. I carefully put this bill together to make sure it did not include any assessments for penalties, fines or late fees. The bill covers the basic monies the association uses to build its regular budgets. Additionally, all boards have the ability to waive any and all assessments for homeowners who come to them. I am on the board of the Green Valley Ranch Community Association, and we routinely have community members ask us to work with them to reduce or waive fees for them while they are going through economic hardships. We may put them on a payment plan. We and other boards are happy to work with our homeowners because we want them to have a good stable community, and we want to look after the overall association. Nobody will be using this bill to penalize. It helps the community remain financially stable and able to meet its obligations.

CHAIR CARE:
I do not have a problem with the bill, but I oppose the motion because I am more comfortable with nine months.

THE MOTION FAILED. (SENATORS AMODEI, CARE, McGINNESS AND WASHINGTON VOTED NO.)

* * * * *

SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED A.B. 204 BY CHANGING SIX MONTHS TO NINE MONTHS IN SECTION 2 AND MAKING THAT NUMBER CONSISTENT IN THE BILL.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
Assemblywoman Spiegel, your House will have the opportunity to concur with what we just did, assuming this comes out of the Senate, or you may find the vote goes to conference committee where we can negotiate. The point is, you get a bill out of the Committee.

CHAIR CARE:
Members of the Senate Committee on Judiciary, there being no further business, we are adjourned at 11:16 a.m.

RESPECTFULLY SUBMITTED:

_____
Janet Sherwood,
Committee Secretary

APPROVED BY:

_____
Senator Terry Care, Chair

DATE:_____

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

WORK SESSION

Senate Committee on Judiciary

May 8, 2009

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

Bills Under Consideration

The following measures may be considered for action during today's work session. In some cases, possible amendments are noted. These amendments were either suggested during testimony or submitted after the hearing and do not necessarily have the approval of the Committee.

☐ **Assembly Bill 88 (R2)** M NO ACTION
Floor Assignment S

☐ **Assembly Bill 179 (R1)** M A amend & do pass w/ amendment
Floor Assignment S C

☐ **Assembly Bill 204 (R1)** M C Amend Do pass
Floor Assignment S W

☐ **Assembly Bill 233 (R1)** M A amend & do pass
Floor Assignment S C

Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

Senate Committee on Judiciary

This measure may be considered for action during today's work session.

May 8, 2009

ASSEMBLY BILL 88 (R2) — ***Establishes a civil remedy for a person who was a victim of a sexual offense which was used to promote child pornography.*** **(BDR 15-267)**

Sponsored by:	Assembly Committee on Judiciary (On Behalf of the Attorney General)
Date Heard:	May 1, 2009
Fiscal Impact:	Effect on Local Government: No. Effect on the State: No.

Assembly Bill 88 creates a civil cause of action for a person who, while a minor, was a victim of a sexual offense of which any depiction of sexual conduct of the offense was used to promote child pornography. A victim who suffers personal or psychological damages and prevails in the civil action may recover actual damages, which are deemed to be at least $150,000, plus attorney's fees and costs. The statute of limitations for such an action is three years after the court enters a verdict in a related criminal case or the victim reaches the age of 18, whichever is later.

Opposition: Opposition was expressed by Jason Frierson, Clark County Public Defender's Office, to the amendment proposed by the Office of the Attorney General. Mr. Frierson otherwise supported the bill as currently written.

Amendments: Yes.

1. Brett Kandt, Office of the Attorney General, offered an amendment concerning the crime of using the Internet to access a film, photograph, or other visual depiction of a person under age 16 engaging in or simulating sexual conduct. A first offense would be a category B felony; a second offense would be a category A felony.

2. Helen Foley, T-Mobile, proposed an amendment concerning an entity that provides access to the Internet using spectrum regulated by the Federal Communications Commission.

Special Note: Legal counsel has indicated Ms. Foley's amendment is not sufficiently germane to the bill.

#2

AMENDMENT TO AB 88

Contact information:
Brett Kandt
Special Deputy Attorney General
100 N. Carson Street
Carson City, NV 89701
775-688-1966

PROPOSE TO AMEND BILL AS FOLLOWS:

Add a new section to the bill to read as follows:

Chapter 200 of NRS is hereby amended by adding thereto a new section to read as follows:

A person who knowingly and willfully uses the Internet to access any film, photograph or other visual presentation depicting a person under the age of 16 years engaging in or simulating, or assisting others to engage in or simulate, sexual conduct:

1. For the first offense, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than $5,000.

2. For any subsequent offense, is guilty of a category A felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of life with the possibility of parole, and may be further punished by a fine of not more than $5,000.

3. As used in this section, "sexual conduct" means sexual intercourse, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person's body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.

H3

Exhibit A

Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

Senate Committee on Judiciary

This measure may be considered for action during today's work session.

May 8, 2009

ASSEMBLY BILL 179 (R1) — *Revises provisions governing postconviction genetic marker analysis.* (BDR 14-869)

Sponsored by:	Assembly Members Horne, Segerblom, Kihuen, Anderson, and Senators Parks, Care, et al.
Date Heard:	May 6, 2009
Fiscal Impact:	Effect on Local Government: May have Fiscal Impact. Effect on the State: Yes.

Assembly Bill 179 authorizes a person convicted of a category A or B felony and who is currently under a sentence of imprisonment to petition the court for postconviction genetic marker analysis. The bill sets forth the information that must be included in the petition. The court may dismiss the petition or appoint counsel to further review, supplement, and present the petition to the court.

If the court schedules a hearing on the petition, the judge who conducted the trial that resulted in the conviction must preside over the hearing unless that judge is unavailable. The bill requires notification of the petition, the time and place of any scheduled hearings, and the outcome of the hearings to victims who have requested such notice.

If the results of the analysis are unfavorable to the petitioner, the court must send the results to the State Board of Parole Commissioners. The petitioner must pay for the costs of the analysis unless the results are favorable to the petitioner and he is indigent and incarcerated at the time of the petition.

Opposition: No.

Amendments: Yes. Assemblyman Munford offered an amendment that would allow a petitioner to have a genetic marker test performed at his own expense, if the court denies the petition.

Special Note: Assemblyman Horne has requested the Committee process the bill without amendment.

H 4

May 6, 2009

Proposed Amendment to Assembly Bill No. 179

Presented by Assemblyman Harvey Munford to the Senate Judiciary Committee

ADD the following to:

Page 3

Section 1.

4. (a) In the event the Court denies the Petitioner their genetic marker analysis testing, the Petitioner may go forward with the testing without the Courts permission bearing the cost himself.

Submitted by:

Tonja Brown
2907 Lukens Lane
Carson City, NV 89706
882-2744

H5

Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

Senate Committee on Judiciary

This measure may be considered for action during today's work session.

May 7, 2009

ASSEMBLY BILL 204 (R1) — *Revises provisions relating to common-interest communities.* (BDR 10-920)

Sponsored by:	Assembly Members Spiegel, McClain, and Senator Parks, et al.
Date Heard:	April 29, 2009
Work Session:	May 2, 2009
Fiscal Impact:	Effect on Local Government: No. Effect on the State: No.

Assembly Bill 204 requires the executive board of a unit owners' association at the beginning of each fiscal year to make available information regarding any policy established by the association concerning the collection of any fees, fines, assessments, or costs imposed on the unit's owner.

The bill also changes the 6-month threshold for super priority of a lien for an association to 2 years if the unit is a single-family detached dwelling.

Opposition: Yes. Opposition was expressed specifically to Section 2.

Amendments: Yes.

1. Assemblywoman Spiegel offered an amendment to Section 2 of the bill concerning the super priority of a lien that would address regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association if such regulations are adopted.

2. Bill Uffelman, Nevada Bankers Association, proposed an amendment to delete Section 2 of the bill.

Special Note: Staff was asked to prepare a table itemizing and summarizing the common-interest community measures currently under consideration. The information was provided to Committee members on May 6, but is also attached to this document.

Assemblywoman Spiegel has subsequently provided comments for the Committee's consideration from Alan G. Crandall, Senior Vice President and West Region Manager, Community Association Banc and CondoCerts (a Division of Mutual of Omaha Bank). Mr. Crandall's comments (sent via e-mail) are as follows:

H6

"The ability for communities to fund the maintenance and repair of the common area is critical to maintaining curb appeal and structural integrity. Unmaintained property will sell lower then maintained property. Particularly in a buyers market.

In my opinion, my banking colleagues are being very short sighted in their opposition to this bill. Passage would help to protect the values of their collateral interest. Any additional potential costs can be factored into the lending decision just as they are now with the six month super lien. Threats that banks would not lend due to this change are disingenuous in my opinion. A similar argument was made in opposition to the current law. Banks are not the only source of financing available to home buyers. Any short term effect of banks withdrawing from the community association market would be more then offset by the stabilizing effect of improved curb appeal and structural integrity of the properties.

As someone who has worked at providing funding for major repairs for hundreds of communities over the past 18 years, the increased ability of the community to maintain property values improves the likelihood of approval for a commercial loan."

COMMON-INTEREST COMMUNITY BILLS CONSIDERED IN THE 2009 LEGISLATIVE SESSION
Current as of May 4, 2009
Does not include bills introduced but no longer active.

ASSEMBLY BILLS					
Bill Number	**Sponsor**	**Description**	**Status**		**Brief Summary**
			Assembly	**Senate**	
AB 129	Assemblyman Conklin	Revises provisions governing common-interest communities.	A&DP	A&DP	Chapter 116 of NRS does not invalidate or modify the tariffs and rules of a public utility and an association's governing documents must not conflict with those tariffs and rules. An association cannot prohibit a service provider from parking certain utility service, law enforcement, or emergency service vehicles while providing services within community. The association cannot prohibit a unit's owner or tenant from parking service vehicles in certain areas under certain circumstances.
AB 204	Assemblywoman Spiegel	Revises provisions relating to common-interest communities.	A&DP	NACT	At the beginning of each fiscal year, the executive board of an association is required to make information available regarding any policy concerning the collection of fees, fines, and assessments. Changes the 6-month threshold for super priority of a lien for an association to 2 years for a single-family detached dwelling.
AB 207	Assemblyman Carpenter	Makes various changes concerning common-interest communities.	A&DP	May 6	Exempts certain associations created for a rural agricultural residential common-interest community from paying the Ombudsman fee, mailing meeting notices to each resident, and conducting a reserve study every 5 years. Associations with 20 units in counties under 50,000 people may have studies conducted by a qualified person rather than a reserve study specialist.
AB 311	Assemblyman Settelmeyer	Revises provisions governing the financial statements of common-interest communities.	A&DP	DP	Eliminates requirement that associations with annual budget under $75,000 must have financial statement audited every 4 years. Statement must be reviewed in the year preceding the year in which a reserve study is conducted, unless requested by association's members. Also eliminates audit requirement for associations with budgets between $75,000 and $100,000. Instead, the financial statements must be reviewed every fiscal year. If 15 percent of the voting members request an audit, however, an audit must be conducted.

AB 350	Assemblyman Munford	Makes various changes relating to common-interest communities.	A&DP	May 12	Authorizes an association to charge a reasonable fee for collecting past due obligations, but eliminates a fee for electronic documents. Requires board meetings other than during standard business hours at least twice per year, and allows members to speak for 2 minutes per agenda item. Provides an interest rate for any assessment for common expenses that are 60 days or more past due. Requires budgets to itemize expected expenses in excess of $100 and that money budgeted for nonemergency, nonrecurring expenses over $100 must be approved with signatures of at least two board members. Allows a unit owner to bring action to recover compensatory damages and attorneys fees for retaliatory actions. Finally, documents given to a purchaser must include a statement of all current and expected fees.
AB 361	Assemblyman McArthur	Makes changes relating to common-interest communities.	A&DP	May 6	A person with a security interest in a unit must provide his contact information to the association within 30 days after an action is filed for recovery of a debt secured by the unit or after notice of a breach of obligation secured by the unit. Authorizes an association, without liability for trespass, to enter a vacant unit in the foreclosure process to maintain the exterior or abate a public nuisance, the costs of which must be paid by the owner and are subject to a lien on the property.

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SENATE BILLS

Bill Number	Sponsor	Description	Status		Brief Summary
			Assembly	Senate	
SB 149	Senator Rhoads	Exempts limited-purpose associations that are created for a rural agricultural residential common-interest community from certain fees.	NACT	DP	Exempts rural agricultural residential common-interest communities from paying the fee charged to fund the Ombudsman.
SB 182	Senator Schneider	Makes various changes relating to common-interest communities.	To Assembly	Jud: A&DP Fin: DP	Makes it a crime to alter the outcome of an election to an association's executive board, or for a community manager or board member to receive compensation to influence a vote or official action. Makes various changes pertaining to the election or removal of board members and to the recording of board meetings, allowances for public comment, and considerations of sanctions and complaints at board meetings. Requires the Real Estate Division to adopt regulations for the filing of petitions. Clarifies that associations do not have the power of eminent domain and that Chapter 116

					of NRS supersedes any conflicting provision in a governing document. Expands the rights of unit owners to display certain political signs. Prohibits associations from interfering with the collection of signatures on petitions or from interrupting utility services unless charges are unpaid. Limits the imposition of fines against a unit owner or tenant. Authorizes court action to recover fees imposed by the State. Clarifies that a board has authority to impose assessments to fund reserves. Expands prohibition against certain contracts. Finally, makes changes to the Commission for Common-Interest Communities and Condominium Hotels and provides for duties of an arbiter.
SB 183	Senator Schneider	Revises various provisions governing common-interest communities.	May 6	A&DP	Establishes conditions for the enforcement of restrictions on the use of solar panels. Requires disclosure by board members of any personal gain from a matter before the board and prohibits a board member from imposing a fine if his assessments are not paid. Changes the term of office for board members and prohibits use of delegate voting. Clarifies that Chapter 116 of NRS and association government documents do not modify the tariffs and rules of a public utility. Prohibits an association from restricting motorcycles, using a radar gun to impose fines, imposing a fine for violations committed by delivery or service vehicle, and restricting utility service vehicles from parking. Clarifies that a board may impose assessments to fund adequate reserves. Requires creation of a separate account for a unit owner's payments. Clarifies when draft documents must be made public and requires official publications to provide equal space to opposing views. Allows interruption of utility service for nonpayment of charges. Expands prohibition against certain contracts between association and a member of the board. Authorizes adoption by the State of regulations concerning disclosures in the sale of a unit. Prohibits association from charging a fee for resale of unit, limits fees charges for documents association with resale, and changes the deposit of funds in connection with unit purchase. Finally, requires community manager to post a bond and provides for temporary manager certificates.
SB 216	Senator Schneider	Revises provisions regarding the addition of shutters in common-interest communities.	DP	A&DP	Prohibits associations from unreasonably restricting or prohibiting the use of shutters attached to certain common elements associated with a unit
SB 253	Senator Parks	Makes various changes to provisions relating to common-interest communities.	NACT	A&DP	Requires executive board members to disclose any personal profit from a matter under consideration by the board and to abstain from voting. Requires opening bids during a board meeting. Limits the association's ability to restrict or prohibit the lease or rent of a unit under certain

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					circumstances. Requires seller to provide a resale package to purchaser at seller's expense, to include disclosure of transfer fees. Expands to all counties existing NRS provisions allowing for the transient commercial use of units in certain communities. Finally, increases from $5,000 to $10,000 the fine imposed against a person for certain activities.
SB 261	Senator Care	Makes various changes relating to common-interest ownership.	Not scheduled	A&DP	Incorporates certain provisions of the Uniform Common-Interest Ownership Act and clarifies applicability of the Act. Allows a community's declaration to state that the community is a master-planned community and eliminates references to the preparation of certain plans for communities and condominium hotels.
SB 351	Senate Judiciary (for the State Bar)	Makes various changes relating to common-interest communities.	Not scheduled	A&DP	Requires deposit of association funds into insured accounts and certain investments. Expands the use of adequate reserves from assessments to include repair of portions of the community that the association is obliged to maintain. Authorizes the board to change a declaration, bylaw, or other government document without complying with procedural requirements or owner approval in order to conform to provisions of Chapter 116 of NRS. A statement advising an owner that Chapter 116 may supersede such documents must be provided at the time of purchase. Authorizes an association to take certain actions unless the governing documents prohibit those actions. Prohibits an executive board from filling a vacancy without a vote of the members if governing documents require a vote. Clarifies that a special meeting includes a meeting to remove a board member. Allows for workshops by the board that are not formal meetings if no action is taken, and exempts architectural records from public records.

Prepared by the Research Division, Legislative Counsel Bureau
May 4, 2009

W91398-1

ELLEN B. SPIEGEL
ASSEMBLYWOMAN
District No. 21

COMMITTEES:
Member
Government Affairs
Health and Human Services
Transportation

State of Nevada Assembly

Seventy-Fifth Session

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April 30, 2009

Senate Committee on Judiciary
Nevada Legislature

Thank you for again for hearing my bill, Assembly Bill 204 - *Revises provisions relating to common-interest communities. (BDR 10-920)* in the Senate Committee on Judiciary on April 29, 2009. I am writing to address some issues raised in Mr. Uffelman's testimony that I would like to comment upon:

- During his testimony, Mr. Uffelman asserted that through passage of Senator Parks' bill (S.B. 128) and Assemblyman McArthur's bill (A.B. 361), property titles would need to be conveyed on a timely basis, and properties would be compelled to be maintained. While I agree that these bills will address issues related to specific properties, they do nothing to address issues facing common-interest communities. ***A.B. 204 is the only bill that addresses the foreclosure crisis' impact on common-interest communities.***

  Here are two examples that depict this point:

  - If a title is conveyed on a timely basis (per S.B. 128), but 18 months of dues are written off, ***the community association is still harmed and has no mechanism to be made whole.*** When 20-40% of the homes in an association go through foreclosure and up to 18 months of regular assessments are written off, the financial damage to the community is considerable and could result in decreased services, increased regular assessments and/or special assessments; and

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- An association's legal ability to remove dead landscaping (which would be permitted within A.B. 361) is meaningless if the association cannot afford to pay a gardener to do the work. If a community association is facing cash flow issues, their primary responsibility is to maintain the common areas (per NRS 116.3107 and NRS 116.3115). Assemblyman McArthur's bill A.B. 361 could place additional responsibilities upon associations - ***A.B. 204 would provide the associations with the cash flow to invest in individual properties.***

- Mr. Uffelman spoke of the collections policy implemented by Summerlin North (the association in which he lives). Under the policy he described, there is no leeway for an association to work with homeowners to bring them current (e.g., give them payment plans) or the association risks losing more revenues and has no tangible means of recovery.

  Many associations are criticized for being arbitrary and non-understanding of owner hardships, yet many associations would like their collections policies to have flexibility. ***A.B. 204 preserves associations' abilities to maintain good relationships with homeowners and develop community-wide goodwill, while mitigating conflict.***

- Mr. Uffelman testified that under an association's collections policy, civil lawsuits could be brought to collect assessments that are in arrears. However in most cases, there is not enough money involved to warrant a civil lawsuit.

  Most (if not all) association policies stipulate that homeowners are responsible for past due assessments plus collection fees and associated court and attorney costs. Using an example based on the assessment charged in my community ($111 per quarter/$444 annually), for the association to file a civil suit to capture $444 is simply is not cost effective. I cannot imagine any association bringing a civil lawsuit action against a homeowner who is already in financial distress for such a small amount of money. ***A.B. 204 gives associations the ability to work with homeowners while preserving their ability to be made whole (per the terms of A.B. 204).***

I would appreciate your consideration of this additional information when you discuss A.B. 204 in Saturday's work session and I will be present to address any questions you may have.

Sincerely,

Ellen B Spiegel

Ellen Spiegel
Assemblywoman, District 21

ES/cs

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MOCK-UP

PROPOSED AMENDMENT 4695 TO ASSEMBLY BILL NO. 204 FIRST REPRINT

PREPARED FOR ASSEMBLYWOMAN SPIEGEL
APRIL 29, 2009

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

(Showing Affected Sections Only)

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

Sec. 2. NRS 116.3116 is hereby amended to read as follows:

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

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

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

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

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

➥ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the *2 years* ~~*[immediately preceding institution of an action to enforce the lien if the unit is a single family detached dwelling or during the* 6 months,]~~ immediately preceding institution of an action to enforce the lien ~~[.]~~ ~~*[if the unit is any other type of dwelling,]*~~ ***, unless the federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If the federal regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien.*** This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

8. 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 or 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.

9. 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.

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

(1) 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.

H

Eissmann, Linda

From: Bill Uffelman [wuffelman@nvbankers.org]

Sent: Tuesday, April 28, 2009 10:11 AM

To: McGinness, Mike Senator; Wiener, Valerie Senator; Copening, Allison Senator; Care, Terry Senator; Parks, David R. Senator; Washington, Maurice Senator; Amodei, Mark Senator; Ellen@EllenSpiegel.com; Woodhouse, Joyce Senator

Cc: Eissmann, Linda; 'Sande III, John P.'; jsandeiv@jonesvargas.com; 'Cheryl Blomstrom'; 'Ross, George'; AAlonso@lrlaw.com; greg@theferrarogroup.com; 'randy robison'

Subject: Amendment to AB 204

Nevada Bankers Association
Bill Uffelman
President & CEO
702-375-9025

Amendment to AB 204 (First Reprint)

Delete Section 2 of the bill

Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

Senate Committee on Judiciary

This measure may be considered for action during today's work session.

May 7, 2009

ASSEMBLY BILL 233 (R1) — ***Makes various changes concerning scrap metal.*** **(BDR 54-53)**

Sponsored by:	Assembly Members Oceguera, Koivisto, Ohrenschall, Bobzien, Conklin, and Senators Cegavske, Parks, et al.
Date Heard:	April 23, 2009
Work Session:	April 29, 2009, May 2, 2009
Fiscal Impact:	Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County/City Jail or Detention Facility. Effect on the State: Yes.

Assembly Bill 233 requires scrap metal purchasers to be licensed by the State and the appropriate local government and to have authorization to operate from the appropriate solid waste management authority. Scrap metal processors are required to maintain records of all scrap metal purchases. Purchases with a value of $150 or more must be made by check or electronic money transfer, and a scrap metal processor shall not conduct more than one cash transaction of less than $150 with the same seller on the same day.

The bill authorizes a law enforcement officer to place a hold on property in the possession of a scrap metal processor alleged to be related to criminal activity during the investigation or prosecution. Criminal penalties may be imposed for failure to maintain the required records, violating a law enforcement hold on property subject to criminal investigation, and violating the limits on scrap metal purchases. A first offense or second offense within 5 years is a misdemeanor and a third or subsequent offense within 5 years is a category E felony.

The willful or malicious removal, damage, or destruction of utility property, agricultural infrastructure, or construction sites to obtain scrap metal is punishable as a misdemeanor if the value of the property is less than $500 and as a felony if the value is more than $500 or interrupts a utility service. The bill also provides that theft of scrap metal within a 90-day period with a value of: (1) less than $250 is punishable as a misdemeanor; (2) at least $250 but less than $2,500 is punishable as a category C felony; and (3) $2,500 or more is punishable as a category B felony.

Update: Senator Wiener provided two e-mails to the Committee concerning personal identification information required in the bill. Those e-mails are attached.

Amendments: Yes. Senator Amodei has suggested an amendment to Section 7.5 of the bill that would make violations a misdemeanor. During the original hearing, Terry Graves, Scrap Metal Processors, suggested deleting Section 7.5 in its entirety.

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From: Wiener, Valerie Senator
Sent: Saturday, May 02, 2009 7:16 AM
To: Eissmann, Linda
Subject: FW: AB 233

Senator Wiener asked that this be included in the work session Documents for the Committee this morning.

Jeanne

From: BROWN, RANDY J (ATTSI) [mailto:rb9192@att.com]
Sent: Thursday, April 30, 2009 6:38 AM
To: Wiener, Valerie Senator
Cc: jstokey@nvenergy.com; debra.gallo@swgas.com; nscta@aol.com; jaw@jonesvargas.com; gravestk@cox.net; J7318M@lvmpd.com; morgan.baumgartner@rrpartners.com
Subject: AB 233

Good morning Senator Wiener:

Thank you for your participation at yesterdays hearing on Assembly Bill 233 (scrap metal theft). I appreciate your concern regarding the protection of personal information obtained by recyclers during the course of a transaction and concur with the importance of safeguarding same.

I have asked our legal counsel to identify protections currently in statute and he suggests there are sufficient protections in place today, namely in NRS 603A. I have included the language in this transmission for your review and consideration.

NRS 603A.210 Security measures.

1. **A data collector that maintains records which contain personal information of a resident of this State shall implement and maintain reasonable security measures to protect those records from unauthorized access, acquisition, destruction, use, modification or disclosure.**

2. A contract for the disclosure of the personal information of a resident of this State which is maintained by a data collector must include a provision requiring the person to whom the information is disclosed to implement and maintain reasonable security measures to protect those records from unauthorized access, acquisition, destruction, use, modification or disclosure.

3. If a state or federal law requires a data collector to provide greater protection to records that contain personal information of a resident of this State which are maintained by the data collector and the data collector is in compliance with the provisions of that state or federal law, the data collector shall be deemed to be in compliance with the provisions of this section.

NRS 603A.030 "Data collector" defined. "**Data collector" means any** governmental agency, institution of higher education, **corporation,** financial institution **or retail operator or any other type of business entity or association that, for any purpose,**

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whether by automated collection or otherwise, handles, collects, disseminates or otherwise deals with nonpublic personal information.

NRS 603A.040 "Personal information" defined. "**Personal information" means a natural person's first name or first initial and last name in combination with** any one or more of the following data elements, when the name and data elements are not encrypted:

1. Social security number.

2. **Driver's license number or identification card number.**

3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

Ê The term does not include the last four digits of a social security number or publicly available information that is lawfully made available to the general public.

(Added to NRS by 2005, 2504; A 2005, 22nd Special Session, 109; 2007, 1314)

Randy J. Brown, CPA | Director - Regulatory & Legislative Affairs | AT&T Nevada | 775.333.8504 office | 775.544.5974 wireless

H20

From: Baret, Jeanne
Sent: Saturday, May 02, 2009 7:19 AM
To: Eissmann, Linda
Subject: FW: Hearing on SB 227 Senator Wiener's bill on Identity Theft

Linda--here is another email that Senator Wiener wants distributed to the Committee in today's work session.

If you would like me to make the copies I will gladly do so.

Jeanne

-----Original Message-----
From: Ira Victor [mailto:Ira@dataclonelabs.com]
Sent: Thursday, April 30, 2009 9:53 AM
To: Baret, Jeanne
Subject: RE: Hearing on SB 227 Senator Wiener's bill on Identity Theft

Hello Jeanne,

Sen. Wiener wanted my assistance regarding this Saturday's workshop on the "scap metal ID" bill.

I would recommend that the Senator oppose any provision that requires the merchants to collect seller PII.

It is unrealistic to expect scrap metal dealers to put into place the layers of security that are used by insurance companies, medical facilities, and financial organizations.

Therefore, the information will not be secured, and the REAL theft problem will originate INSIDE the scrap metal businesses, not from construction sites.

It is not in the interest of the State to create a huge opportunity for ID thefts to occur. Furthermore, with the collapse in construction, how many thefts of copper wires do we have now?

Finally, if we have another construction boom, builders can install web cams cheaply for security around construction sites. I just bought a web cam for a customer for less than $40.

Please have the Senator contact me with any questions.

Sincerely,
Ira Victor, G17799 GCFA GPCI GSEC
Director, Compliance Practice
Data Clone Labs, Inc
http://DataCloneLabs.com
775-636-7894

Co-host, Data Security Podcast
30min every week on data security, privacy and the law

Audio Stream: http://datasecuritypodcast.com

On iTunes: http://itunes.datasecuritypodcast.com

H 21

From: Baret, Jeanne [mailto:jbaret@lcb.state.nv.us]
Sent: Monday, April 27, 2009 9:27 AM
To: jearl@ag.nv.gov; eric_ebenstein@aeanet.org; james.elste@igt.com; Mira_guertin@aeanet.org; fhillerby@aol.com; cipsen@doit.nv.gov; cmackenzie@allisonmackenzie.com; lizm@rannv.org; NVBankers@att.net; Ira Victor
Subject: Hearing on SB 227 Senator Wiener's bill on Identity Theft SB 227, Senator Valerie Wiener's bill on Identity Theft has been scheduled for hearing in the Assembly.
The hearing will take place on Wednesday, April 29th at 1:30 pm in Room 4100 of the Legislative Building in Carson City.
Video conferencing is in Room 4406 of the Grant Sawyer State Office Building in Las Vegas.
Senator Valerie Wiener invites you to attend the hearing and offer testimony in support of the bill.
If you are unable to attend the hearing you may FAX, to me, a letter of support addressed to Chair Marcus Conklin and members of the Assembly Committee on Commerce and Labor.
I will distribute the copies to the Committee.
Thank you for your participation and support, Jeanne Baret Office of Senator Valerie Wiener Room 2132 Legislative Building
401 South Carson Street
Carson City, NV 89701-4747
(775) 684-1422
jbaret@lcb.state.nv.us
FAX 775-684-6529

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MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
May 11, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 9:14 a.m. on Monday, May 11, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblyman Mo Denis, Assembly District No. 28
Assemblyman Richard McArthur, Assembly District No. 4

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Robert D. Faiss, Adjunct Professor, William S. Boyd School of Law, University of Nevada, Las Vegas
James Conway, Student, William S. Boyd School of Law, University of Nevada, Las Vegas

Charles Peterson, Student, William S. Boyd School of Law, University of Nevada, Las Vegas
Lindsay Demaree, Student, William S. Boyd School of Law, University of Nevada, Las Vegas
Dennis K. Neilander, Chair, State Gaming Control Board
Melissa Saragosa, Las Vegas Township Justice Court, Department 4, Clark County
Ben Graham, Administrative Office of the Courts
Jon Sasser, Washoe Legal Services
Susan Fisher, Northern Nevada Motel Association; Southern Nevada Multi-Housing Association
Michael Buckley
Howard Skolnik, Director, Department of Corrections
Stefanie Ebbens, Legal Aid Center of Southern Nevada, Inc.
Frances Doherty, District Judge, Department 12, Family Division, Second Judicial District

CHAIR CARE:
I will open the hearing on Assembly Bill (A.B.) 218.

ASSEMBLY BILL 218: Authorizes the Nevada Gaming Commission to prescribe the manner of regulating governmental entities that are involved in gaming. (BDR 41-603)

ROBERT D. FAISS (Adjunct Professor, William S. Boyd School of Law, University of Nevada, Las Vegas):
Students from the gaming law legislative advocacy seminar will testify in support of their 2009 legislative project, A.B. 218. I will read from my written testimony (Exhibit C).

JAMES CONWAY (Student, William S. Boyd School of Law, University of Nevada, Las Vegas):
I will read from my written testimony (Exhibit D).

CHARLES PETERSON (Student, William S. Boyd School of Law, University of Nevada, Las Vegas):
I will read from my written testimony (Exhibit E).

ASSEMBLY BILL 204 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

CHAIR CARE:
Is that in the amendment we were given this morning (Exhibit H)?

MR. BUCKLEY:
Yes. It is on page 2 of Exhibit H beginning on line 19.

CHAIR CARE:
We have a letter from Caughlin Ranch wanting to expand the definition of the exterior of the unit. Did you see that? The additional language would say, "including all landscaping and property exclusively owned by the unit owner." This is in section 1, subsection 7 of the bill.

ASSEMBLYMAN RICHARD MCARTHUR (Assembly District No. 4):
I did see that. We made a change on page 1, line 22 of the amendment, Exhibit H; hopefully, that language will make him feel more comfortable.

MR. BUCKLEY:
Section 1, subsection 2, paragraph (a) is where they were talking about that.

CHAIR CARE:
Do you have any objection to that language?

ASSEMBLYMAN MCARTHUR:
No. We had included that language in our amendment, Exhibit H, on page 2, line 22. After the initial sale, the unit is bound by the governing documents. Also, on page 1, lines 22 and 23, there was a concern of the credit unions regarding landscaping.

CHAIR CARE:
The amendment deletes landscaping and says "maintenance," Exhibit H, page 1, line 23.

MR. BUCKLEY:
We are confusing two things. You are talking about the Caughlin Ranch issue. They wanted to say it applied not just to the exterior of the unit but to the parts

the unit owner was obligated to maintain. That would be consistent with Assemblyman McArthur's proposal. That is separate from the credit union issue.

The credit union concern was that the association could go beyond standard maintenance or make improvements. I suggested it in lines 22 and 23 on page 1 of the amendment, Exhibit H, where it expressly states the standards in the governing documents; instead of just landscaping, it would be landscaping maintenance. The word "landscaping" needs to stay in.

ASSEMBLYMAN MCARTHUR:
I did not discuss this with Mr. Robison, but we talked about it before. I hope this will satisfy his concerns.

CHAIR CARE:
There is that and the e-mail I received from Mr. Buckley. There is the Caughlin Ranch issue and the reference to paragraphs (a) and (c) but not (b) of NRS 116.3116. Does that cover all of it?

MR. BUCKLEY:
One was the 60 days instead of 30 days.

CHAIR CARE:
We were going to go with 60?

MR. BUCKLEY:
Yes. That was the committee's recommendation, and that has also been changed.

On page 2 of the amendment, Exhibit H, line 8, we have added the word "reasonable" inspection fees rather than "any" inspection fees. On line 10, there would be a record of the costs. On line 32, we have added the word "reasonably." There were some concerns that if a unit owner was gone for a while, the credit union wanted drive-bys every so often. To put the word "reasonably" as an overall standard makes it subject to better interpretation.

CHAIR CARE:
Even though there was no opposition, reference is made to several amendments. We now have the 30 days going to 60 days for the time required to provide the contact information. We have the amendment from

Assemblyman McArthur and Mr. Buckley, Exhibit H, which also addresses the nonreference to paragraph (b) of subsection 2 of NRS 116.3116. We have the expanded definition of exterior of the unit. We have the landscaping maintenance for the credit union.

SENATOR WIENER:
For clarification, you mentioned the 30 days goes to 60 days for contact information. I see section 1, subsection 1 of the bill related to the contact information, and I still see not later than 30 days. But I see the 60-day extension in section 1, subsection 9.

ASSEMBLYMAN MCARTHUR:
They are two different situations.

SENATOR WIENER:
I do not see an extension. I still see 30 days when it comes to contact information.

MR. BUCKLEY:
There was no objection to the original 30 days. It was just how long it was unoccupied.

SENATOR COPENING:
Are Caughlin Ranch's amendments addressed in Assemblyman McArthur's amendment, Exhibit H?

CHAIR CARE:
No. We just got it on record. The sponsor has no objection to that.

> SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED A.B. 361 WITH ASSEMBLYMAN McARTHUR'S LATEST AMENDMENTS AND CAUGHLIN RANCH'S AMENDMENT.

CHAIR CARE:
As to the expanded definition of the exterior of a unit?

SENATOR COPENING:
Correct.

MR. WILKINSON:
There was some discussion about the 30-day period. That was referenced in subsection 1, and that was Senator Parks' concern. Is that not to be included in the amendment? That was the question Senator Wiener was asking. There are two references to 30 days in the bill, but Senator Parks' reference was the one in section 1, subsection 1 of the bill.

CHAIR CARE:
That is why the language appeared as it does in the binder, Exhibit G, page 14.

ASSEMBLYMAN MCARTHUR:
These are two separate things. The first reference is in regard to providing contact information in section 1, subsection 1 of the bill.

CHAIR CARE:
Senator Parks is fine with that.

SENATOR WIENER SECONDED THE MOTION.

MR. WILKINSON:
The motion is to leave it as currently provided with the 30 days in section 1, subsection 1 of the bill. The proposed language—which I recognize is taken from A.B. 204 on page 2, starting at line 19, of the amendment, Exhibit H, where it refers to federal regulations adopted by the Federal Home Loan Mortgage Corporation—specifically references the lien under paragraph (b) of subsection 2 of NRS 116.3102 and a period of priority for that. This is adding the new language specifically as it pertains to paragraphs (a) and (c) of subsection 2 of NRS 116.3116, on page 3, line 19 of the bill. How does that fit in here, and is it necessary?

MR. BUCKLEY:
The intent is to keep the same rule and be consistent with A.B. 204. We want to make sure this bill does not affect the ability to get home loans in Nevada if the federal regulations require a shorter priority. Whatever language we need to do, that is what we should have.

MR. WILKINSON:
We have the changes proposed in this amendment, Exhibit H, along with the changes from Caughlin Ranch relating to maintenance of the landscaping and

property exclusively owned by the unit owner. That is what I understand the motion to be.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:
We will address A.B. 473, Exhibit G, page 15. Section 1, subsection 7, of the bill says, "... establishing regulations, with the approval of the Board ... ." Is that the bulk of the fiscal hit?

ASSEMBLY BILL 473: Revises provisions relating to medical and dental services for prisoners. (BDR 16-1128)

HOWARD SKOLNIK (Director, Department of Corrections):
No. The fiscal note is tied to the amendment proposed by the American Civil Liberties Union (ACLU) of Nevada. The only fiscal concern we have with this bill is section 2, subsection 2, paragraph (c) that speaks of maintaining an inventory of essential medical and dental equipment, which would be up to the Legislature to fund us. We have no direct control over that.

CHAIR CARE:
What is the extent of staff training in medical emergency response and reporting?

MR. SKOLNIK:
All our correctional officers are trained in cardiopulmonary resuscitation, and the staff who work in the medical unit are trained in basic medical response as part of their in-service training. The primary response to the medical needs of our inmates would be done by our Medical Division, not by line staff.

CHAIR CARE:
The fiscal note stems from the proposed amendment from the ACLU. If we take that out, there is no fiscal hit to speak of except maybe funding issues with section 2 of the bill. The argument is whether we need the bill and whether this is already done. It would not have an effect on the litigation in Ely.

SENATOR COPENING MOVED TO DO PASS A.B. 473.

delinquents but could be criminalized with the hardcore kids. I would like to know there is a better remedy than the detention option. I am concerned that it could become an easy option with a frustrated jurist.

CHAIR CARE:
Senator Wiener, are you asking that we hold this?

SENATOR WIENER:
I would like to work with Assemblyman Denis and the professionals to see if there is something in between that does not put children in detention.

CHAIR CARE:
We will hold it. There being nothing further to come before the Senate Committee on Judiciary, we are adjourned at 11:17 a.m.

RESPECTFULLY SUBMITTED:

_____
Kathleen Swain,
Committee Secretary

APPROVED BY:

_____
Senator Terry Care, Chair

DATE:_____

Amendment No. 643

Senate Amendment to Assembly Bill No. 204 First Reprint (BDR 10-920)

Proposed by: Senate Committee on Judiciary

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted ☐	Lost ☐		Adopted ☐	Lost ☐	
Concurred In ☐	Not ☐		Concurred In ☐	Not ☐	
Receded ☐	Not ☐		Receded ☐	Not ☐	

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold dashed underlining** is newly added transitory language.

BFG/BAW Date: 5/11/2009

A.B. No. 204—Revises provisions relating to common-interest communities.
(BDR 10-920)

A AB204 R1 643

ASSEMBLY BILL NO. 204–ASSEMBLYMEN SPIEGEL, MCCLAIN; AIZLEY, ANDERSON, ARBERRY, BOBZIEN, BUCKLEY, CHRISTENSEN, CLABORN, CONKLIN, DENIS, HARDY, KIRKPATRICK, KOIVISTO, LESLIE, MANENDO, MASTROLUCA, MUNFORD, PARNELL, PIERCE, SEGERBLOM, SMITH, STEWART AND WOODBURY

FEBRUARY 19, 2009

JOINT SPONSORS: SENATORS PARKS; WOODHOUSE

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-920)

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; requiring the executive board of a unit owners' association of a common-interest community to make available to each unit's owner certain information concerning the association's collection policy; extending the period of time certain liens have priority over [~~other~~] certain *other* security interests; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, not less than 30 days or more than 60 days before the beginning of the fiscal year of a unit owners' association of a common-interest community, the executive board of the association must provide each unit's owner with certain information pertaining to the budget of the association. (NRS 116.31151) **Section 1** of this bill requires the executive board to also make available to each unit's owner information pertaining to a policy established by the association for the collection of any fees, fines, assessments or costs imposed against a unit's owner, including the unit's owner's responsibility to pay such fees, fines, assessments or costs and the rights of the association to recover the fees, fines, assessments or costs if the unit's owner does not pay them.

Under existing law, a unit-owners' association of a common-interest community has priority over certain other creditors with respect to a lien on a unit for any construction penalty imposed against the unit's owner, any assessment levied against the unit or certain fines imposed against the unit's owner. Such a lien is also prior to a first security interest on the unit recorded before the assessments became delinquent to the extent of the assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration during the 6 months preceding an action to enforce the lien. [*(NRS 116.3116)*] **Section 2** of this bill changes the 6-month threshold for super priority of a lien for an association to [~~12 years, if the unit is a single-family detached dwelling. (NRS 116.3116)~~] *9 months, unless federal regulations adopted by the Federal Home*

Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If such federal regulations require a shorter period, the period must be determined in accordance with the federal regulations, except that the period must not be less than the 6 months preceding an action to enforce the lien, as currently provided in existing law.

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

Section 1. NRS 116.31151 is hereby amended to read as follows:

116.31151 1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the

proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

4. The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner pursuant to this section, make available to each unit's owner the policy established for the association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter. The policy must include, without limitation:

(a) The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

(b) The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

Sec. 2. NRS 116.3116 is hereby amended to read as follows:

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

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

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

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

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

➥ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the ~~*12 years immediately preceding institution of an action to enforce the lien if the unit is a single-family detached dwelling or during the 6*~~] *9* months immediately preceding institution of an action to enforce the lien ~~[.] *[if the unit is any other type of dwelling.]*~~ *, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien.* This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

8. 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 or 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.

9. 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.

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

(1) 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.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
May 12, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:47 a.m. on Tuesday, May 12, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus Conklin, Assembly District No. 37
Assemblyman John Hambrick, Assembly District No. 2
Assemblyman Harvey J. Munford, Assembly District No. 6

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

OTHERS PRESENT:

Sam Bateman, Nevada District Attorneys Association
Kevin Wallace, President, Community Association Management Executive Officers, Inc.

Michael E. Buckley, Commissioner, Commission for Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry
Garrett Gordon, Olympia Group
John Leach, Nevada Chapter, Community Associations Institute
Donna Erwin, Nevada Chapter, Community Associations Institute
K. "Neena" Laxalt, Nevada Association Services
Jonathan Friedrich
Robert Robey
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
David W. Huston
Bill Uffelman, President, Nevada Bankers Association
George A. Ross, Bank of America
Andrew Pizor, National Consumer Law Center, Inc.
Dennis Flannigan, President, Great Basin Federal Credit Union; Chairman, Nevada Credit Union League Government Relations Committee
Ben Graham, Administrative Office of the Courts
Frank A. Ellis III, Chair, Article 6 Subcommittee on Judicial Discipline

CHAIR CARE:
We will open the meeting on Assembly Bill 380.

ASSEMBLY BILL 380 (1st Reprint): Makes various changes relating to the sexual exploitation of children. (BDR 15-727)

SAM BATEMAN (Nevada District Attorneys Association):
We support A.B. 380.

CHAIR CARE:
When is it lawful for assets to be seized? You can do so following judgment, but can you seize assets during the execution of a search warrant?

MR. BATEMAN:
Section 2 relates to the statutory scheme we already have with regard to forfeiture. Forfeiture is a civil action we can institute through our office regardless of whether or not we have secured a conviction. We must prove the proceeds or assets secured through an arrest and seizure are associated with and derived from a criminal scheme. We can then forfeit it through this process.

Section 9 deals with interest rates on assessments. The law allows interest to accrue up to 18 percent. This bill proposes to make that a floating rate. If 18 percent is too high, the Commission strongly encourages the bill to have language to put a lower cap on it. We do not support a floating rate because it will cause constant expense for associations to go back and reset things. It should be a flat rate. If 18 percent is too high, then the Legislature can lower that rate.

CHAIR CARE:
Is that the legal rate?

MR. BUCKLEY:
It is the legal rate. The managers and the accountant on our committee said the associations would have to check the rates on July 1 and January 1. There are software programs to figure this out, but it would be simpler to pick a flat maximum rather than have the associations go to the expense of picking out a rate.

CHAIR CARE:
My experience is you pick up the phone on July 1 and January 1 to get the legal rate, and if you have to make an adjustment, you do. There may be additional costs associated above and beyond the legal rate.

MR. BUCKLEY:
A lot of these associations have software programs, but if it is not set up to do a floating rate they will have to get new software. Assemblyman Munford mentioned that a number of bills like A.B. 204 recognize that associations are hurting financially.

ASSEMBLY BILL 204 (2nd Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

Associations are suffering from delinquencies and foreclosures. And yet, a number of bills—and there are some provisions in this bill—impose greater requirements on associations that are more expensive to associations. There is a duality in the policies we are seeing in the bills. The Commission recognizes that associations are going through tough times, and we encourage the bills not to impose statutory obligations on associations that would impose further financial hardships.

On page 17, lines 1 through 3 of A.B. 350 require the budget include an itemized list of expenses over $100. A condominium high-rise could have hundreds of checks over $100 every month. This is not necessary. Association budgets should be based on actual revenues and expenses. Making each association in the State list every expense for $100 is unnecessary and not helpful.

CHAIR CARE:
Section 12.3 creates a cause of action for the unit owner who has been denied his request—he believes in good faith—to review the books. Given the number of associations and unit owners we have, I do not want to flood the courts with cases like this. You have the Ombudsman for owners in common-interest communities, but I have heard complaints about that Office.

MR. BUCKLEY:
If you hear complaints about the Ombudsman, it is because the Ombudsman has to deal with a board person who has to go back to the board and cannot really work one-on-one.

CHAIR CARE:
Just so there is no misunderstanding, I am talking about the system of the Ombudsman and not the Ombudsman personally. The office is inundated.

MR. BUCKLEY:
That is right. As a lawyer, I find this does not make any sense. How can you say a director took a retaliatory action when a director does not have any power other than as a member of the board? Nevada Revised Statute 116.4117 is a general remedy for any violation of the chapter. Subsection 2 of section 12.3 is unnecessary.

Section 17 would make every violation of the governing documents come to the Commission. What is in statute is a prosecution, and it deals with a violation of the law. If somebody believes a person has violated NRS 116, they file a complaint with the Real Estate Division of the Department of Business and Industry and the Division investigates. They turn it over to the Office of the Attorney General who represents the State of Nevada against this person who violated the law. That process in the statute does not fit a dispute among people involving governing documents. The Commission supports a quick resolution to disputes involving governing documents.

Last year, we set up a system where administrative law judges decided disputes between governing documents. The Office of the Attorney General told us we had exceeded our authority because the arbitration or determination of disputes through our statutory process was beyond what the statutes provided. If the *Nevada Revised Statutes* is to provide for the Commission to deal with disputes between homeowners, board members or governing documents, there would need to be a new set of statutes that had a different process than the State of Nevada versus so and so. That is the problem. We support whatever we can do legislatively to make these things get resolved faster, but it cannot work under the existing process.

All the section 18 points are part of a regulation that came from the Commission. I have a proposed amendment to sections 18.2 through 18.6 (Exhibit E). The way it is written right now, section 18.1 says the "client" is the board of directors. If you go through all the different duties and obligations under all these section 18s, in most cases it should say the "association" rather than the "board of directors." I deleted the unnecessary word "client" and stated in its place either "board" or "association," Exhibit E. It does not change anything, it is just being more precise. For the record, it was pointed out this morning that there are references in section 18 that say "this chapter." These need to be looked at, because when it went from a regulation into the statute, the references are not correct.

CHAIR CARE:
Why would it be necessary to take a regulation and codify it?

MR. BUCKLEY:
As was explained, we really mean it. That was our question, but the response was we think this is important and we want to put it in the statute.

CHAIR CARE:
We will put your suggestions in the mock-up.

GARRETT GORDON (Olympia Group):
The Olympia Group agrees with all the comments made by Mr. Buckley. You have a copy of the amendment by the Olympia Group (Exhibit F) regarding section 12 of A.B. 350. Participating in the subcommittee on the Assembly side, we worked through many issues and there were many compromises. This language is one sticking point to Olympia. I have spoken to

Assemblyman Munford about our amendment, and he can live with it. I have spoken to Assemblyman John Oceguera, whose A.B. 108 was amended into this bill, and he can also live with this amendment.

ASSEMBLY BILL 108: Revises provisions governing community managers of common-interest communities. (BDR 10-178)

My amendment is to section 12, subsection 5 found on page 20 of the bill that says, "The executive board shall not require a unit's owner to pay an amount in excess of $10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section." The language the Olympia Group proposes to delete is the second sentence, "Upon written request of a unit's owner, copies ... ," Again, reading that word in conjunction with the first sentence which should be copies of any papers of the association, " ... must be provided to the unit's owner, in electronic format at no charge or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 10 cents per page."

What are the reasons for Olympia Group's proposal to delete this sentence? This is a user-based fee. Every homeowner is provided a packet when they purchase the home which includes the covenants, conditions and restrictions (CCRs) and everything dealing with the home. After each HOA meeting, every homeowner is provided with a copy of the minutes and any amendments made to the bylaws, CCRs or anything affecting that community. If an individual lost, misplaced or needs additional copies, Olympia believes, unlike the Office of the County Recorder, that there should be a fee. There is staff time involved in addition to monthly lease payments for the copiers. When you have thousands of homeowners, this additional staff time can add up quickly.

There are other limitations in NRS 116 which prevent abuse by a management company dealing with copies and providing information. There is a $10-per-hour limitation to review the association's records, contracts or papers and a 25-cent-per-copy cap. There is a $160 limitation in the regulations for the resale certificate which would include the resale package.

In conclusion, this is a user-based fee. If the floodgates are opened where paper copies must be provided at 10 cents or electronically free, there are some folks who would take advantage of this, especially in these large communities that

CHAIR CARE:
The sign-up sheet would indicate this is consensus. We will close the meeting on A.B. 496 and continue the hearing tomorrow. We are adjourned at 11:04 am.

RESPECTFULLY SUBMITTED:

Janet Sherwood,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE:

ASSEMBLY BILL NO. 204–ASSEMBLYMEN SPIEGEL, MCCLAIN; AIZLEY, ANDERSON, ARBERRY, BOBZIEN, BUCKLEY, CHRISTENSEN, CLABORN, CONKLIN, DENIS, HARDY, KIRKPATRICK, KOIVISTO, LESLIE, MANENDO, MASTROLUCA, MUNFORD, PARNELL, PIERCE, SEGERBLOM, SMITH, STEWART AND WOODBURY

FEBRUARY 19, 2009

JOINT SPONSORS: SENATORS PARKS; WOODHOUSE

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-920)

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; requiring the executive board of a unit owners' association of a common-interest community to make available to each unit's owner certain information concerning the association's collection policy; extending the period of time certain liens have priority over other certain security interests; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, not less than 30 days or more than 60 days before the beginning of the fiscal year of a unit owners' association of a common-interest community, the executive board of the association must provide each unit's owner with certain information pertaining to the budget of the association. (NRS 116.31151) **Section 1** of this bill requires the executive board to also make available to each unit's owner information pertaining to a policy established by the association for the collection of any fees, fines, assessments or costs imposed against a unit's owner, including the unit's owner's responsibility to pay such fees, fines, assessments or costs and the rights of the association to recover the fees, fines, assessments or costs if the unit's owner does not pay them.

Under existing law, a unit-owners' association of a common-interest community has priority over certain other creditors with respect to a lien on a unit for any construction penalty imposed against the unit's owner, any assessment levied against the unit or certain fines imposed against the unit's owner. Such a lien is also prior to a first security interest on the unit recorded before the assessments became delinquent to the extent of the assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration during the 6 months preceding an action to enforce the lien. **Section 2** of this bill changes the 6-month threshold for super priority of a lien for an association to 2 years, if the unit is a single-family detached dwelling. (NRS 116.3116)

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

Section 1. NRS 116.31151 is hereby amended to read as follows:

116.31151 1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of

the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

4. The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner pursuant to this section, make available to each unit's owner the policy established for the association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter. The policy must include, without limitation:

(a) The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

(b) The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

Sec. 2. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in

installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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

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

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

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

➥ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the ***2 years immediately preceding institution of an action to enforce the lien if the unit is a single-family detached dwelling or during the*** 6 months immediately preceding institution of an action to enforce the lien ~~[.]~~ ***if the unit is any other type of dwelling.*** This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

8. 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 or 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.

9. 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.

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

(1) 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.

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ASSEMBLY BILL NO. 204–ASSEMBLYMEN SPIEGEL, MCCLAIN; AIZLEY, ANDERSON, ARBERRY, BOBZIEN, BUCKLEY, CHRISTENSEN, CLABORN, CONKLIN, DENIS, HARDY, KIRKPATRICK, KOIVISTO, LESLIE, MANENDO, MASTROLUCA, MUNFORD, PARNELL, PIERCE, SEGERBLOM, SMITH, STEWART AND WOODBURY

FEBRUARY 19, 2009

JOINT SPONSORS: SENATORS PARKS; WOODHOUSE

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-920)

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; requiring the executive board of a unit owners' association of a common-interest community to make available to each unit's owner certain information concerning the association's collection policy; extending the period of time certain liens have priority over certain other security interests; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, not less than 30 days or more than 60 days before the beginning of the fiscal year of a unit owners' association of a common-interest community, the executive board of the association must provide each unit's owner with certain information pertaining to the budget of the association. (NRS 116.31151) **Section 1** of this bill requires the executive board to also make available to each unit's owner information pertaining to a policy established by the association for the collection of any fees, fines, assessments or costs imposed against a unit's owner, including the unit's owner's responsibility to pay such fees, fines, assessments or costs and the rights of the association to recover the fees, fines, assessments or costs if the unit's owner does not pay them.

Under existing law, a unit-owners' association of a common-interest community has priority over certain other creditors with respect to a lien on a unit for any construction penalty imposed against the unit's owner, any assessment levied against the unit or certain fines imposed against the unit's owner. Such a lien is also prior to a first security interest on the unit recorded before the assessments became delinquent to the extent of the assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration during the 6 months preceding an action to enforce the lien. (NRS 116.3116) **Section 2** of this bill changes the 6-month threshold for super priority of a lien for an association to 9 months, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If such federal regulations require a shorter period, the period must be determined in accordance with the federal regulations, except that the period must not be less than the 6 months preceding an action to enforce the lien, as currently provided in existing law.

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

Section 1. NRS 116.31151 is hereby amended to read as follows:

116.31151 1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major

component of the common elements or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

4. The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner pursuant to this section, make available to each unit's owner the policy established for the association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter. The policy must include, without limitation:

(a) The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

(b) The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

Sec. 2. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the

construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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

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

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

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

➥ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the ~~[6]~~ ***9*** months immediately preceding institution of an action to enforce the lien ~~[.]~~ ***, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien.*** This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

8. 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 or 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.

9. 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.

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

(1) 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.

Assembly Bill No. 204–Assemblymen Spiegel, McClain; Aizley, Anderson, Arberry, Bobzien, Buckley, Christensen, Claborn, Conklin, Denis, Hardy, Kirkpatrick, Koivisto, Leslie, Manendo, Mastroluca, Munford, Parnell, Pierce, Segerblom, Smith, Stewart and Woodbury

Joint Sponsors: Senators Parks; Woodhouse

CHAPTER.....

AN ACT relating to common-interest communities; requiring the executive board of a unit owners' association of a common-interest community to make available to each unit's owner certain information concerning the association's collection policy; extending the period of time certain liens have priority over certain other security interests; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, not less than 30 days or more than 60 days before the beginning of the fiscal year of a unit owners' association of a common-interest community, the executive board of the association must provide each unit's owner with certain information pertaining to the budget of the association. (NRS 116.31151) **Section 1** of this bill requires the executive board to also make available to each unit's owner information pertaining to a policy established by the association for the collection of any fees, fines, assessments or costs imposed against a unit's owner, including the unit's owner's responsibility to pay such fees, fines, assessments or costs and the rights of the association to recover the fees, fines, assessments or costs if the unit's owner does not pay them.

Under existing law, a unit-owners' association of a common-interest community has priority over certain other creditors with respect to a lien on a unit for any construction penalty imposed against the unit's owner, any assessment levied against the unit or certain fines imposed against the unit's owner. Such a lien is also prior to a first security interest on the unit recorded before the assessments became delinquent to the extent of the assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration during the 6 months preceding an action to enforce the lien. (NRS 116.3116) **Section 2** of this bill changes the 6-month threshold for super priority of a lien for an association to 9 months, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If such federal regulations require a shorter period, the period must be determined in accordance with the federal regulations, except that the period must not be less than the 6 months preceding an action to enforce the lien, as currently provided in existing law.

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

Section 1. NRS 116.31151 is hereby amended to read as follows:

116.31151 1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

4. The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner pursuant to this section, make available to each unit's owner the policy established for the association concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter. The policy must include, without limitation:

(a) The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

(b) The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

Sec. 2. NRS 116.3116 is hereby amended to read as follows:

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

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

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

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

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

➥ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the ~~[6]~~ ***9*** months immediately preceding institution of an action to enforce the lien ~~[.]~~ ***, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien.*** This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

8. 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 or 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.

9. 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.

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

(1) 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.

TAB 5

SB174

Introduced in the Senate on Feb 17, 2011.

By: (**Bolded** name indicates primary sponsorship)
Copening

Revises provisions relating to common-interest communities. (BDR 10-105)
DECLARED EXEMPT

Fiscal Notes

Effect on Local Government: No.
Effect on State: No.

Most Recent History Action: (No further action taken.)
(See full list below)

Upcoming Hearings

Past Hearings

Senate Judiciary	Feb 24, 2011	08:00 AM	**Agenda**	**Minutes**	No Action
Senate Judiciary	Feb 25, 2011	08:00 AM	**Agenda**	**Minutes**	No Action
Senate Judiciary	Mar 09, 2011	08:00 AM	**Agenda**	**Minutes**	Mentioned Not Agendized
Senate Judiciary	Mar 10, 2011	08:00 AM	**Agenda**	**Minutes**	Mentioned Not Agendized
Senate Judiciary	Mar 16, 2011	08:00 AM	**Agenda**	**Minutes**	Mentioned Not Agendized
Senate Judiciary	Mar 17, 2011	08:00 AM	**Agenda**	**Minutes**	Mentioned Not Agendized
Senate Judiciary	Apr 13, 2011	08:00 AM	**Agenda**	**Minutes**	No Action
Senate Judiciary	Apr 15, 2011	07:00 AM	**Agenda**	**Minutes**	Amend, and do pass as amended
Assembly Judiciary	May 06, 2011	08:00 AM	**Agenda**	**Minutes**	Mentioned, no jurisdiction
Assembly Judiciary	May 10, 2011	08:00 AM	**Agenda**	**Minutes**	Mentioned, no jurisdiction
Assembly Judiciary	May 13, 2011	08:00 AM	**Agenda**	**Minutes**	Mentioned, no jurisdiction
Assembly Judiciary	May 17, 2011	04:30 PM	**Agenda**	**Minutes**	Mentioned, no jurisdiction

Senate Finance	Jun 03, 2011	09:00 AM	**Agenda**	**Minutes**	Not Heard
Senate Finance	Jun 04, 2011	See Agenda	**Agenda**	**Minutes**	No Action
Assembly Judiciary	Jun 05, 2011	09:30 AM	**Agenda**	**Minutes**	Mentioned, no jurisdiction
Senate Finance	Jun 05, 2011	02:00 PM	**Agenda**	**Minutes**	Not Heard
Assembly Judiciary	Jun 06, 2011	09:00 AM	**Agenda**	**Minutes**	Not heard

Final Passage Votes

Bill Text **As Introduced** **1st Reprint**

Adopted Amendments **Amend. No. 506**

Bill History

Feb 17, 2011

- Read first time. Referred to Committee on Judiciary. To printer.

Feb 18, 2011

- From printer. To committee.

Apr 25, 2011

- From committee: Amend, and do pass as amended.

Apr 26, 2011

- Notice of eligibility for exemption.
- Read second time. Amended. (Amend. No. **506**.)
- Rereferred to Committee on Finance. To printer.

Apr 27, 2011

- From printer. To engrossment. Engrossed. **First reprint** .
- To committee.
- Exemption effective.

Jun 07, 2011

- (No further action taken.)

SENATE BILL NO. 174–SENATOR COPENING

FEBRUARY 17, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-105)

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; authorizing appeals to the Commission for Common-Interest Communities and Condominium Hotels after certain actions by the Real Estate Division of the Department of Business and Industry; revising provisions concerning the removal or abatement of a public nuisance on the exterior of a unit under certain circumstances; revising provisions relating to elections for members of an executive board; revising provisions concerning the removal of members of an executive board; revising provisions governing meetings of units' owners and meetings of an executive board; revising provisions governing the maintenance and repair of walls within a common-interest community; revising insurance and bond requirements for unit-owners' associations and community managers; revising provisions relating to the maintenance and investment of association funds; revising provisions concerning the assessment of certain common expenses against a unit's owner; revising provisions governing the withdrawal of money from the operating account of an association; revising provisions concerning liens on a unit for certain charges or fees; prohibiting a unit's owner from engaging in certain threatening conduct or retaliatory actions; revising provisions governing the award of punitive damages in certain circumstances; revising provisions governing management agreements and community

managers; exempting certain associations from the requirement to obtain a state business license; making various other changes relating to common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill authorizes a person who is aggrieved by certain written decisions of the Real Estate Division of the Department of Business and Industry to appeal to the Commission for Common-Interest Communities and Condominium Hotels.

Section 3 of this bill revises the circumstances under which the employees or agents of a unit-owners' association may enter the grounds of a unit which is being foreclosed to abate a nuisance.

Existing law authorizes the declaration of a common-interest community to provide for cumulative voting for the purpose of electing members of the executive board of the association. (NRS 116.2107) **Sections 2 and 4** of this bill prohibit such use of cumulative voting. **Section 4** also revises the procedures for the election of members of the executive board when the number of nominations for such membership is equal to or less than the number of members to be elected.

Under existing law, a member of the executive board may be removed from the executive board if the number of votes cast equals at least 35 percent of the total number of voting members of the association and the majority of all votes cast are cast in favor of removal. (NRS 116.31036) **Section 5** of this bill requires the number of votes cast in favor of removal to be at least 35 percent of the total number of voting members of the association and a majority of the votes cast.

Section 6 of this bill revises provisions governing the responsibility to maintain or repair walls within a common-interest community.

Existing law requires notice of a meeting of the executive board to be provided to the units' owners, except in an emergency. (NRS 116.31083) Under **section 8** of this bill, if a meeting of the executive board will consist only of an executive session, the association is not required to provide notice of the meeting to the units' owners. **Section 8** also authorizes an association to comply with the requirement to include an agenda with a notice of an executive board meeting by stating on the notice that the agenda will be sent at the request of a unit's owner to the electronic mail address of the unit's owner.

Existing law requires the minutes of meetings of the units' owners and the executive board to be provided to any unit's owner upon request and at no charge if those minutes are provided in electronic format. **Sections 7 and 8** of this bill require those minutes to be provided at no charge if provided by electronic mail.

Section 9 of this bill authorizes an executive board to meet in executive session: (1) to discuss the alleged misconduct, professional competence, or physical or mental health of an association vendor; and (2) to discuss with the vendor the vendor's alleged misconduct, professional competence or failure to perform under a contract.

Existing law requires an applicant for a certificate as a community manager, or the employer of that applicant, to post a bond in a certain form and amount. (NRS 116A.410) **Sections 10 and 19** of this bill remove this requirement and require an association to provide crime insurance that includes coverage for dishonest acts by certain persons.

Section 11 of this bill: (1) authorizes an association to invest association funds in any instrument or investment authorized by the governing documents or the investment policy established by the executive board; and (2) exempts petty cash and change funds from the requirement to deposit all association funds in certain

financial institutions. **Section 13** of this bill requires the executive board to make available to each unit's owner the policy for the investment of association funds at the same time and in the same manner as the budget is made available to the units' owners.

Section 12 of this bill authorizes an association to assess against a unit the legal fees and costs incurred by an association to enforce a violation of the association's governing documents by the unit's owner, a tenant or an invitee of the unit's owner or tenant. **Section 12** also amends provisions concerning the imposition of interest charges on late assessments to provide that: (1) interest may, but is not required to, accrue; and (2) interest may accrue at a rate less than the rate specified in statute.

Section 14 of this bill authorizes money in the operating account of an association to be withdrawn without the required signatures to make certain electronic transfers of money.

Existing law provides that an association has a lien on a unit for certain charges imposed against a unit's owner. (NRS 116.3116) Existing law also allows an association to charge reasonable fees to cover the costs of collecting past due obligations. (NRS 116.310313) **Section 15** of this bill provides that the association has a lien on a unit for any fees to cover the costs of collecting a past due obligation which are imposed against the unit's owner and that the association has a lien on a unit for any other amounts due the association. **Section 15** also provides that a lien on a unit for any fees to cover the costs of collecting a past due obligation is included within the super-priority lien for assessments for common expenses.

Existing law prohibits a member of the executive board of an association, a community manager and officers, employees and agents of an association from taking, or directing or encouraging, retaliatory action against a unit's owner under certain circumstances. (NRS 116.31183) **Section 16** of this bill prohibits a unit's owner from taking, or directing or encouraging, retaliatory action against a member of the executive board, an officer, employee or agent of an association, or another unit's owner under certain circumstances. **Section 16** also prohibits a unit's owner from making certain threats against a member of the executive board, an officer, agent or employee of the association or another unit's owner.

Section 18 of this bill adds community managers to a prohibition against punitive damages being awarded in certain circumstances.

Section 20 of this bill revises the requirements for management agreements entered into between an association and a community manager, including, without limitation, removing the requirement that the management agreement include provisions for dispute resolution. **Section 20** also requires a community manager to transfer the electronic books, records and papers of a client in a certain manner.

Section 21 of this bill revises the duty of a community manager to deposit, maintain and invest association funds so that such activities must be performed at the client's direction.

Existing law exempts nonprofit corporations from the requirement to obtain a state business license. (NRS 76.020, 76.100) **Sections 22 and 23** of this bill exempt from this requirement associations which are organized as certain other types of nonprofit or cooperative organizations.

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any person who is aggrieved by a letter of instruction, advisory opinion, declaratory order or other written decision which the person has received from the Division may file a written notice of appeal with the Division not later than 30 days after receipt of the letter of instruction, advisory opinion, declaratory order or other written decision.

2. If the next regularly scheduled meeting of the Commission is more than 30 days after the date on which the Division receives a notice of appeal pursuant to subsection 1, the Division must schedule a hearing before the Commission for the next regularly scheduled meeting of the Commission. If the next regularly scheduled meeting of the Commission is 30 days or less after the date on which the Division receives a notice of appeal pursuant to subsection 1, the Division must schedule a hearing before the Commission for the regularly scheduled meeting of the Commission which immediately follows the next regularly scheduled meeting.

3. The Commission may continue a hearing scheduled pursuant to subsection 2 upon the written request of the appellant, for good cause shown.

4. The Division shall give the appellant written notice of the date, time and place of the hearing on the appeal at least 30 days before the date of the hearing. The notice must be delivered personally to the appellant or mailed to the appellant by certified mail, return receipt requested, to his or her last known address.

5. The appellant and the Division may be represented by an attorney at any hearing on an appeal pursuant to this section.

6. The Commission shall render a final decision on an appeal pursuant to this section not later than 20 days after the date of the hearing.

7. The Commission shall notify the appellant of its decision in writing by certified mail, return receipt requested, not later than 60 days after the date of the hearing. The written decision must include any changes to the letter of instruction, advisory opinion, declaratory order or other written decision which are ordered by the Commission.

Sec. 2. NRS 116.2107 is hereby amended to read as follows:

116.2107 1. The declaration must allocate to each unit:

(a) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of

the association (NRS 116.3115) and a portion of the votes in the association;

(b) In a cooperative, a proportionate ownership in the association, a fraction or percentage of the common expenses of the association (NRS 116.3115) and a portion of the votes in the association; and

(c) In a planned community, a fraction or percentage of the common expenses of the association (NRS 116.3115) and a portion of the votes in the association.

2. The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

3. If units may be added to or withdrawn from the common-interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common-interest community after the addition or withdrawal.

4. The declaration may provide:

(a) That different allocations of votes are made to the units on particular matters specified in the declaration; ***and***

(b) ~~[For cumulative voting only for the purpose of electing members of the executive board; and~~

~~(c)]~~ For class voting on specified issues affecting the class if necessary to protect valid interests of the class.

➥ Except as otherwise provided in NRS 116.31032, a declarant may not utilize ~~[cumulative or]~~ class voting for the purpose of evading any limitation imposed on declarants by this chapter nor may units constitute a class because they are owned by a declarant.

5. Except for minor variations because of rounding, the sum of the liabilities for common expenses and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units must each equal one if stated as a fraction or 100 percent if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

6. In a condominium, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

7. In a cooperative, any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

Sec. 3. NRS 116.310312 is hereby amended to read as follows:

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

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

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

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions if the unit's owner refuses or fails to take any action or comply with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

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

(b) Remove or abate a public nuisance on the exterior of the unit which ~~[:]~~ ***adversely affects the use and enjoyment of any nearby unit and:***

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

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

(3) Results in blighting or deterioration of the unit or surrounding area ***.*** ~~[; and~~

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

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

4. The association may order that the costs of any maintenance or abatement conducted pursuant to subsection 2 or 3, including, without limitation, reasonable inspection fees, notification and

collection costs and interest, be charged against the unit. The association shall keep a record of such costs and interest charged against the unit and has a lien on the unit for any unpaid amount of the charges. The lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

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

6. Except as otherwise provided in this subsection, a lien described in subsection 4 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116. If the federal regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.

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

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

9. As used in this section:

(a) "Exterior of the unit" includes, without limitation, all landscaping outside of a unit and the exterior of all property exclusively owned by the unit owner.

(b) "Vacant" means a unit:

(1) Which reasonably appears to be unoccupied;

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

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

Sec. 4. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of

declarant's control, the units' owners shall elect an executive board of at least three members, all of whom must be units' owners. The executive board shall elect the officers of the association. Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners. The members of the executive board and the officers of the association shall take office upon election.

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

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

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

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

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

5. ~~[~~Before the secretary or other officer specified in the bylaws of the association causes notice to be given to each unit's owner of his or her eligibility to serve as a member of the executive board pursuant to subsection 4,~~]~~ ***Unless*** the executive board ~~[~~may determine that~~]~~ ***determines otherwise,*** if, at the closing of the prescribed period for nominations for membership on the executive board, the number of candidates nominated for membership on the executive board is equal to or less than the number of members to be elected to the executive board at the election ***:*** ~~[~~, then the secretary or other officer specified in the bylaws of the association will cause notice to be given to each unit's owner informing each unit's owner that:~~]~~

(a) The association ~~[~~will~~]~~ ***must*** not prepare or mail any ballots to units' owners pursuant to this section ~~[~~and the~~]~~ ***;***

(b) The nominated candidates shall be deemed to be duly elected to the executive board ~~[unless:~~

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

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

~~(b) Each unit's owner who is qualified to serve as a member of the executive board may nominate himself or herself for membership on the executive board by submitting a nomination to the executive board within 30 days after the notice provided by this subsection.]~~ ***effective at the beginning of the next regularly scheduled meeting of the executive board; and***

(c) Not less than 10 days before the next regularly scheduled meeting of the executive board, the association must send to each unit's owner notification that the candidates nominated have been elected to the executive board.

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

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

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

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

~~7.]~~ If ***,*** ~~[the notice described in subsection 5 is given and if,]~~ at the closing of the prescribed period for nominations for membership on the executive board ***,*** ~~[described in subsection 5,]~~ the number of candidates nominated for membership on the executive board is greater than the number of members to be elected to the executive board, then the association ~~[shall:]~~ ***must:***

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

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

~~[8.]~~ ***7.*** Each person who is nominated as a candidate for a member of the executive board pursuant to subsection 4 ~~[or 5]~~ must:

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

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

➥ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his or her candidacy information. Except as otherwise provided in this subsection, the association shall distribute the disclosures, on behalf of the candidate, to each member of the association with the ballot or, in the event ballots are not prepared and mailed pursuant to subsection ~~[6,]~~ ***5,*** in the next regular mailing of the association. The association is not obligated to distribute any disclosure pursuant to this subsection if the disclosure contains information that is believed to be defamatory, libelous or profane.

~~[9.]~~ ***8.*** Unless a person is appointed by the declarant:

(a) A person may not be a member of the executive board or an officer of the association if the person, the person's spouse or the person's parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

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

(1) That master association; or

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

~~[10.]~~ ***9.*** An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, the person shall file proof in the records of the association that:

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

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

10. Notwithstanding any provision of the declaration or bylaws to the contrary, cumulative voting may not be used by units' owners for the purpose of electing members of the executive board.

11. Except as otherwise provided in subsection ~~[6]~~ ***5*** or NRS 116.31105, the election of any member of the executive board must be conducted by secret written ballot in the following manner:

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

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

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

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

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

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

12. An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in the candidate's campaign for election as a member of the executive board, except that the candidate's campaign may be limited to 90 days before the date that ballots are required to be returned to the association. A candidate may request that the secretary or other officer specified in the bylaws of the association send, 30 days before the date of the election and at the association's expense, to the mailing address of each unit within the common-interest community or to any other mailing address designated in

writing by the unit's owner a candidate informational statement. The candidate informational statement:

(a) Must be no longer than a single, typed page;

(b) Must not contain any defamatory, libelous or profane information; and

(c) May be sent with the secret ballot mailed pursuant to subsection 11 or in a separate mailing.

➥ The association and its directors, officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to this subsection.

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

Sec. 5. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section ~~[:~~

~~(a) The]~~ ***, the*** number of votes cast ***in favor of removal*** constitutes ~~[at]~~ ***:***

(a) At least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election ***.*** ~~[are cast in favor of removal.]~~

2. ***A removal election may be called by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. To call a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this subsection and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If a removal election is called pursuant to this subsection and:***

(a) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to this section:

(1) The secret written ballots for the removal election must be sent in the manner required by this section not less than 15 days or more than 60 days after the date on which the petition is received; and

(2) The executive board must set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots and not later than 120 days after the date on which the petition was received.

(b) The voting rights of the owners of time shares will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board must set the date for the removal election so that the removal election is held not less than 15 days or more than 120 days after the date on which the petition is received.

➥ The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.

3. Except as otherwise provided in NRS 116.31105, the removal of any member of the executive board must be conducted by secret written ballot in the following manner:

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

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

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

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

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

~~[3.]~~ ***4.*** If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his or her role as a member of the board, the association shall indemnify the

member for his or her losses or claims, and undertake all costs of defense, unless it is proven that the member acted with willful or wanton misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. ~~[Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against:~~

~~(a) The association;~~

~~(b) The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board; or~~

~~(c) The officers of the association for acts or omissions that occur in their capacity as officers of the association.~~

~~4. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.]~~

Sec. 6. NRS 116.31073 is hereby amended to read as follows:

116.31073 1. Except as otherwise provided in subsection 2 and NRS 116.31135, ~~[the association is responsible]~~ ***unless a governmental entity has accepted responsibility*** for the maintenance, repair, restoration and replacement of ~~[any security]~~ ***a*** wall which is located within ~~[the]~~ ***a*** common-interest community ~~[.~~

~~2. The provisions of this section do not apply if the governing documents provide that a unit's owner or an entity other than the association]~~ ***or any part thereof, the unit's owner or any other person specified in the governing documents of the common-interest community*** is responsible for the maintenance, repair, restoration and replacement of the ~~[security]~~ wall.

~~[3. For the purpose of carrying out the]~~

2. Any maintenance, repair, restoration ~~[and]~~ ***or*** replacement of a ~~[security]~~ wall ~~[pursuant to this section:~~

~~(a) The association, the members of its executive board and its officers, employees, agents and community manager may enter the grounds of a unit after providing written notice and, notwithstanding any other provision of law, are not liable for trespass.~~

~~(b) Any such maintenance, repair, restoration and replacement of a security wall must be performed:~~

~~(1) During normal business hours;~~

~~(2) Within a reasonable length of time; and~~

~~(3) In a manner that does not adversely affect access to a unit or the legal rights of]~~ ***that is performed because of any damage caused by the willful or negligent act of*** a unit's owner ~~[to enjoy the use of his or her unit.~~

~~(c) Notwithstanding any other provision of law, the executive board is prohibited from imposing an assessment without obtaining prior approval of the units' owners unless the total amount of the assessment is less than 5 percent of the annual budget of the association.~~

~~4. As used in this section, "security wall" means any wall composed of stone, brick, concrete, concrete blocks, masonry or similar building material, including, without limitation, ornamental iron or other fencing material, together with footings, pilasters, outriggers, grillwork, gates and other appurtenances, constructed around the perimeter of a residential subdivision with respect to which a final map has been recorded pursuant to NRS 278.360 to 278.460, inclusive, to protect the several tracts in the subdivision and their occupants from vandalism.~~**]** ***, a tenant or an invitee of the unit's owner or tenant is the responsibility of the unit's owner.***

Sec. 7. NRS 116.3108 is hereby amended to read as follows:

116.3108 1. A meeting of the units' owners must be held at least once each year. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

2. Special meetings of the units' owners may be called by the president, by a majority of the executive board or by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. **[**~~The same number of units' owners may also call a removal election pursuant to NRS 116.31036.~~**]** To call a special meeting **,** **[**~~or a removal election,~~**]** the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this section and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. **[**~~If the petition calls for a special meeting, the~~**]** ***The*** executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received **[**~~. If the petition calls for a removal election and:~~

~~(a) The voting rights of the owners of time shares will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 60 days after the date on which the petition is received; or~~

~~(b) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to NRS 116.31036, the secret written ballots for the removal election must be sent in the manner required by NRS 116.31036 not less than 15 days or more than 60 days after the date on which the petition is received, and the executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots.~~

~~➥]~~ ***, the request for a special meeting is received from the president or the vote of the majority of the executive board to call a special meeting, whichever is applicable.*** The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be hand-delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request, ~~[in]~~ ***by*** electronic ~~[format]~~ ***mail*** at no charge to the unit's owner or, if the association is unable to provide the copy or summary ~~[in]~~ ***by*** electronic ~~[format,]~~ ***mail,*** in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

4. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an

emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

6. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection, a copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request, ~~[in]~~ ***by*** electronic ~~[format]~~ ***mail*** at no charge to the unit's owner or, if the association is unable to provide the copy or summary ~~[in]~~ electronic ~~[format,]~~ ***mail,*** in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

7. Except as otherwise provided in subsection 8, the minutes of each meeting of the units' owners must include:

(a) The date, time and place of the meeting;

(b) The substance of all matters proposed, discussed or decided at the meeting; and

(c) The substance of remarks made by any unit's owner at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

8. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

9. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

10. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his or

her intent to record the meeting to the other units' owners who are in attendance at the meeting.

11. The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

Sec. 8. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every quarter, and not less than once every 100 days and must be held at a time other than during standard business hours at least twice annually.

2. Except ***as otherwise provided in subsection 3 or*** in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

(a) Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;

(b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or

(c) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. ***If a meeting of the executive board will consist only of the executive board meeting in executive session, the secretary or other officer specified in the bylaws of the association is not required to cause notice of the meeting to be given to the units' owners.***

4. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice

must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

~~[4.]~~ ***5.*** The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting ***,*** ~~[or]~~ the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners ~~[.]~~ ***or, if the association offers to send notice of a meeting of the executive board by electronic mail, a statement that an agenda will be sent by electronic mail at the request of a unit's owner to an electronic mail address designated in writing by the unit's owner.*** The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the audio recording, the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request, ~~[in]~~ ***by*** electronic ~~[format]~~ ***mail*** at no charge to the unit's owner or, if the association is unable to provide the copy or summary ~~[in]~~ ***by*** electronic ~~[format,]~~ ***mail,*** in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

~~[5.]~~ ***6.*** The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. A period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for both the beginning and the end of each meeting. During the period devoted to comments by the units' owners and discussion of those comments at the beginning of each meeting, comments by the units' owners and discussion of those comments must be limited to items listed on the agenda. In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

~~[6.]~~ ***7.*** At least once every quarter, and not less than once every 100 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

(a) A current year-to-date financial statement of the association;

(b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;

(c) A current reconciliation of the operating account of the association;

(d) A current reconciliation of the reserve account of the association;

(e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and

(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

~~[7.]~~ ***8.*** The secretary or other officer specified in the bylaws shall cause each meeting of the executive board to be audio recorded and the minutes to be recorded or otherwise taken at each meeting of the executive board, but if the executive board is meeting in executive session, the meeting must not be audio recorded. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the audio recording of the meeting, the minutes of the meeting and a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection, a copy of the audio recording, the minutes or a summary of the minutes must be provided to any unit's owner upon request, ~~[in]~~ ***by*** electronic ~~[format]~~ ***mail*** at no charge to the unit's owner or, if the association is unable to provide the copy or summary ~~[in]~~ ***by*** electronic ~~[format,]~~ ***mail,*** in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

~~[8.]~~ ***9.*** Except as otherwise provided in subsection ~~[9]~~ ***10*** and NRS 116.31085, the minutes of each meeting of the executive board must include:

(a) The date, time and place of the meeting;

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting;

(d) A record of each member's vote on any matter decided by vote at the meeting; and

(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

~~[9.]~~ ***10.*** The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

~~[10.]~~ ***11.*** The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

~~[11.]~~ ***12.*** A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his or her intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

~~[12.]~~ ***13.*** As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 9. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to open or consider bids for an association project as defined in NRS 116.31086, or to enter into, renew, modify, terminate or take any other action regarding a contract.

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive.

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager ***,*** ~~[or]~~ an employee of the association ~~[.]~~ ***or a vendor who has entered into a contract with the association.***

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

(e) Discuss with a vendor of the association the vendor's alleged misconduct, professional competence or failure to perform under a contract.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:

(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses;

(b) Is entitled to due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the hearing panel; and

(c) Is not entitled to attend the deliberations of the executive board.

5. The provisions of subsection 4 establish the minimum protections that the executive board must provide before it may make a decision. The provisions of subsection 4 do not preempt any provisions of the governing documents that provide greater protections.

6. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to the person's designated representative.

7. Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 10. NRS 116.3113 is hereby amended to read as follows:

116.3113 1. Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available, ~~[~~both of~~]~~ ***all*** the following:

(a) Property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against all risks of direct physical loss commonly insured against or, in the case of a converted building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles must be not less than 80 percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land,

excavations, foundations and other items normally excluded from property policies.

(b) Liability insurance, including insurance for medical payments, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units.

(c) Crime insurance which includes coverage for dishonest acts by members of the executive board and the officers, employees, agents, directors and volunteers of the association and which extends coverage to any business entity that acts as the community manager of the association and the employees of that entity. Such insurance may not contain a conviction requirement, and the minimum amount of the policy must be not less than an amount equal to 3 months of aggregate assessments on all units plus reserve funds.

2. In the case of a building that is part of a cooperative or that contains units having horizontal boundaries described in the declaration, the insurance maintained under paragraph (a) of subsection 1, to the extent reasonably available, must include the units, but need not include improvements and betterments installed by units' owners.

3. If the insurance described in subsections 1 ***,*** ~~[and]~~ 2 ***and 3*** is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all units' owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it considers appropriate to protect the association or the units' owners.

4. An insurance policy issued to the association does not prevent a unit's owner from obtaining insurance for the unit's owner's own benefit.

Sec. 11. NRS 116.311395 is hereby amended to read as follows:

116.311395 1. Except as otherwise provided in ~~[subsection 2,]~~ ***subsections 2 and 3,*** an association ~~[, a member of the executive board, or a community manager]~~ shall deposit ~~[or invest]~~ ***and maintain*** all funds of the association ~~[at]~~ ***in*** a financial institution ***whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation and*** which:

(a) Is located in this State;

(b) Is qualified to conduct business in this State; or

(c) Has consented to be subject to the jurisdiction, including the power to subpoena, of the courts of this State and the Division.

2. ~~[Except as otherwise provided by the governing documents, in addition to the requirements of]~~ ***Funds held by the association as petty cash, imprest funds or change funds are not required to be deposited or maintained in accordance with subsection 1. The amount of petty cash, imprest funds and change funds held by the association must be set forth in the policy established by the executive board for the investment of the funds of the association.***

3. Funds deposited or maintained by an association pursuant to subsection 1 ~~[, an association shall deposit, maintain and invest all funds of the association:]~~ ***may be invested in:***

(a) ~~[In]~~ ***Certificates of deposit issued by*** a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation;

(b) ~~[With a private insurer approved pursuant to NRS 678.755; or~~

~~(c) In a]~~ ***A*** government security backed by the full faith and credit of the Government of the United States ~~[.~~

~~3.]~~ ***; or***

(c) Any other instrument or investment authorized by the governing documents or the policy established by the executive board for the investment of the funds of the association.

4. The Commission shall adopt regulations prescribing the contents of the declaration to be executed and signed by a financial institution located outside of this State to submit to consent to the jurisdiction of the courts of this State and the Division.

Sec. 12. NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4 to 7, inclusive:

(a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the

major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore. The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements or any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore are necessary. Notwithstanding any provision of the governing documents to the contrary, to establish adequate reserves pursuant to this paragraph, including, without limitation, to establish or carry out a funding plan, the executive board may, without seeking or obtaining the approval of the units' owners, impose any necessary and reasonable assessments against the units in the common-interest community. Any such assessments imposed by the executive board must be based on the study of the reserves of the association conducted pursuant to NRS 116.31152.

3. Any assessment for common expenses or installment thereof that is 60 days or more past due ~~[bears]~~ ***may bear*** interest at a rate ~~[equal to]~~ ***which may not exceed*** the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date the assessment becomes past due, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the balance is satisfied.

4. Except as otherwise provided in the governing documents:

(a) Any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(c) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

5. Assessments to pay a judgment against the association may be made only against the units in the common-interest community at the time the judgment was entered, in proportion to their liabilities for common expenses.

6. ~~[If any common expense is caused by the misconduct of any unit's owner, the]~~ ***The*** association may assess ~~[that]~~ ***a common*** expense exclusively against ~~[his or her]~~ ***an individual*** unit ~~[.]~~ ***if the common expense:***

(a) Is caused by the misconduct of a unit's owner, a tenant or an invitee of a unit's owner or tenant; or

(b) Is for the legal fees and costs incurred by the association to enforce a violation of the governing documents.

7. The association of a common-interest community created before January 1, 1992, is not required to make an assessment against a vacant lot located within the community that is owned by the declarant.

8. If liabilities for common expenses are reallocated, assessments for common expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

9. The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting.

Sec. 13. NRS 116.31151 is hereby amended to read as follows:

116.31151 1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are ~~[necessary,]~~ ***required to adequately fund the reserves,*** and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more ~~[special]~~ ***reserve*** assessments will be necessary to repair, replace or restore any major component of the common elements or any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties but not to exceed 60 miles from the physical location of the common-interest community; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

4. The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a

unit's owner pursuant to this section, make available to each unit's owner ~~[the]~~ ***:***

(a) The policy established ***by the executive board*** for the ~~[association]~~ ***investment of the funds of the association; and***

(b) The policy established by the executive board concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter. The policy must include, without limitation:

~~[(a)]~~ ***(1)*** The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

~~[(b)]~~ ***(2)*** The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

Sec. 14. NRS 116.31153 is hereby amended to read as follows:

116.31153 1. Money in the reserve account of an association required by paragraph (b) of subsection 2 of NRS 116.3115 may not be withdrawn without the signatures of at least two members of the executive board or the signatures of at least one member of the executive board and one officer of the association who is not a member of the executive board.

2. Except as otherwise provided in subsection 3, money in the operating account of an association may not be withdrawn without the signatures of at least one member of the executive board or one officer of the association and a member of the executive board, an officer of the association or the community manager.

3. Money in the operating account of an association may be withdrawn without the signatures required pursuant to subsection 2 to:

(a) Transfer money to the reserve account of the association at regular intervals; ~~[or]~~

(b) Make automatic payments for utilities ~~[.]~~ ***;***

(c) Make an electronic transfer of money to a state agency pursuant to NRS 353.1467;

(d) Make an electronic transfer of money to the United States Government, or any agency thereof, pursuant to any federal law requiring transfers of money to be made by an electronic means authorized by the United States Government or the agency thereof; or

(e) Make an electronic transfer of money to make a payment to a vendor or community manager for goods or services provided by the vendor or community manager pursuant to a written agreement which requires the vendor or community manager to provide goods or services to the association during a period

specified in the written agreement between the vendor or community manager and the association, if:

(1) The electronic transfer of money is made pursuant to a written agreement entered into between the association and the financial institution where the operating account of the association is maintained;

(2) The executive board has expressly authorized the electronic transfer of money; and

(3) The association has established internal accounting controls to safeguard the assets of the association which comply with generally accepted accounting principles.

4. As used in this section, "electronic transfer of money" has the meaning ascribed to it in NRS 353.1467.

Sec. 15. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a ***statutory*** lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment ~~[levied against]~~ ***attributable to*** that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, ***reasonable attorney's fees and other fees to cover the cost of collecting a past due obligation which are imposed pursuant to NRS 116.310313,*** any ~~[penalties,]~~ fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 ***, and any other amounts due the association pursuant to the governing documents, this chapter or the decision of an arbitrator, mediator, court or administrative body*** are enforceable ***in the same manner*** as ***unpaid*** assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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

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

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

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

➥ The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the

association on a unit pursuant to NRS 116.310312 ***,*** ~~[and]~~ to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien ~~[,]~~ ***and to the extent of any reasonable attorney's fees and other fees to cover the cost of collecting a past due obligation which are imposed pursuant to NRS 116.310313,*** unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions ***against a unit's owner*** to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

8. 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 or 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.

9. 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.

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

(1) 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.

Sec. 16. NRS 116.31183 is hereby amended to read as follows:

116.31183 1. An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

(a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

(b) Recommended the selection or replacement of an attorney, community manager or vendor; or

(c) Requested in good faith to review the books, records or other papers of the association.

2. ***A unit's owner, a tenant or an invitee of a unit's owner or tenant shall not knowingly threaten:***

(a) To cause bodily injury to a member of the executive board, an officer, employee or agent of the association, or another unit's owner;

(b) To cause physical damage to the property of a member of the executive board or an officer, employee or agent of the association;

(c) To subject a member of the executive board, an officer, employee or agent of the association, or another unit's owner to physical confinement or constraint; or

(d) To do any act which is intended to substantially harm a member of the executive board, an officer, employee or agent of the association, or another unit's owner with respect to his or her physical or mental health or safety,

➥ if the person by words or conduct places the person receiving the threat in reasonable fear that the threat will be carried out.

3. A unit's owner shall not take, or direct or encourage another person to take, any retaliatory action against a member of the executive board, an officer, employee or agent of the association, or another unit's owner because the member of the executive board, the officer, employee or agent, or the unit's owner has:

(a) Performed his or her duties under the governing documents or the provisions of this chapter; or

(b) Exercised his or her rights under the governing documents or the provisions of this chapter.

4. In addition to any other remedy provided by law, upon a violation of this section, a ~~[unit's owner]~~ ***person aggrieved by the violation*** may bring a separate action to recover:

(a) Compensatory damages; and

(b) Attorney's fees and costs of bringing the separate action.

Sec. 17. NRS 116.4106 is hereby amended to read as follows:

116.4106 1. The public offering statement of a common-interest community containing any converted building must contain, in addition to the information required by NRS 116.4103 and 116.41035:

(a) A statement by the declarant, based on a report prepared by an independent registered architect or licensed professional engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(b) A list of any outstanding notices of uncured violations of building codes or other municipal regulations, together with the estimated cost of curing those violations; and

(c) The budget to maintain the reserves required pursuant to paragraph (b) of subsection 2 of NRS 116.3115 which must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget was prepared, the current estimate of the amount of cash reserves that are necessary to repair, replace and restore the major components of the common elements and the current amount of accumulated cash reserves that are set aside for such repairs, replacements and restorations;

(3) A statement as to whether the declarant has determined or anticipates that the levy of one or more ~~[special]~~ ***reserve*** assessments will be required within the next 10 years to repair, replace and restore any major component of the common elements or to provide adequate reserves for that purpose;

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves described in subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of reserves required pursuant to NRS 116.31152; and

(5) The funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a period of years.

2. This section applies only to a common-interest community comprised of a converted building or buildings containing more than 12 units that may be occupied for residential use.

Sec. 18. NRS 116.4117 is hereby amended to read as follows:

116.4117 1. Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief.

2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for damages or other appropriate relief for a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

(a) By the association against:

(1) A declarant;

(2) A community manager; or

(3) A unit's owner.

(b) By a unit's owner against:

(1) The association;

(2) A declarant; or

(3) Another unit's owner of the association.

(c) By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.

3. ***Members of the executive board are not personally liable to the victims of crimes occurring on the property.***

4. Except as otherwise provided in ~~[~~NRS 116.31036,~~]~~ ***this subsection,*** punitive damages may be awarded for a willful and material failure to comply with any provision of this chapter if the failure is established by clear and convincing evidence.

~~[~~4.~~]~~ ***Punitive damages may not be recovered against:***

(a) The association;

(b) The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board;

(c) The officers of the association for acts or omissions that occur in their capacity as officers of the association; or

(d) The community manager of an association for acts or omissions that occur in his or her capacity as the community manager of the association.

5. The court may award reasonable attorney's fees to the prevailing party.

~~[5.]~~ ***6.*** The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.

7. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.

Sec. 19. NRS 116A.410 is hereby amended to read as follows:

116A.410 1. The Commission shall by regulation provide for the issuance by the Division of certificates. The regulations:

(a) Must establish the qualifications for the issuance of such a certificate, including, without limitation, the education and experience required to obtain such a certificate. The regulations must include, without limitation, provisions that:

(1) Provide for the issuance of a temporary certificate for a 1-year period to a person who:

(I) Holds a professional designation in the field of management of a common-interest community from a nationally recognized organization;

(II) Provides evidence that the person has been engaged in the management of a common-interest community for at least 5 years; and

(III) Has not been the subject of any disciplinary action in another state in connection with the management of a common-interest community.

(2) Except as otherwise provided in subparagraph (3), provide for the issuance of a temporary certificate for a 1-year period to a person who:

(I) Receives an offer of employment as a community manager from an association or its agent; and

(II) Has management experience determined to be sufficient by the executive board of the association or its agent making the offer in sub-subparagraph (I). The executive board or its agent must have sole discretion to make the determination required in this sub-subparagraph.

(3) Require a temporary certificate described in subparagraph (2) to expire before the end of the 1-year period if the certificate holder ceases to be employed by the association, or its agent, which offered the person employment as described in subparagraph (2).

(4) Require a person who is issued a temporary certificate as described in subparagraph (1) or (2) to successfully complete not less than 18 hours of instruction relating to the Uniform Common-Interest Ownership Act within the 1-year period.

(5) Provide for the issuance of a certificate at the conclusion of the 1-year period if the person:

(I) Has successfully completed not less than 18 hours of instruction relating to the Uniform Common-Interest Ownership Act; and

(II) Has not been the subject of any disciplinary action pursuant to this chapter or chapter 116 of NRS or any regulations adopted pursuant thereto.

(6) Provide that a temporary certificate described in subparagraph (1) or (2) and a certificate described in subparagraph (5):

(I) Must authorize the person who is issued a temporary certificate described in subparagraph (1) or (2) or certificate described in subparagraph (5) to act in all respects as a community manager and exercise all powers available to any other community manager without regard to experience; and

(II) Must not be treated as a limited, restricted or provisional form of a certificate.

(b) ~~[Must require an applicant or the employer of the applicant to post a bond in a form and in an amount established by regulation. The Commission shall, by regulation, adopt a sliding scale for the amount of the bond that is based upon the amount of money that applicants are expected to control. In adopting the regulations establishing the form and sliding scale for the amount of a bond required to be posted pursuant to this paragraph, the Commission shall consider the availability and cost of such bonds.~~

~~(c)]~~ May require applicants to pass an examination in order to obtain a certificate other than a temporary certificate described in paragraph (a). If the regulations require such an examination, the Commission shall by regulation establish fees to pay the costs of the examination, including any costs which are necessary for the administration of the examination.

~~[(d)]~~ ***(c)*** Must establish a procedure for a person who was previously issued a certificate and who no longer holds a certificate to reapply for and obtain a new certificate without undergoing any period of supervision under another community manager, regardless of the length of time that has passed since the person last acted as a community manager.

~~[(e)]~~ ***(d)*** May require an investigation of an applicant's background. If the regulations require such an investigation, the

Commission shall by regulation establish fees to pay the costs of the investigation.

~~[(f)]~~ ***(e)*** Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate.

~~[(g)]~~ ***(f)*** Must establish rules of practice and procedure for conducting disciplinary hearings.

2. The Division may collect a fee for the issuance of a certificate in an amount not to exceed the administrative costs of issuing the certificate.

3. As used in this section, "management experience" means experience in a position in business or government, including, without limitation, in the military:

(a) In which the person holding the position was required, as part of holding the position, to engage in one or more management activities, including, without limitation, supervision of personnel, development of budgets or financial plans, protection of assets, logistics, management of human resources, development or training of personnel, public relations, or protection or maintenance of facilities; and

(b) Without regard to whether the person holding the position has any experience managing or otherwise working for an association.

Sec. 20. NRS 116A.620 is hereby amended to read as follows:

116A.620 1. Any management agreement must:

(a) Be in writing and signed by all parties;

(b) Be entered into between the client and the community manager or the employer of the community manager if the community manager is acting on behalf of a corporation, partnership, limited partnership, limited-liability partnership, limited-liability company or other entity;

(c) State the term of the management agreement;

(d) State the basic consideration for the services to be provided and the payment schedule;

(e) Include a complete schedule of all fees, costs, expenses and charges to be imposed by the community manager, whether direct or indirect, including, without limitation:

(1) The costs for any new ~~[client]~~ ***association*** or start-up costs;

(2) The fees for special or nonroutine services, such as the mailing of collection letters, the recording of liens and foreclosing of property;

(3) Reimbursable expenses;

(4) The fees for the sale or resale of a unit or for setting up the account of a new member; and

(5) The portion of fees that are to be retained by the client and the portion to be retained by the community manager;

(f) State the identity and the legal status of the contracting parties;

(g) State any limitations on the liability of each contracting party ~~[;]~~ ***, including, without limitation, any provisions for indemnification of the community manager;***

(h) Include a statement of the scope of work of the community manager;

(i) State the spending limits of the community manager;

(j) Include provisions relating to the grounds and procedures for termination of the community manager;

(k) Identify the types and amounts of insurance coverage to be carried by each contracting party, including, without limitation:

(1) A ~~[requirement that]~~ ***statement as to whether*** the community manager ~~[or his or her employer shall]~~ ***will*** maintain insurance covering liability for errors ~~[or]~~ ***and*** omissions ~~[,]~~ ***or*** professional liability ***;*** ~~[or a surety bond to compensate for losses actionable pursuant to this chapter in an amount of $1,000,000 or more;]~~

(2) An indication of which contracting party will maintain fidelity bond coverage; ~~[and]~~

(3) A statement as to whether the client will maintain directors and officers liability coverage for the executive board; ***and***

(4) A statement as to whether each contracting party must be named as an additional insured under any required insurance;

(l) ~~[Include provisions for dispute resolution;~~

~~(m)]~~ Acknowledge that all records and books of the client are the property of the client, except any proprietary information and software belonging to the community manager;

~~[(n)]~~ ***(m)*** State the physical location, including the street address, of the records of the client, which must be within 60 miles from the physical location of the common-interest community;

~~[(o)]~~ ***(n)*** State the frequency and extent of regular inspections of the common-interest community; and

~~[(p)]~~ ***(o)*** State the extent, if any, of the authority of the community manager to sign checks on behalf of the client in an operating account.

2. In addition to any other requirements under this section, a management agreement may:

(a) Provide for mandatory binding arbitration; ~~[or]~~

(b) ***Provide for indemnification of the community manager in accordance with and subject to the appropriate provisions of title 7 of NRS; and***

(c) Allow the provisions of the management agreement to apply month to month following the end of the term of the management agreement, but the management agreement may not contain an automatic renewal provision.

3. Not later than 10 days after the effective date of a management agreement, the community manager shall provide each member of the executive board evidence of the existence of the required insurance, including, without limitation:

(a) The names and addresses of all insurance companies;

(b) The total amount of coverage; and

(c) The amount of any deductible.

4. After signing a management agreement, the community manager shall provide a copy of the management agreement to each member of the executive board. Within 30 days after an election or appointment of a new member to the executive board, the community manager shall provide the new member with a copy of the management agreement.

5. Any changes to a management agreement must be initialed by the contracting parties. If there are any changes after the execution of a management agreement, those changes must be in writing and signed by the contracting parties.

6. Except as otherwise provided in the management agreement, upon the termination or assignment of a management agreement, the community manager shall, within 30 days after the termination or assignment, transfer possession of all books, records and other papers of the client to the succeeding community manager, or to the client if there is no succeeding community manager, regardless of any unpaid fees or charges to the community manager or management company. ***If any books, records or other papers of the client are in an electronic format, the community manager must transfer possession of the books, records or other papers in a shareable format which:***

(a) Does not require a person seeking access to the books, records or other papers to enter a password to obtain such access; and

(b) Allows the client to immediately save, print and use the books, records or other papers.

7. Notwithstanding any provision in a management agreement to the contrary, a management agreement may be terminated by the client without penalty upon 30 days' notice following a violation by the community manager of any provision of this chapter or chapter 116 of NRS.

Sec. 21. NRS 116A.630 is hereby amended to read as follows:

116A.630 In addition to any additional standards of practice for community managers adopted by the Commission by regulation pursuant to NRS 116A.400, a community manager shall:

1. Except as otherwise provided by specific statute, at all times:

(a) Act as a fiduciary in any client relationship; and

(b) Exercise ordinary and reasonable care in the performance of duties.

2. Comply with all applicable:

(a) Federal, state and local laws, regulations and ordinances; and

(b) Lawful provisions of the governing documents of each client.

3. Keep informed of new developments in the management of a common-interest community through continuing education, including, without limitation, new developments in law, insurance coverage and accounting principles.

4. Advise a client to obtain advice from an independent expert relating to matters that are beyond the expertise of the community manager.

5. Under the direction of a client, uniformly enforce the provisions of the governing documents of the association.

6. At all times ensure that:

(a) The financial transactions of a client are current, accurate and properly documented; and

(b) There are established policies and procedures that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation:

(1) Proper maintenance of accounting records;

(2) Documentation of the authorization for any purchase orders, expenditures or disbursements;

(3) Verification of the integrity of the data used in business decisions;

(4) Facilitation of fraud detection and prevention; and

(5) Compliance with all applicable laws and regulations governing financial records.

7. Prepare or cause to be prepared interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of an association is fairly presented in accordance with all applicable laws and regulations.

8. Cause to be prepared, if required by the Division, a financial audit performed by an independent certified public accountant of the records of the community manager pertaining to the common-interest community, which must be made available to the Division.

9. Make the financial records of an association available for inspection by the Division in accordance with the applicable laws and regulations.

10. Cooperate with the Division in resolving complaints filed with the Division.

11. Upon written request, make the financial records of an association available to the units' owners electronically or during regular business hours required for inspection at a reasonably convenient location, which must be within 60 miles from the physical location of the common-interest community, and provide copies of such records in accordance with the applicable laws and regulations. As used in this subsection, "regular business hours" means Monday through Friday, 9 a.m. to 5 p.m., excluding legal holidays.

12. ~~[Maintain]~~ ***At the direction of the client, deposit, maintain*** and invest association funds in ~~[a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, National Credit Union Share Insurance Fund, Securities Investor Protection Corporation, or a private insurer approved pursuant to NRS 678.755, or in government securities that are backed by the full faith and credit of the United States Government.]~~ ***accordance with NRS 116.311395.***

13. Except as required under collection agreements, maintain the various funds of the client in separate financial accounts in the name of the client and ensure that the association is authorized to have direct access to those accounts.

14. Provide notice to each unit's owner that the executive board is aware of all legal requirements pursuant to the applicable laws and regulations.

15. Maintain internal accounting controls, including, without limitation, segregation of incompatible accounting functions.

16. Ensure that the executive board develops and approves written investment policies and procedures.

17. Recommend in writing to each client that the client register with the Division, maintain its registration and file all papers with the Division and the Secretary of State as required by law.

18. Comply with the directions of a client, unless the directions conflict with the governing documents of the client or the applicable laws or regulations of this State.

19. Recommend in writing to each client that the client be in compliance with all applicable federal, state and local laws, regulations and ordinances and the governing documents of the client.

20. Obtain, when practicable, at least three qualified bids for any capital improvement project for the client.

21. Develop written collection policies, approved by the executive board, to comply with all applicable federal, state and local laws, regulations and ordinances relating to the collection of debt. The collection policies must require:

(a) That the executive board approve all write-offs of debt; and

(b) That the community manager provide timely updates and reports as necessary.

Sec. 22. NRS 76.020 is hereby amended to read as follows:

76.020 1. Except as otherwise provided in subsection 2, "business" means:

(a) Any person, except a natural person, that performs a service or engages in a trade for profit;

(b) Any natural person who performs a service or engages in a trade for profit if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, or a Schedule F (Form 1040), Profit or Loss From Farming Form, or its equivalent or successor form, for that activity; or

(c) Any entity organized pursuant to this title, including, without limitation, those entities required to file with the Secretary of State, whether or not the entity performs a service or engages in a business for profit.

2. The term does not include:

(a) A governmental entity.

(b) A nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

(c) A person who operates a business from his or her home and whose net earnings from that business are not more than 66 2/3 percent of the average annual wage, as computed for the preceding calendar year pursuant to chapter 612 of NRS and rounded to the nearest hundred dollars.

(d) A natural person whose sole business is the rental of four or fewer dwelling units to others.

(e) A business whose primary purpose is to create or produce motion pictures. As used in this paragraph, "motion pictures" has the meaning ascribed to it in NRS 231.020.

(f) A business organized pursuant to chapter 82 or 84 of NRS ~~.~~ ***or a unit-owners' association, as that term is defined in NRS 116.011 or 116B.030, that is organized pursuant to chapter 81 of NRS.***

Sec. 23. NRS 76.100 is hereby amended to read as follows:

76.100 1. A person shall not conduct a business in this State unless and until the person obtains a state business license issued by the Secretary of State. If the person is:

(a) An entity required to file an initial or annual list with the Secretary of State pursuant to this title, the person must obtain the state business license at the time of filing the initial or annual list.

(b) Not an entity required to file an initial or annual list with the Secretary of State pursuant to this title, the person must obtain the state business license before conducting a business in this State.

2. An application for a state business license must:

(a) Be made upon a form prescribed by the Secretary of State;

(b) Set forth the name under which the applicant transacts or intends to transact business, or if the applicant is an entity organized pursuant to this title and on file with the Secretary of State, the exact name on file with the Secretary of State, the entity number as assigned by the Secretary of State, if known, and the location in this State of the place or places of business;

(c) Be accompanied by a fee in the amount of $100; and

(d) Include any other information that the Secretary of State deems necessary.

➥ If the applicant is an entity organized pursuant to this title and on file with the Secretary of State and the applicant has no location in this State of its place of business, the address of its registered agent shall be deemed to be the location in this State of its place of business.

3. The application must be signed pursuant to NRS 239.330 by:

(a) The owner of a business that is owned by a natural person.

(b) A member or partner of an association or partnership.

(c) A general partner of a limited partnership.

(d) A managing partner of a limited-liability partnership.

(e) A manager or managing member of a limited-liability company.

(f) An officer of a corporation or some other person specifically authorized by the corporation to sign the application.

4. If the application for a state business license is defective in any respect or the fee required by this section is not paid, the Secretary of State may return the application for correction or payment.

5. The state business license required to be obtained pursuant to this section is in addition to any license to conduct business that must be obtained from the local jurisdiction in which the business is being conducted.

6. For the purposes of this chapter, a person shall be deemed to conduct a business in this State if a business for which the person is responsible:

(a) Is organized pursuant to this title, other than a business organized pursuant to chapter 82 or 84 of NRS ~~[,]~~ ***or a unit-owners' association, as that term is defined in NRS 116.011 or 116B.030, that is organized pursuant to chapter 81 of NRS.***

(b) Has an office or other base of operations in this State;

(c) Has a registered agent in this State; or

(d) Pays wages or other remuneration to a natural person who performs in this State any of the duties for which he or she is paid.

7. As used in this section, "registered agent" has the meaning ascribed to it in NRS 77.230.

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MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
February 24, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:04 a.m. on Thursday, February 24, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Randolph Watkins, Executive Director and Vice President, Del Webb Community Management Company
Michael E. Buckley
John Leach
Mark Coolman, Western Risk Insurance
Pamela Scott
Garrett Gordon, Southern Highlands Community Association, Olympia Group
Angela Rock, President, Olympia Management Services
Donald Schaefer, Sun City Aliante
Jonathan Friedrich

Rana Goodman
Chris Ferrari, Concerned Homeowner Association Members Political Action Committee
Joseph Eaton, Concerned Homeowner Association Members Political Action Committee
Ellen Spiegel, Ex-Assemblywoman
Kay Dwyer
Jan Porter, Sage Creek Homeowners' Association
Gary Solomon, Professor, College of Southern Nevada
Tim Stebbins
Norman McCullough
Kevin Wallace, Community Association Managers Executive Organization, Inc.
Paul P. Terry, Jr., Community Associations Institute
Bill Uffelman, President and CEO, Nevada Bankers Association
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Rutt Premsrirut, Concerned Homeowner Association Members Political Action Committee

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 174.

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

RANDOLPH WATKINS (Executive Director and Vice President, Del Webb Community Management Company):
I have presented you a handout entitled HOA 101 (Exhibit C) which explains how homeowners' associations (HOAs) originated. I will highlight benefits to forming an HOA. Municipalities benefit from forming HOAs because they maintain private roads, common areas, and parks and recreation areas that local cities and governments do not maintain.

Another benefit is rules are and should be enforced for all. The HOAs are for amenities such as pools, tennis courts, recreation centers and places where families can have sense of community. They invite clean, efficiently run, architecturally and aesthetically controlled neighborhoods. Resale value for homes in an HOA are higher because property is maintained.

Nevada has 2,956 HOAs, including approximately 477,000 units, and HOA homeowners equate to 17 percent or 18 percent of the state's population. If there are two people in every home, approximately 950,000 live in HOAs. There are three types of HOAs: planned unit development, condominium and hotels, and stock co-ops.

The responsibilities of living in an HOA are to abide by the governing documents; pay assessments on time; attend board meetings; and volunteer to serve as elected board members and committee members.

In order for an HOA to govern itself, it needs governing documents such as articles of incorporation; covenants, conditions and restrictions (CC&Rs); and election procedures. Chapter 116 of the *Nevada Revised Statutes* (NRS) governs HOAs. The CC&Rs, rules and regulations, and design guidelines are tools used by management companies to assist the board of directors.

Professional management companies manage approximately 2,500 of the HOAs in Nevada. The remaining 400 are self-managed or managed by boards of directors or licensed community managers.

There are also supporting professionals, i.e., lawyers, certified public accountants, and landscaping and architectural review companies. It is actually big business.

In December 2009, a Zogby survey showed 71 percent of the residents in HOAs were satisfied with their associations, 12 percent were dissatisfied and the remainder had issues which did not fit into those two categories. In addition, 70 percent are in favor of the rules; 82 percent are positive about the value received from the community association assessments; 87 percent oppose additional government regulation; and 37 percent favor mandatory licensing for community association managers.

ALLISON COPENING (Clark County Senatorial District No. 6):
I am here today to introduce S.B. 174. I will read from my testimony (Exhibit D).

I have provided a list of the S.B. 174 Working Group members (Exhibit E) and request it be entered into the record.

MICHAEL E. BUCKLEY:
The Common-Interest Ownership Uniform Act was the first consumer protection law enacted in the State.

I am a member of the State Bar of Nevada, Real Property Law Section. We have looked at S.B. 174 in another context because the Uniform Act has been amended. I am also a member of the Commission for Common-Interest Communities and Condominium Hotels (CICCH). A group of people met before Session to compile solutions. We had input from different groups and people. An explanation of the proposed changes, section by section of the bill, is in (Exhibit F).

Section 1, page 4, of S.B. 174 would allow an appeal to the CICCH from a ruling of the Real Estate Division (RED). The main issue with HOAs is to have an easy, inexpensive way to resolve disputes. The CICCH is comprised of seven members—three homeowner representatives, an accountant, an attorney, a developer and a manager. All of the meetings are public, and public comment is allowed. A homeowner can go to the CICCH with a complaint. There has been discussion that issues appealed to the CICCH need to be fine-tuned. Sections 2 through 7 are procedural issues. The substance is in section 1.

Section 2, page 4, proposes not permitting cumulative voting. Smaller associations are concerned cumulative voting would permit a small group to take over an association. Cumulative voting may benefit larger associations; you need to draw a line rather than eliminate all cumulative voting.

Section 3, page 6, became law in 2009. *Nevada Revised Statute* 116.310312 addresses the fact homes were abandoned, foreclosed upon and falling into disrepair. This section allows the association to maintain an abandoned or foreclosed property. The costs expended by the association are a superpriority lien against the property. The Uniform Common Interest Ownership Act was adopted wherein, if a first mortgage holder forecloses on a common-interest community (CIC) unit, the association can be paid six months of the dues owed, which is called superpriority. This was expanded to nine months, except for condominiums.

On page 6, section 3 addresses the removal or abatement of a public nuisance on the exterior of the unit which “adversely affects the use and enjoyment of any nearby unit.”

On page 8, section 4 changes the mailing of ballots on an election to save the association money. A CIC can consist of three to thousands of units. This language clarifies if the people nominated are equal to or not more than the board spaces which are open, those people are elected. The proposed amendment in section 3, subsection 5, paragraph (a) states if this situation applied, the association could not have an election. We would change the words "must not" to "shall not be required to."

On page 9, section 5, paragraph (b), the change states that the nominees will become duly elected members at the next regular board meeting.

On page 11, section 3, subsection 10 is cumulative voting. That may need to be clarified by limiting it to certain-size associations.

On page 12, section 5 needs to be in conjunction with section 7; although chapter 116 is uniform law, it has been amended many times. Section 7 states how to call a special meeting of the homeowners. Section 5 removes provisions from section 7 and puts them into section 5. This gives the owners the ability to call for a removal election, not the board or the president. Section 5, subsection 1, paragraph (a) clarifies the number of votes. In the statute, if an HOA had 100 members, you only needed a majority of 35 and 18 people could remove a member of the board. The new language restores the provision that at least 35 percent of the membership must vote for removal.

On page 14, section 5, subsection 4 is moved to section 18 on the bottom of page 33 and the top of page 34. Section 6 amends NRS 116.31073. The concern was from municipalities where if a wall or security wall was boarding a street and an association, the city was not responsible. The CICCH had meetings to understand what a security wall is. There can be a wall between a street and the association, referred to as a perimeter wall; a wall between two homes; a wall around a common area inside the project; or a wall along the street inside a project. The person whose property contains the wall assumes responsibility, unless the government has accepted the responsibility, the wall has been damaged by a third party or the CC&Rs provide otherwise. Clark County suggests that where subsection 1 references "governmental entity has accepted responsibility," the agreement be in writing (Exhibit G).

On page 16, section 7, subsection 3, paragraph (a) is a change which appears throughout S.B. 174. The law states an owner should be provided copies of the

minutes in electronic format at no charge. Some owners want a compact disc (CD) or a copy of the audiotape of a meeting. The intent was if there is a cost to the association, there should be a cost to the owner. But the intent of electronic format was intended as e-mail and PDF attachments.

On page 17, section 7, subsection 6 is the same change, to clarify e-mail rather than a CD or other format.

On page 18, section 8 defines an executive session and also states that an executive session does not require notification to unit owners.

On page 19, section 4, subsection 5 allows the association to make deliveries by e-mail. Paragraph (a) changes electronic format to e-mail. Page 20 is the same change.

On page 21, section 9 describes what can be discussed in executive session and subsection 3, paragraph (b) adds the board be permitted to discuss the professional competence or misconduct of a vendor. The board cannot act on a failure or change the contract in executive session; that needs to be discussed in an open meeting. There is a suggestion to delete the reference to "or physical or mental health" from paragraph (b). Paragraphs (d) and (e) may be repetitive.

On page 23, section 10, subsection 1, paragraph (c) requires the association to provide crime insurance. Section 11, section 1 requires the association maintain its funds with an institution insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation.

On page 24, subsection 2 permits associations to have cash on hand.

On page 25, section 12, subsection 3 states assessments have to bear interest. The change is intended to say they "may" bear interest, not "have" to bear interest.

On page 26, section 12, subsection 6 may need to be rewritten. If a person in the community causes damage to the common elements, the person should be responsible. This would include not only the unit owner but the unit owner's tenants or guests. Subparagraph (b) states the person who created the harm is also responsible for legal fees and costs.

On page 27, section 13, subsection 1, paragraph (b), subparagraph (2), the word "necessary" is deleted. In subparagraph (3), "special" is replaced with "reserve." This clarifies it refers only to those reserves. Some associations refer to special assessments as an assessment for a violation. An association has the ability to fund its reserves or make an assessment against an owner without approval from the owner, but only for reserves.

On page 28, section 13, subsection 4, paragraph (a) clarifies the need to send owners the investment policy as well as the collection policy. Section 14 addresses how an association pays money and requires two signatures, but there are exceptions. If there is more than $10,000 to be paid to the State, you have to pay by wire transfer. This would permit the transfer. This also permits transfers to the United States Government for taxes and payment to certain vendors.

On page 29, section 14, subsection 3, paragraph (e), subparagraphs (1) through (3) are requirements designed to safeguard the electronic transfers. Section 15, subsection 1 defines anything the association charges a lien on the property. If the first mortgage forecloses, all association's liens are wiped out except the superpriority, which protects the association.

On page 30, section 15 would allow the collection costs to be part of the superpriority lien. In December 2010, the CICCH approved a proposed regulation that clarified what are reasonable collection costs, which is stalled because of the moratorium on new regulations. The CICCH determined what are reasonable fees and costs. In the comment to a change in 2008, the Uniform Law Commissioners stated the 2008 change was approved by the Foreclosure Prevention and Mortgage Assistance (Fannie Mae) program. I have been told that adding collection costs to the superpriority violates Fannie Mae, but when I looked at the Fannie Mae guidelines, that was not the case. Nevada has the concept of reasonable collection costs, which is another safeguard. Subsection 6 clarifies actions "against a unit's owner."

On page 31, section 16, subsection 1 makes the executive board, a member of the board or manager liable for retaliatory action against a unit owner. The intent of subsection 2 was to provide protection for board members against threats and retaliation by a unit's owners.

On page 32, section 17 is a technical correction to clarify reserve assessments, not special assessments.

On page 33, section 18 defines punitive damages.

On page 34, section 18, subsection 4, paragraph (d) should be deleted, as this would apply to the community manager and that was not the intent. It is intended to cover the volunteers who work for the HOA.

On page 35, section 19, subsection 1, paragraph (b), the reference to bond is removed.

On page 36, section 20 clarifies provisions regarding regulations on management contracts.

On page 37, section 20, subsection 1, paragraph (g) requires provisions for indemnity. Paragraph (k), subparagraph (1) defines it is not the manager's funds, but the association's funds. Subparagraphs (1) through (4) define insurance. Paragraph (l) is a technical correction to delete "include provisions for dispute resolution." It also conflicts with the provisions in subsection 2, paragraph (a) defining mandatory arbitration.

On page 38, section 20, subsection 2, paragraph (b) permits management to obtain contracts to provide indemnification for the manager. The reference to Title 7 of the NRS is to the corporate statutes, which say indemnification is not appropriate where the wrongdoer is negligent. Subsection 6 defines managers who only have electronic records. When there is a change in manager, the new manager can obtain and have access to those records without receiving a password from the previous manager.

On page 39, section 21 refers to NRS 116A, community managers (CMs).

On page 40, section 21, subsection 12 clarifies the board invests funds, although the CM can do things on behalf of board members who make those decisions.

On page 41, section 22 amends NRS 76.020 and defines "business." The business law tax was enacted to exempt nonprofits under NRS 82, under which

most associations are incorporated. This would also add NRS 81 because some associations are incorporated under that chapter.

On page 42, section 23 amends NRS 76.100 to further define business.

JOHN LEACH:
I am in favor of S.B. 174. I agree with Mr. Watkins, Senator Copening and Mr. Buckley. The comments Mr. Buckley made regarding Exhibit F breaks down into two categories, i.e., enhanced due process in section 1 giving the association owner the opportunity to come before the Commission, and the sections that provide cost-savings to HOAs and thereby the homeowners. Clarification in the statutes is also key.

CHAIR WIENER:
Mr. Buckley, when the Commission met with the Real Estate Division, were members going to address the safety issue for the unit owners and management?

MR. BUCKLEY:
We discussed if a crime is committed, it need not be added to NRS 116. But there needs to be protection of retaliation against board members.

MARK COOLMAN (Western Risk Insurance):
I am in favor of S.B. 174. Five major insurance markets provide coverage for HOAs, and all of them provide the endorsements free of charge. The way sections 10 and 20 are rewritten, the cost of insurance would be favorable. Homeowners' associations would have the largest amount of availability, and the cost would be less than both of them maintaining half the insurance coverage. First of all, you would disclose who does what, and second, you would go out to market and obtain the best available price and coverage.

Section 16 defines the need for protection of board members. In the last several years, I had four claims where a board member or president had cars, houses or other personal property destroyed, generally after board meetings or controversial activities within the association.

PAMELA SCOTT:
Section 15 talks about superpriority and reasonable collection costs. Banks are taking from 18 months to 24 months to complete the foreclosure process on

property, causing the superpriority liens and the need for collection costs. Homeowners have stopped paying their assessments prior to the bank's foreclosure action. If the homeowner stops paying the association, the association puts a lien on the property before the bank starts the foreclosure process. If the bank is not moving forward, it forces the association to move forward with the lien, which adds another step and fees. The association does not receive the funds and are writing off years of common assessment to bad debt. It is money which condominium and smaller associations need; they do not have the numbers to spread the debt around. It is important the associations receive their collection costs.

The key is the regulation, which has not been adopted because of the moratorium. Senator Copening has a bill that spells out reasonable collection costs. It is important to include reasonable collection costs for superpriority for HOAs.

GARRETT GORDON (Southern Highlands Community Association, Olympia Group):
Southern Highlands Community Association is a large association with over 7,000 rooftops, approximately 25,000 residents. Many of these issues are unique to large associations.

ANGELA ROCK (President, Olympia Management Services):
I am the president of Olympia Services, which manages Southern Highlands Community Association. We have submitted a list of clarifications (Exhibit H) on sections 1, 2, 4, 14 and 16. We have additional comments and questions on section 10 as it relates to insurance. Unique situations apply to smaller communities compared to large associations. Both have important issues and needs.

CHAIR WIENER:
Could you give us an idea of the budget and management challenges you have with a large association?

MS. ROCK:
When you have 25,000 homeowners and they disagree, a great number of groups are involved. This is a complex financial issue, with large amounts of money involved, and there needs to be protection, which S.B. 174 accomplishes. Homeowners volunteer their time to run a multimillion dollar corporation, which I point out in Exhibit H.

Last week, auditing issues were addressed in smaller associations. Cumulative voting can be an issue in a smaller association while in a larger community, it allows smaller subassociations to have a voice. We have some subassociations in our community with approximately 30 to 40 homes, compared to other subassociations that have 720 homes. It is a necessary tool for larger communities to allow smaller masses to have a voice. These are some issues which can be vetted through the process.

DONALD SCHAEFER (Sun City Aliante):
I am a homeowner in Sun City Aliante, an age-qualified community consisting of 2,028 homes. I am here today representing Sun City Aliante exclusively.

Homeowners own the association, which the board manages. Being transparent with disclosures—where money is invested, how it is invested, how collections are made and when someone is turned over to collections—makes board management clear to the homeowners.

On page 9, section 4, subsection 5, paragraphs (b) and (c) have not been addressed. In Sun City Summerlin, the process begins with nominations in January, as its fiscal year runs from July 1 through June 30. The homeowners have 30 days to nominate someone and the nominee to turn in a resume, etc. In another 30 days, the ballots are printed and sent to the homeowners. At the annual meeting in May, a candidate forum and open voting are held. At end of the board meeting, the winners are announced, the meeting is recessed and the board is reorganized. The board then has a meeting to elect the president, secretary, et cetera.

If S.B. 174 passes with no changes, the above section states: “the nominated candidates shall be deemed to be duly elected to the executive board.” If this was the case, at the end of January if there were three people running for three positions, they would be elected to the board on the second Wednesday of February. You have shortened the term of the existing board and lengthened the term of the incoming board. It is not a major issue for those associations that have a two-year term, but for those associations that have a three-year term, the board would be in violation of the three-year maximum limit. That term would be exceeded by two to three months.

The Sun City Summerlin board suggests the language in paragraph (b) be changed to say elected board members would take their seats at the conclusion

of the current board term. This is consistent with how State officials are elected. They are elected in November and seated in January.

JONATHAN FRIEDRICH:
I will read from my testimony (Exhibit I).

When you buy a home in an HOA, you sign a contract. When the State changes the terms or supersedes the contract, there is no approval by one party—the homeowner. It is a contract.

Mr. Watkins stated 71 percent of the homeowners are satisfied; what about the other 29 percent? Based upon Mr. Watkins' numbers, he stated 950,000 people live in HOAs. If you multiply that times the 29 percent who are not happy, that makes 275,000 people in this State who are not happy with their HOA.

Mr. Buckley referenced the item on electronic format. I received a complaint from a homeowner whose CM wanted $25 for a CD. We need regulations.

On page 4, section 1, subsections 1 through 7 can be used as a tool by the HOA attorneys to charge high attorney fees, which the association will pay. Then, the association attempts to recoup those fees using NRS 116.3115, subsection 6, which forces the homeowner to pay the attorney fees. It can also be used by the homeowner who wants to appeal a RED decision to the CICCH. Either way, the Commission will become inundated with appeals. If these appeals are considered civil actions, NRS 116.31088 requires notice to all homeowners. This will prove costly to everybody.

The new law extends the removal of board members to 120 days, four months. If you have bad board members, you want them off the board as soon as possible.

I am in favor of criminal insurance, but the HOA should pick up the cost. That is a cost of doing business by the CM.

RANA GOODMAN:
I have previously submitted my comments (Exhibit J); I will not read them. However, I have additional comments regarding Mr. Watkins' statements about HOAs and how they are established. He is describing a utopia. When most of us buy a home in an HOA community, we buy it with the same idea; we want to

live in a nice community. In that respect, I agree with him. The problem is the people who govern the HOA. You are at the mercy of your board of directors. If you have a resident-friendly board, you have what you want. The problem is many HOAs are run by bully boards; it is a fact of life, and the complaints prove that.

In Southern Highlands Community Association and Sun City Anthem, there are 7,144 homes with 11,000-plus residents who are retired with no children. The biggest majority of those residents suffer from a bad case of apathy. They do not care—they want to play golf, live a fabulous retired life, and more power to them. I would argue that 71 percent are happy; a big portion are not happy, not with the association. The look of the association is beautiful, but the residents are not happy with those who govern the HOA.

I ask you to choose how you coin your words in S.B. 174. For example, on page 18, section 8, subsection 2, paragraph (b), you use the term, "if the association offers." It is too soft; I would suggest it be changed to "the board shall offer." When you say, "if the association offers to send notice by electronic mail" and you have a bad board, it can say, no, we are not going to do that. There is nothing a resident can do because the law gives the board an out.

On page 21, section 9, subsection 3, in paragraph (b), you use the term "misconduct." How do you define misconduct? Several years ago, a resident in my community physically assaulted someone by knocking that person down; that is misconduct. There are other cases where someone asks for documents and the board did not want to give them. Because the attorney deemed it misconduct, he fined the person, used the paragraph which deals with community expenses and charged the homeowner $8,000 in legal fees. That word needs to be changed and further defined; it is too loose. Misconduct is when my child mouths off to me. What we need from you, our Legislators, is a way the homeowners can hold their boards accountable. It is not the HOA per se, it is people governing the HOA. Our first line of governance is our board, but our line of reason is you. If we have ambiguous terms in the law, where do we go?

If residents are retaliated against by the board, they go to the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels and wait for at least three months. Then they take it to RED, and it goes

into mandatory arbitration. If this law passes as is, a resident is deemed to retaliate against board members by having an argument with them or whatever the board deems is retaliation against them. The board can do anything it wants. I quote my board president in testimony last week to you: "This board can do whatever we want."

CHRIS FERRARI (Concerned Homeowner Association Members Political Action Committee):
Concerned Homeowner Association Members Political Action Committee (CHAMP) is a broad-based coalition of homeowners, consumer credit counselors, labor union members, minority chambers of commerce, National Association for the Advancement of Colored People, legal aid organizations, real estate agents, builders and numerous others. For clarification, we are not anti-HOA. Our primary concern is to ensure when fees are assessed based on nonpayment of assessments, the money goes to fix the communities and keep them maintained for their residents.

I am not in opposition to S.B. 174 but have concerns in opposition to sections 12 and 15. Based on Mr. Buckley's comments in section 12, subsection 6 alleviates our concerns in section 12, so I will focus on section 15.

After a home is foreclosed upon, the Fannie Mae program will pay up to six months of back due HOA assessments for common expenses. That amount may include collection fees, but no more than that. This is a discrepancy that we have with the comments made by Mr. Buckley and is evidenced on page 1 of our handout (Exhibit K), in the bottom two right-hand boxes. We have also had conversations with Fannie Mae and Federal Home Loan Mortgage Corporation's (Freddie Mac) counsel to confirm this.

The HOAs have the ability to foreclose for past due assessments through Nevada's nonjudicial foreclosure process. Prior to foreclosure, an HOA resident who missed payments is turned over to an HOA's collection or management company in less than two months. This is referred to as "imaginary fees." We all know someone who has been impacted by these egregious fees.

Page 2 of Exhibit K shows a sample payoff demand from an HOA collector, who supports S.B. 174, for services purportedly rendered to collect past due assessments. While it contains many of the imaginary fees—it is not unique—it is the norm. In this particular example, page 3 shows the two past due

assessments are each in the amount of $39.12 for a total amount owed of $78.24. How much would the demand letter be based upon? $3,322.24. To be fair, in this example we will deduct the demand and transfer fees from the total, as these are relevant charges. The new total is just under $3,000. The past due amount is $78, and we are talking about almost $3,000; that is the core of our argument. That means 2.7 percent of the money demanded will find its way to the HOA, and 97.3 percent will go to the collector. Who is winning in this situation? The money is not going back to the HOA to fix the issues.

Page 4 of Exhibit K shows a demand issued via e-mail at 9:08 a.m. for payment by 1 p.m. that same day. I doubt whether any one of us who received such a demand this morning would be able to pay it by 1 p.m. Because the four-hour demand was not met, the fee went up $2,000, a $2,000 fee increase in four hours. The money is not going back to the HOA to fix the problem.

In Exhibit K, page 10, in contrast—Fannie Mae and Freddie Mac's nonjudicial foreclosure pays $600 for the same process and completes the foreclosure, unlike the previous examples.

One of the members of Senator Copening's Working Group testified in previous Legislative Sessions that from the thousands of files opened by an HOA collection company, only two homes were foreclosed upon. This seems fairly consistent in the process, but the question is: why are those notices sent?

In closing, S.B. 174, sections 12 and 15 make it harder for families in Nevada to buy or sell a home and easier for their HOA collection companies to do business as usual.

SENATOR BREEDEN:
Mr. Friedrich, you mentioned homeowners contact you. Are you an advocate, but not with an organization?

MR. FRIEDRICH:
Through personal disputes with my HOA and having been run through the mill, I have become an advocate for unhappy homeowners. I will be glad to share my binder with anyone who would like to see it. These are complaints e-mailed to me by unhappy homeowners that range from, "I have a jungle gym in my backyard, and they want me to take it down" to "the color of my driveway paint does not match the exact shade I submitted." There is no organization,

just a group of people trying to fight for homeowners' rights and level the playing field.

SENATOR GUSTAVSON:
Mr. Ferrari, on the exorbitant fees people are being charged; if Fannie Mae or Freddie Mac will not pay these fees, who will?

MR. FERRARI:
That is a great question, one of which all of you are concerned. What typically happens is a superpriority lien, which is in section 15, incorporating more fees under superpriority. As many real estate agents or others can tell you, that lien is stuck on the house regardless of who owns it. When the next buyers purchase the home, they will not find out how much the fees are until the end of the process through a demand letter to the collection agency. We found in numerous examples, including the consumer credit counselors, when people buy homes, their federal loans are approved, but they cannot finance the lien amount. That is stopping real estate transactions throughout the State, making it a larger issue. Until we rid the excess inventory in the market, people cannot start building again and those homes will not transact.

SENATOR BREEDEN:
If this is a bank-owned home, why are buyers not responsible for paying those fees?

MR. FERRARI:
I will defer that question to Mr. Buckley, a real estate agent or attorney from CHAMP to answer the question.

SENATOR COPENING:
There is a collections bill which will mirror the CICCH's regulations not on hold. We wanted to codify it into law to ensure these egregious fees to a homeowner do not happen again. The fees would be capped at under $2,000 and only one letter will be sent. There would be limits on how much could be charged to write a letter, maybe $50 for the time it took to generate it.

Someone has to pay those collection costs when there is a foreclosure. Right now, in my bill and in the collections bill, superpriority will be given to collection costs because it is a cost of the association. In many cases, HOAs have paid those costs when contracted with a collections agency. In some situations, they

paid every month, and two years down the road, the home forecloses. There may be the maximum $2,000 collection fee. If the assessments were $100 for nine months, the association receives $900 and could also be owed those fees. It is my understanding CHAMP believes those costs should pass on to all homeowners of the association. In that case, one person's bad debt, or several in an association, would be passed on to all homeowners. If it is not passed on and the bank owns the unit, it would pay—or the investors would pay. Investors could recoup when they flip the home, or the debt would be paid by the new homeowner. If we remove superpriority, who should pay those collection costs?

MR. FERRARI:
This is an issue impacting folks; it is a unique issue because we agree with the cap. We will work with you and try to pass a bill we believe is reasonable and benefits all parties. When working with folks, i.e., legal aid centers all the way to bankers, there is a middle ground. It is not in the best interests of HOA residents to pay exorbitant fees without getting additional money. We look forward to working with you on the collections bill.

JOSEPH EATON (Concerned Homeowner Association Members Political Action Committee):
Superpriority fees are not paid by the purchaser who acquires the property from the bank if the bank is the successful bidder at a nonjudicial foreclosure sale. Those fees are paid by investors. Given the amendments proposed, those fees would be included in superpriority. The payment would be shifted from the community members to the general public as a whole. That is who will pick up those costs in the context of a foreclosure. Those fees have to be paid by the bank when the bank takes title to the property—or an investor when the investor takes title. This is not a case where a delinquent homeowner steps up and pays the fees. This is not a question of shifting the cost to someone who should have borne the cost. It is whether the people who could exercise restraint over the collectors and who enter into those contracts are going to be forced to bear the costs. When they do not, the costs shift to the public as a whole. Members of the community are in a much better position to exercise restraint over the collectors they retain.

SENATOR COPENING:
Collection costs are a part of the superpriority; you want that removed. We know it is happening because when investors or homeowners buy homes, they

are responsible for the superpriority. Those collection costs are paid to the collection companies.

MR. EATON:
There is litigation pending. This is not a settled question at this point.

SENATOR KIHUEN:
Mr. Friedrich, how long did it take you to accumulate the complaints in your binder? Are these from this January or the past few years?

MR. FRIEDRICH:
These have been forwarded to me by different people in less than a year. I will get the binder to each of you. It is broken down into three sections: the arbitration trap mandated under NRS 38 and 116, fines levied by associations against homeowners, and collection fees. In one case, a 78-year-old lady almost lost her home on two issues: Over $6,000 in fines for dead grass on her front lawn and delinquent association fees where she thought she was current and was not. I attribute this to her age and not being on top of the situation.

ELLEN SPIEGEL (Ex-Assemblywoman):
I will read from my written testimony (Exhibit L).

KAY DWYER:
I am a homeowner, resident and former board member of a large CIC. I am in support of S.B. 174.

There are many issues in sections of this bill, but I will limit my comments to section 16, subsection 3. This section addresses the issue of harassment and interference with the performance of duties of board members, managers and staff. You have received testimony where multiple complaints, 60 to 80, were filed in a large association at a cost of more than $38,000 to the association. None of these complaints resulted in fines or serious charges of wrongdoing. Most of the complaints resulted in either no action or were deemed unwarranted. Some complaints are still open and unresolved. These multiple and numerous complaints were filed by the same people over and over again. These complaints were made by fewer than a dozen people out of a population of 14,000 in a community of over 7,000 homes. There are probably 13,900 people who are happy with their association. Board members, managers, staff

and professional associates have been targeted by this very small, vocal group. This is not a unique situation as the recent negative publicity has shown.

Please support S.B. 174 and retain the authority of boards, managers and staff to perform their duties without harassment. This association is responsible for administering the business of the corporation, representing thousands of residents, and is accountable for millions of dollars in budget decisions, reserve issues, and maintenance and upkeep of many millions of resident dollars in assets. The association is responsible for over 250,000 square feet of recreational facilities that accommodate the lifestyle of the 14,000 residents. The HOA and other responsible, diligent volunteers, board members, managers and staff must be allowed to conduct the business of their communities. There are remedies in place for those associations and managers who violate their positions and duties.

JAN PORTER (Sage Creek Homeowners' Association):
I support S.B. 174. I am a homeowner and member of the board of the 230 homes in Sage Creek Homeowners' Association. I served as the homeowner representative on the Commission for Common-Interest Communities and Condominium Hotels. I serve as general manager for Peccole Ranch Association.

Our small association met last night and discussed a number of the different items in this bill. We need to ask how many of these complaints have gone before the CICCH. How many complaints has the Office of the Ombudsman received? What kind of validity do the complaints have, and have they followed the process? One of the most important things is education. Education helps the homeowners as well as the board members serve their communities better.

GARY SOLOMON (Professor, College of Southern Nevada):
I am a psychology professor at the College of Southern Nevada, am tenured, an expert witness, a published author and psychotherapist.

My concern is that HOAs are doing damage to their residents, a syndrome which I have identified as HOA Syndrome, somewhat similar to post-traumatic stress disorder. People living in HOAs are experiencing a wide range of psychiatric conditions. There are people who are becoming ill; people who are dying. I personally, at my own expense, placed a billboard on Boulder Highway warning people not to move into HOAs. It is so far out of hand that an HOA is

now mimicking a concentration camp, an actual neighborhood ghetto. People on the HOA boards have taken the roles as Capos, defined as individuals who hurt other individuals at no charge.

The master community is an absolute abomination. To refer to one as a "master" is an archaic term which was used against women and blacks. Now we are using it against homeowners.

At the top of the food chain come the collection companies. I refer to them collectively as a cartel. The HOA boards, the management companies and the collection companies operate as cartel consortiums. Unlike drug cartels, the HOAs supply nothing, no drugs, nothing, except harm and pain. As a health care professional, I am now putting the entire State on notice, you need to stop this now. Not only should this bill not be passed for health reasons, but what has been passed needs to be undone.

I have put individual board members and management companies on notice. I will continue to do so at my own expense until this stops. If we do not stop this now, you are going to see people killed and houses burned down because the owners feel powerless over their own situations.

TIM STEBBINS:
I will read from my written testimony (Exhibit M).

I urge the wording in section 8, subsection 5 be changed so it is not mandatory that the only way one can receive information about agendas, etc., is by e-mail. It should be optional. Maybe in another generation everybody will be up to speed on computers, but we are not there yet.

I support the comments made by Ms. Goodman earlier.

NORMAN MCCULLOUGH:
I agree with Mr. Stebbins' testimony. There are parts of S.B. 174 I am for, but there are parts I dislike, and dislike is a kind word. You need a third option such as, "disagree with parts." I have submitted a three-page statement with four exhibits (Exhibit N).

I will read from my written testimony (Exhibit O).

KEVIN WALLACE (Community Association Managers Executive Organization, Inc.):
I represent the Community Association Managers Executive Officers (CAMEO), which collectively manages 250,000 doors in the State. I was also the president of RMI Management and received hundreds of e-mails regarding the issues we are talking about today; most of them are in favor of S.B. 174. CAMEO supports this bill with the changes noted by the sponsors.

We want to clarify a few issues. Section 15 is a policy issue. There will be collection costs accrued to collect a homeowner's debt, but the issue is who should pay the costs. Is it going to be the homeowner who pays the costs, or under CHAMP's suggestion, the guilty party or delinquent party? We support the bill regarding collections and reasonable fees.

We are a Fannie Mae representative in this State. Fannie Mae and banks pay liens. Fannie Mae has offered to pay more than legally required. The agency's concerns are that associations in this State are financially strapped. If the troubled associations need help, it has offered to lend a hand.

PAUL P. TERRY, JR. (Community Associations Institute):
I am a member of the board of the Community Associations Institute (CAI) and a member of the CAI Legislative Action Committee. In the interest of full disclosure, I am also a practicing attorney in the HOA area and my law firm, Angius & Terry, operates a licensed collection agency.

I am here on behalf of CAI, which is in full support of S.B. 174. Unlike the bills in past years based largely on anecdotal information, this is the first bill where all stakeholders have been brought together in a thoughtful and collaborative approach. We understand there needs to be language change, but overall, the bill is the way the legislative process should work.

BILL UFFELMAN (President and CEO, Nevada Bankers Association):
The Association supports S.B. 174. The concerns we have are sections 12 and 15, the collection cost issues. There is a companion bill coming forward, and the more closely we can link the bills together, the better. Perhaps we need to ensure the collections bill reflects the discussions we had over the interim. Everything is tied together, so everyone knows the rules, the rights of the HOAs and the obligations of the purchaser at foreclosure sales. Be it known, I am also the neighborhood representative for Chardonnay Hills in Summerlin.

SENATOR MCGINNESS:
Are these collection fees unique to Nevada, or are they across the United States?

MR. UFFELMAN:
Collection fees are common. I was president of my HOA when I lived in Virginia. We had a little ...

SENATOR MCGINNESS:
I am referring to the collection fees in the case of the unpaid assessments for $39.12 for two months, but the total came to $3,000.

MR. UFFELMAN:
I cannot speak to the amounts, but the concept, yes.

MR. TERRY:
I operate a collection agency in both Nevada and California. The amounts are consistent between the two states. The issue is not the amount of collection costs because whatever the costs are, they are fixed. They are fixed regardless of whether the assessment owed is $10 or $1,000. The steps you go through to comply with the statutory process are always the same.

SENATOR MCGINNESS:
There was an exhibit presented today where the notice was sent out at 9 a.m. to be paid by 1 p.m.

MR. TERRY:
That situation is not common. Circumstances arise where homeowners ignore the collection process until the foreclosure sale is scheduled to take place. They call our office at 9 a.m. and say we do not want the foreclosure sale to go forward. We may send them a communication which says you have a very short period of time to produce the money. It is not because they received the notice for the first time at 9 a.m. before the foreclosure sale; it is because they ignored the entire collection process until 9 a.m. before the foreclosure sale.

CHAIR WIENER:
We have a stand-alone bill on collections where we go into more depth on this issue.

SENATOR MCGINNESS:
I hope we do not lose this because it is in a separate bill.

CHAIR WIENER:
We will make sure everything is covered. That is why we are waiting on this bill until the end.

SENATOR MCGINNESS:
I hope we do not leave it to "reasonable" because it does not seem "reasonable" is getting it accomplished.

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):
I will address section 1, where it states "any person who is aggrieved," then it lists a number of items, i.e., letter of instruction, advisory opinion, declaratory order or any other written decision which the person has received. The Real Estate Division issues many written documents, closing letters, responses to constituents and attorneys, and delinquency notices regarding delinquent registrations. If this section means to propose any written document issued by the Division under this program is subject to appeal by a recipient or possibly someone affected by it, it is going to create an arduous process for anything to be done and finalized. That letter could be presented as an appeal to the Commission, and then it comes to what?

Under the law, an investigative file is confidential. This poses some legal and procedural issues to be considered for a closing of an unsubstantiated case of complaint for nonjurisdiction. A complainant receives a closing letter on a complaint filed and investigated by the Division and then presents this closing letter in appeal to the Commission. The party who comes before the Commission says, here is my letter and I am aggrieved by it, but there is not much the Division can do. We have conducted an investigation under NRS 233B, which is notification of an opening letter, an opportunity to respond, and a request to provide us with an answer that might take care of the issue. The contents of that investigation are confidential. Outside the process of NRS 233B, I do not see how the Division could defend an appeal made to the Commission on the basis of our investigation.

Under NRS 233B, a notice of complaint and hearing has to be offered. The production of documents used in the State's prosecution and presentation of

evidence to support an alleged violation of law are all part of that process. I strongly oppose this procedure being offered to a licensee under the jurisdiction of RED. This provision is in NRS 116, not NRS 116A.

It is a conflict for the Commission to act as an investigative body and a judicial body on the same matter. I do not see how it would work in an appeal process.

Since a complaint and notice of hearing is a document issued by RED and the Office of the Attorney General, does the formal notice become an appealable written document someone could bring to the Commission and say, I do not like this notice of hearing and I would like to tell you why?

One suggestion is to address the needs for mediation or resolution and issues to be considered. If there are questions of substantive law a party wants considered by the Commission before a complaint has been filed, it would be argued before the Commission for determination of facts specific to an association's issues. Those are many of the complaints filed. Homeowners say this is going on and we do not think it is right, or they are doing it this way —they being the board.

The Division, and therefore the Commission, does not have jurisdiction over governing document disputes. I look forward to working on section 16, but I have jurisdictional concerns.

RUTT PREMSRIRUT (Concerned Homeowner Association Members Political Action Committee):
I am a director of CHAMPS. I would like to answer Senator Copening's question of who is paying the majority of these liens. It is the U.S. taxpayers. You may see Bank of America on the title, but the bank is the servicer. The bills are being paid by Freddie Mac, Fannie Mae and the U.S. Department of Housing and Urban Development (HUD). I have liens provided by Freddie Mac's in-house counsel of $3,000 (Exhibit P), $4,000 (Exhibit Q) and $7,000 (Exhibit R).

In section 15, amending the superpriority lien is nothing but a scheme to raid the U.S. Treasury. This is a 20-year-old statute being amended that takes advantage of the foreclosure situation. This amendment distorts the original intent of six or nine months. When you add collection fees on top, it becomes $5,000 or $10,000, which is five to ten years of assessments. If you are a lender, i.e., Fannie Mae or Freddie Mac, and you want to continue lending in

Nevada, you have to mitigate these risks, which means pass the costs off to the consumer. That means higher down payments, higher mortgage insurance premiums and higher interest rates.

I would like to ask the Senators, homeowners and HOA boards—when the Inspector Generals of HUD, Fannie Mae and Freddie Mac come to recover their millions of dollars in damages, similar to what Bank of America is doing now in federal court, who is going to be liable and holding the bag? I have confirmed this legal position with Regina Shaw, in-house counsel to Freddie Mac; Lisa O'Donald, Associate General Counsel of Fannie Mae; and Donna Ely, legal in-house counsel to the Federal Housing Finance Agency.

Clark County Republic Services, Clark County Water Reclamation District and special improvement districts all have superpriority liens. You do not see any of these entities hiring a third-party collector charging $3,000, $4,000 or $5,000 in collection fees, often four to ten times the original principal of the debt to collect their back due assessments. This amendment's intent is to unjustly enrich a small handful of collectors.

MR. EATON:
I will clarify what happens in the context of a nonjudicial foreclosure. Previous comments indicated that through this process, the superpriority lien is putting the burden of these delinquent assessments on the homeowners who failed to pay those assessments. That is not the case. When we speak about the superpriority statute, the portion at issue is what happens after there is a foreclosure under a first deed of trust. Under those circumstances, a delinquent homeowner does not show up and offer to pay the past due assessment and thus avoid the bank; U.S. taxpayers or an investor does not have to pay those expenses.

When the bank owns the property and has to clear those liens, it passes along those costs. We, the taxpayers, have to bail the banks out and pick up those costs. It is not the people in the community who did not pay those costs, it is the taxpayers who do not live in the community and who have no ability to exercise any oversight other than through their elected representatives such as yourselves. The collectors have contracts with associations to provide these services. When the members of the association can rest assured the taxpayers are going to pick up those burdens and the association will not have to bear

them, the board members have little incentive to exercise oversight over the collectors.

The vast majority of lien amounts I have seen as an investor are due to collection costs. A small amount of those monies the collectors seek are passed on to the association to help them out. Those monies line their own pockets.

A prior comment was made regarding the collection process that takes place on behalf of the HOA. One comment is because the banks are taking so long to foreclose, the HOAs have to go forward with their foreclosure process. In fact, they do not go forward with the process; they threaten to go forward but do not complete the process. There is a good reason why. If the HOAs were to go forward with that process, they would own the property. When they own the property, they would not have the lien against it and their lien would be lost. If their lien is lost, they are subject to the bank's foreclosure and they are not going to get paid at all. Lacking a present intention to go forward violates federal law—the Fair Debt Collection Practices Act, which is intended to protect consumers and shield them from threats. To say these people are going to get their legal fees and collection costs and be included in the superpriority is to stretch this to include improper costs the collectors seek to impose for their own benefit, not that of the community. This is an ill-advised policy.

With respect to common assessments, we are not confused to the extent the common assessments are composed of expenditures by the association. Our objection is the inclusion of collection fees and costs within common assessments that can be imposed exclusively against a particular unit and made

to survive the nonjudicial foreclosure under a bank.

CHAIR WIENER:
The meeting is adjourned at 10:54 a.m.

RESPECTFULLY SUBMITTED:

Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 174	C	Randolph Watkins	Welcome to HOA 101
S.B. 174	D	Senator Allison Copening	Written Testimony
S.B. 174	E	Senator Allison Copening	S.B. 174 Working Group
S.B. 174	F	Michael E. Buckley	SB 174 -Explanation /Section Summary
S.B. 174	G	Senator Allison Copening	Clark County Proposed Amendment
S.B. 174	H	Angela Rock	Written Testimony
S.B. 174	I	Jonathan Friedrich	Written Testimony
S.B. 174	J	Rana Goodman	Written Testimony
S.B. 174	K	Chris Ferrari	Priority of Common Expense Assessments
S.B. 174	L	Ellen Spiegel	Written Testimony
S.B. 174	M	Tim Stebbins	Written Testimony
S.B. 174	N	Norman McCullough	Written Testimony
S.B. 174	O	Norman McCullough	Statement regarding S.B. 174
S.B. 174	P	Rutt Premsrirut	Lien by Freddie Mac $3,140
S.B. 174	Q	Rutt Premsrirut	Lien by Freddie Mac $3,962

S.B. 174	R	Rutt Premsrirut	Lien by Freddie Mac $6,788

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
February 25, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:06 a.m. on Friday, February 25, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Thomas R. C. Wilson, Former Senator
Graham Galloway, Nevada Justice Association
Norman McCullough
Jonathan Friedrich
Robert L. Robey
Bill O'Donnell, Former Senator
Richard Rychtarik
Iris Hokanson
Richard Ziskind
Heather Spaniol

Mike Randolph, Homeowner Association Services
Eddie Haddad
Mark Coolman, Western Risk Insurance
Keith Kelley, Kelley & Associates
Randolph Watkins
Robin Huhn, D.C.
John Radocha
Delores Bornbach
Troy Kearns
Audna Lang
Tracey Donley
Yvonne Schuman
Roger Flannigan
Marlene Rogoff
Vicki Hafen Scott

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 165.

SENATE BILL 165: Revises provisions governing arbitrators. (BDR 3-44)

SENATOR MICHAEL ROBERSON (Clark County Senatorial District No. 5):
I will read from my written testimony (Exhibit C).

THOMAS R. C. WILSON (Former Senator):
I was startled to find that often arbitrators are not impartial. An arbitrator has the same responsibility as a district judge and jury in state or federal court to be impartial, exercise judgment and follow the law. I have had a number of arbitrations in commercial cases. There are more and more of these because they are complex, take a lot of time and involve a number of lawyers and a lot of money. The contracts between the parties who come into dispute require arbitration. It is like going to district court.

Under some of the rules of arbitration associations, arbitrators selected by a party are required to advocate for that party. An arbitration is like a case in court where you have lawyers. They file briefs addressing the law that applies to the facts and the facts as they attest to them. You expect a judge to be impartial. Arbitrators appointed by the parties are entitled to advocate in

CHAIR WIENER:
The second request is a measure dealing with title. The intent of this bill draft request would be to make sure when the consumer is selling a unit, the statement sent to the title outlining unpaid assessments is good for a period of time, in this case, ten working days.

> SENATOR COPENING MOVED TO INITIATE A BILL DRAFT REQUEST TO ENSURE THE UNPAID ASSESSMENT STATEMENT WITH TITLE FOR A UNIT SALE IS GOOD FOR TEN WORKING DAYS.
>
> SENATOR KIHUEN SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR WIENER:
I will open the hearing on S.B. 174.

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

BILL O'DONNELL (Former Senator):
I provided you with a handout (Exhibit D). My comments today regard the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels in the Real Estate Division. We support this bill. We would like to change a couple items in the bill.

I will read the first page of a letter written by the Ombudsman's Office, Exhibit D, page 1. This letter is dated December 29, 2010.

A section in the bill includes an existing law allowing the owners to disband their homeowners' association (HOA) with 80 percent of the vote of the members. In our case, we have an investor who owns 261 of the 384 units. If he purchases 80 percent of the units, he could vote to disband the HOA. The problem is we have one gas meter, and he knows that. If you can change the language to say that if it is metered by one meter, you need 100 percent of the people to disband the HOA.

One of the biggest problems in this bill is there is no increase in the budget for the staff of investigators for the Real Estate Division. In addition, the Ombudsman can do virtually nothing. The former board would not cooperate with an investigation. People have died in our complex waiting for justice.

I have enclosed a letter written by the Ombudsman on October 18, 2010, Exhibit D, pages 4 through 6. It is now the end of February, and we have heard nothing. The investigation is confidential, so board members say they cannot tell us anything.

The letter was written to one of our former board members regarding the cooperation of the old board about the investigation, Exhibit D, pages 4 through 6. The board has not cooperated from October 18 to December 29, 2010, even after subpoenas were issued for the records. On October 2, 2010, I asked to look at all the books and records. To this day, I have not seen the records.

The investigation has been going on since April 5, 2010, but no one cares about the time it takes to do a thorough investigation or issue an arrest warrant for the actions of the board of Paradise Spa.

In summary, the association dues have not been paid in the amount of approximately $800,000. The units are now in foreclosure. We risk losing that $800,000 because the super priority liens to be placed on all those units have not been placed because the investor is the treasurer of the association. The $378,000 in assessments made to the homeowners for reserve is gone. There is an insurance check for $842,000 to build out two burned-out buildings. That money is gone.

These people need help. If you pass this bill and do not fund it, you have done nothing. You must fund this. You must give the Real Estate Division the tools. You are trying to put out a house fire with a squirt gun.

SENATOR COPENING:
We had a good conversation last night. I commit to you we will figure out how to get this moving. I will personally get involved. I will also request that Senator Roberson work with me. These are his constituents as well. Together, we can get with the Real Estate Division, figure out why this is taking so long and try to mitigate a negative outcome.

RICHARD RYCHTARIK:
A number of pressing problems must be addressed by the Legislature. I submitted some of those issues (Exhibit E). Section 5 of this bill addresses removal from the board. It says 10 percent of unit owners, or a lower percentage specified in the bylaws, can remove an individual board member. In my association, there are 128 homes. That makes it possible for 23 homeowners to vote a board member out. That should be changed, at least for the smaller HOAs. If it were 50 percent, at least for the smaller HOAs, it would take 33 unit owners to vote a member off the board.

For example, I have been in my HOA for ten years. Three board presidents have been removed. The current board president has been voted out, reelected, voted out last October, reelected 20 minutes later and has another recall pending. That is because we have a 5 percent criteria for these petitions, not 10 percent. We get seven members who continue one recall after another. That section of the bill should be adjusted.

Board members must notify the membership when a lawsuit or legal action is pending. The law does not require the board to notify its insurance company. That becomes an issue. For example, the insurance company was not notified by our board regarding a particular lawsuit. Everyone assumed an insurance company was involved. As a result, we carried the burden of financing that. The board should be required to notify the insurance company immediately when an action is pending.

Collection costs are an issue. If the HOA had the same rights of collection as state and local governments do for property taxes, we would not be in the mess we are regarding collections. When 24 months of dues collections was cut back to 9 months, that was a real negative for small HOAs especially. If we had at least two years for our HOA to collect back dues, we would not be so quick to get someone into collections.

When a homeowner defaults and a lien-warning letter is sent to that particular homeowner, the law does not require that the homeowner be given a written statement of potential future costs. The homeowner is blindsided after discovering collection costs are astronomical. If a homeowner has a temporary funding problem, it may be better to pay the HOA dues and not the property taxes. The costs for delinquent property taxes are not as onerous. You need to consider that issue.

The entire collection process is an issue. There are two types of HOAs. One is gated and one is not. Homeowners in the gated communities pay the same property taxes, but they pay costs normally paid by local governments—streets and lighting. That is a hidden tax. The real problem is collection of HOA dues. Nine months is not long enough.

IRIS HOKANSON:
I live in a two-bedroom rental. I own Units 250 and 251 in Building 20 that had a fire on January 15. I expected to be back in my home in six months. They wanted me to sign a lease. I did not want to, but I did because I did not think we would be there for six months. It has been over a year, and I am still not back in my home. The building has been condemned. It has a fence around it. I still have some belongings in there. I am still making my house payment because I do not want to be foreclosed on.

SENATOR O'DONNELL:
Ms. Hokanson lived in a unit in a building that burned. The people got the insurance check for $842,000. They gave her nothing, and they allowed her to rent from them for $600 a month. She has to continue making her mortgage payment on the burned-out units, and we get no justice. This has happened since January 2010. In April 2010, complaints were made. Here we are in February, and the Ombudsman's Office is overwhelmed.

CHAIR WIENER:
You said the people received the $842,000 insurance money and Ms. Hokanson was not compensated. Who are you referring to?

SENATOR O'DONNELL:
The people are the HOA board. The HOA received the insurance check. After that, we learned the treasurer of the HOA is also a director of a bank in California. The money went into the account and out of the account in the same month. We have the documents to show that.

CHAIR WIENER:
Ms. Hokanson, who are you renting from?

MS. HOKANSON:
The unit I am in belongs to Aaron Yashouafar. I am making the check to CRR, the receivership, because they have been foreclosed on. Previously, I made my checks out to a company in California.

CHAIR WIENER:
Is the rental connected to those who received the insurance money?

SENATOR O'DONNELL:
Yes. Aaron Yashouafar was the treasurer of the board. He received the check, and he is the investor who owns 261 units. He allowed Ms. Hokanson to pay him rent while he took the money for the burned-out units.

He has not paid approximately $800,000 in dues in arrears. If they go into foreclosure, the HOA, which includes all the members living there now, will lose that $800,000. That is the only money we have to pay for the burned-out buildings. That will be gone because the Ombudsman's Office is taking so long to remove these people from the board so we can put the liens on, and they will become a super priority lien on these properties. The scheduled date was February 17 for the sale. Now, it is scheduled for March 16. If it goes to sale on March 16, we are done.

SENATOR COPENING:
We will get on this as quickly as possible. Senator Breeden shares the district with Senator Roberson, and we will all come together to figure out what we can do as quickly as possible.

RICHARD ZISKIND:
I am a past president and board member of the Canyon Gate Master Association. I have been a resident for 12 years. I am not representing any special interests. The revisions to S.B. 174 are necessary and a good basis for developing the final revisions.

The HOA's ability to collect incurred costs associated with foreclosures is addressed in section 15 of the bill. Foreclosures are a significant factor in our community. We have approximately $400,000 in uncollected assessments, associated costs to collect and violations, etc. Much of this is attributed to the foreclosure situation. The board can increase assessments or cut expenses to deal with that deficit. We have cut expenses. For example, we closed one of

our entrances for eight hours at night, which has inconvenienced our residents and reduced security. We have cut maintenance, primarily landscaping. This affects the appearance of the community.

Raising assessments for those who pay is unfair. The lenders who issued bad loans are responsible for the amount owed, not the other residents. Investors who profit by purchasing at reduced prices and reselling are responsible.

Section 15 of the bill clarifies the responsibility for payment of the past nine months of money due, including the cost spent to recover the money. It does not overreach. The super priority status for the HOA is critical because it motivates the lenders to move forward. Otherwise, the homes are blighted, the debts are not collected and the community goes further downhill. All homes lose value in that process.

Why do HOAs foreclose? We do not want to own these homes. The homeowners owe more than the home is worth. The HOA takes this step after significant time has expired, the owner has not taken action to pay and the lender has not foreclosed. This is an effective way to produce action. Banks are slow to foreclose. In most cases, the HOA's foreclosure prompts action by the lender.

When we cut expenses like security, a number of security personnel are unemployed, likewise when we cut maintenance. These people become innocent victims of the failure to collect money owed by those responsible.

HEATHER SPANIOL:
I am a homeowner. I have been harassed for the past three years. Someone mentioned it is the anniversary of chapter 116 of NRS. It is time for a change. Yesterday, Randolph Watkins discussed a survey done by the Community Associations Institute (CAI). Seventy-one percent of homeowners are happy. That is possibly a biased survey because it was done by the CAI. Those here yesterday in T-shirts were board members. Everyone in this room is either an attorney, collection agency or board member.

I would have a good case with everything that happened to me. My car was illegally towed twice. I have been retaliated against. I have been selectively enforced. I spoke with an attorney who said it would be a waste of my time because the law is against homeowners.

When the economy bounces back, if you live in an HOA, you will not be able to sell your house. It is a selling point to not have an HOA. If you vote for this bill, it is a vote to feed the cash cows—the collection agencies and the HOA attorneys. Only homeowners on the board would want this bill passed.

Senator Copening is a former board member, which is biased. I hope you were not biased when you put this bill together. You mentioned yesterday the HOAs are strapped for cash. How about the people who will be strapped in their house when you take away more rights? No one will buy these houses in HOAs.

I do not like to see attorneys use NRS to their advantage. We work our whole life to own our home. You do not feel comfortable in your home when you get violation notices and letters in the mail a couple times a month about trash cans being out an hour early, rocks being out of place, cars being towed or the color of the driveway not matching. I feel like I have a landlord. What was the point of buying a house when I have a landlord? My landlord is the HOA.

The HOA should maintain the golf course, pool and gates. Stop telling people how to live. Las Vegas is a city where people do not get involved. There are many people who feel like I do.

If you do not do something, people will rally and shut down HOAs. Former board members should not be biased. Please think of everyone else. Please do not give HOAs more power. Make them more homeowner-friendly for us.

MIKE RANDOLPH (Homeowner Association Services):
I manage the Homeowner Association Services, a licensed collection agency specializing in homeowner assessment recovery. The 2009 Legislature passed legislation requiring regulation of collection agency fees. The Governor's freeze on regulations has prevented the regulations from becoming effective.

I have considered different ways to do the recovery that would be the most cost-effective and efficient. The super priority lien refers to the nine months immediately preceding an action to enforce the lien. In the *Nevada Revised Statutes*, the word "action" refers to court. I have spoken with attorneys about suing homeowners for nonpayment as opposed to the judicial nonforeclosure. I have been quoted fees of $3,500 minimum to do this. The investors would not want a bill from me for $3,500 in attorney's fees on top of the nine months of assessments.

This week's newspaper reported a total of 3,785 sales of existing homes in January. Of those 3,785 homes, 1,424 were foreclosures and 756 were short sales. Close to half of them are lender-involved foreclosures or sales.

Associations need collection agencies because not every property is foreclosed. Many homeowners have financial problems and end up in collections. We put them on payment plans structured to bring them back into compliance. This brings the association the money required to keep them operating.

The *Las Vegas Review-Journal* reported the median home price is $104,000, which is the lowest since 1991. Over 70 percent of the homes in the Las Vegas Valley are underwater. It does not make sense for the association to foreclose and execute a deed. The association, already strapped for cash, would own a property that is $100,000 upside down. The association cannot sell or short sell it because it is not the original signatory on the deed of trust or mortgage. The bank does not have to work for the association.

I support this bill as a collection agency and board member.

EDDIE HADDAD:
This bill will not make Nevada proud. Would you pass a bill that is unlawful under the Federal Trade Commission? If you do, many people will take this to federal court.

A leading Website, <http://www.condoassociation.com>, tells associations how to handle their collection policies. The Website says associations should be involved in graduated sanctions for untimely payments. That means penalties. Penalties should be graduated. If you do not pay a bill by a specific time, it will increase. Those penalties go to the collection companies. They are called service fees.

I protested a bill on July 28 because it was $4,839. On October 11, I got a bill for $6,382. It was $1,600 more for being 70 days delinquent. That penalty went to the collection agency. These penalties could enrich our associations. Do not call them service fees.

Threatening to take someone's home or threatening extra fines or graduated sanctions for untimely payment are the only tools the collection industry has. It is against the law of the Federal Trade Commission. The Fair Debt Collection

Practices Act prohibits threatening to seize a home unless it is actually contemplated.

I turned this over to the Office of the Attorney General. The Attorney General said you cannot put people in foreclosure because they are 60 days delinquent. Board members of the HOA must get together and determine whether there is equity in the property and whether they want to own the property in 120 days. If the answer is yes, they foreclose. If the answer is no, they cannot do anything. Collection companies are not earning their service fees. All they are doing is threatening.

SENATOR COPENING:
I want to go on the record to say I have proposed a separate bill that caps collection costs. This bill says reasonable collection costs. That amount will be capped. If my collections bill passes, it will go into effect at the same time as S.B. 174.

Senate Bill 174 is 43 pages long, and the area you are talking about is a few lines on one page. There are many cost savings to homeowners in this bill. It is my understanding that investors want to pass the collection costs along to all homeowners in the HOA, which is unfair. What is the most money you have made flipping a home?

MR. HADDAD:
I use my hard-earned money to invest. I take three risks when I buy. I take the risk if the title insurance is not right. I take a risk the property will never be vacated by the inhabitants. I take a risk the property is damaged. I earn a fee based on what I buy because I am spending my money.

SENATOR COPENING:
I am asking what you have profited. Are you saying you pass these costs on to hard-working homeowners instead of the person who buys the home? I want to protect homeowners from paying fees the investor wants to pass on to them when he buys a home rather than covering the fees himself. My collection bill will prevent that from happening.

MR. HADDAD:
I am not suggesting the fees be passed on to the homeowners. If you have an HOA with 100 homes and 15 of them are delinquent, the HOA should collect

penalties. Those penalties should go to the HOA. If the penalties go to the HOA, everyone's assessments will go down.

MARK COOLMAN (Western Risk Insurance):
I support this bill. For a bill this large, not everyone agrees with every word. This bill deals with a great problem. From an insurance perspective, we looked at this from the association's point of view. We tried to save the association the most money and give it the most protection.

KEITH KELLEY (Kelley & Associates):
I support most of the bill. I have some concerns.

Because of the economy and housing issues, many people have been forced to rent property. Section 16 of the bill addresses tenants' responsibility for property damage and harassing board members. I agree with this. However, I have seen tenants harassed by HOAs. Problems between tenants and property owners could be handled easily if management companies would communicate with the property manager. We need something to address harassment of the tenants and communications between the property managers and HOA management companies. Property managers want to ensure fines are taken care of in a timely manner and do not get out of hand.

Sometimes, fines are from previous owners. They should be taken seriously so HOAs can be financially stable. I am involved in a sale where the collection fees are $8,500. The monthly HOA fee is $45. Of this $8,500, almost $1,600 related to landscaping. For less than $125, the repairs were made, but the collection is still there. The buyer may be required to pay. Is that money going back to the HOA?

In closing these transactions, we look at different economies being affected, such as painting, flooring or lighting. Communicating will help close these transactions and help the economy move forward.

RANDOLPH WATKINS:
I support S.B. 174. I am responding to testimony earlier today. I have been a member of CAI for ten years. I have never been an elected official of the HOA where I live.

ROBIN HUHN, D.C.:
I support the testimony of Ms. Spaniol and Mr. Haddad.

I will read from my written testimony (Exhibit F).

JOHN RADOCHA:
I am a homeowner who has been harassed and retaliated against. Selective enforcement has been used against me. This bill gives boards and management too much power. If I wanted to cross-examine my accuser, the board would respond it is the Privacy Act. Where are my rights? When the Ombudsman fails to settle a dispute, the Real Estate Division advises alternate dispute resolution. The odds are 85 percent that you will lose. It would cost between $10,000 and $20,000.

Please explain section 16 of the bill, page 31, beginning on line 16.

CHAIR WIENER:
That is law, not new language. We are not addressing that.

MR. RADOCHA:
How would that be proved? The board says they have never retaliated against someone or used selective enforcement. Please explain section 16 of the bill, line 26, page 31. Am I allowed to ask the management company to see the violations and fines they have given people in the community?

MR. WILKINSON:
You could make a request in good faith, as opposed to making a request for the purpose of harassing someone or causing undue burden.

MR. RADOCHA:
I would like to see those documents to prove the selective enforcement used against me.

DELORES BORNBACH:
I am not a member of an HOA. I am here on behalf of John Radocha, sitting next to me. He has been harassed. You should get rid of HOAs to avoid all these problems.

TROY KEARNS:
Today, I received a violation for a burned-out porch light. I sell real estate. I sell real estate owned (REO) foreclosures. I oppose S.B. 174. I am concerned about the collection provisions on pages 29 and 30 of the bill. This bill makes it easier for collectors to make money. I have ledgers showing collection companies receive 65 percent to 95 percent of the money from a debt paid to the HOA. That does not help the HOA's solvency but helps collectors make millions of dollars. The marketing scheme of the collectors is that collection will not cost the HOA anything. The collectors educate HOA board members on their interpretation of the law.

As an REO agent, I find that most foreclosures are a government-sponsored enterprise—Fannie Mae, Freddie Mac and the U.S. Department of Housing and Urban Development. That represents approximately 65 percent of the inventory. The taxpayers are paying for this, not the banks.

Once HOAs send a bill into collection, they are, in most cases, not willing to deal with the homeowner, realtor or agent for the owner. Once it is in collection, the fees increase rapidly. If you pass this bill, you will be allowing the fox to guard the henhouse.

Most HOAs are managed by a for-profit management company. In addition to that, some management companies own collection companies. If you pass this bill, you will not give power to homeowners. You will give power to for-profit businesses that stand to make millions of dollars. The HOA collection companies in Nevada should not be given more power but limited power.

AUDNA LANG:
I am a professional real estate agent. Most of my clients do not want to live in an HOA. This bill allows the collection companies and lawyers to continue adding bloated fees on the back of HOA dues. The HOAs do not get this money, the collection agencies and lawyers do. This bill would enrich the collections agencies and lawyers. The caps referred to in another bill should be part of this bill.

I work for a company that handles REOs for a credit union. My broker has proof of the collection fees charged to the credit union. I will ask him to send these to you by electronic mail.

I recently had a short sale that fell apart because of excessive fees. The bank would not authorize payment of over $5,000 in back dues and fees. It was not the buyers' responsibility, and the seller did not have the money. If it had only been the dues, the bank may have allowed it out of its proceeds. Everyone lost, including the HOA. After close of escrow, banks are suing HOAs over outrageous collection fees.

Please be aware some HOAs appear to be looking for owners whose homes are paid for. I received a call from a homeowner asking for help because the HOA had started foreclosure on property that was free and clear. The HOA had not put a lien on another home where the owner was thousands of dollars in arrears. That owner filed bankruptcy. The party who called was $600 in arrears because he was out of work. This HOA demanded the party pay six months in advance or it would not accept payment.

This bill should address not only harassment of a board member by a homeowner, but harassment of a homeowner by a board member. Homeowners and board members should be protected equally.

The provision relating to the Real Estate Division and the Commission for Common-Interest Communities and Condominium Hotels should be eliminated or changed. The Real Estate Division's authority would be questioned and undermined. Additional investigators will have to be hired for the Commission to redo the investigation the Real Estate Division already did. In the meantime, there will be a log jam between the Division and the Commission.

CHAIR WIENER:
Please define REO.

MS. LANG:
It is a repossessed property.

SENATOR COPENING:
The collections portion of the bill was written with the intent it would be following the new regulations being set by the Commission. We expected those reasonable fees were already capped, but the Governor has put all regulations on hold. The Governor is considering releasing regulations relating to money issues. These collection fees are egregious. If my collection bill does not pass, there is the protection of the regulations that did pass when the Governor

releases them. I can put an amendment in S.B. 174 that says, "per set by the Commission for Common-Interest Communities and Condominium Hotels." I will work with Legal Division to accomplish this. The fees have already been voted on by the Commission.

MS. LANG:
The problem is if and when those regulations become effective.

MR. ROBEY:
On December 13 and 14, 2010, the Commission was asked by the Attorney General not to act on the collection fees because it was in litigation. I say this from memory, so I am not sure of accuracy. The Commission acted on those fees and limited the collection fee to $1,950.

I will read from my written testimony (Exhibit G).

TRACEY DONLEY:
I am here to represent victims of collection agencies or short sale sellers. I have closed over 100 short sales. I advise my clients to pay their HOA fees. Sometimes, people have to decide whether to put food on the table or pay HOA fees. I have tried to negotiate with HOA management companies and collection agencies. In one instance, there was a $9,300 bill for $2,700 worth of HOA fees, which was 13 or 14 months in arrears. I went to that association and tried to negotiate in excess of $3,000 in fees, which would have made them whole. The HOA management company told me they were advised by the collection agency not to accept that. As a consequence, the HOA waited four months, the bank foreclosed and the HOA got a super priority lien. That makes no fiscal sense.

This bill refers to reasonable fees. There is no control, legislative or otherwise, over any kind of fee a collection agency can charge. I represent people who are forced into foreclosure by the collection agencies after I have obtained full short sale approval from the lender. Taxpayers ultimately pay for this.

I do not get paid if I do not sell a house. If a collection agency does not realize funds for the HOA, they should not get paid. When you talk about fees being capped, the collection agencies would automatically get $3,000 in addition to the nine-month super priority lien. If effective laws are in place for banks and everyone else, collection agencies are necessary only in instances where people

with the means do not pay. If you pass this bill with the collection portions, you are allowing the collection agencies to automatically get $3,000 whether or not they do their job.

YVONNE SCHUMAN:
The fees and costs we are discussing go to the collection agencies, not the HOAs. Why is the Committee drafting legislation to help collection agencies pad their fees and costs further? People who oppose this section of S.B. 174 do not want to pass fees on to other homeowners. These fees are not going to the other homeowners in the first place.

Collection agencies, in most of these cases, make more in fees on each of these foreclosed properties than the investor, without risking a single dollar. The investors are trying to help turn the neighborhoods around and improve the HOAs by getting those properties rehabilitated and back on the market. They take a risk when they do that.

ROGER FLANNIGAN:
I want to help homeowners in trouble. I run across people who are trying to negotiate short sales. There are unreasonable fees tacked on, and debt collectors will not cooperate.

An undisclosed relationship goes on between the HOA, the HOA management company and the debt collector. The HOAs hire a for-profit management company. My HOA hired RMI Management. A debt collector is also hired. My HOA hired Red Rock Financial. In this case, the person who owns RMI also owns Red Rock Financial. My $120 fee turned into $3,000. I called the management company, which would not talk to me because it was in collection. I appealed, and the management company went to the HOA board to waive some unreasonable fees. The company waived two $10 late fees the HOA had assessed. The HOA agreed to waive its fees, but the debt collector did not. This bill promotes that relationship. If we want to solve the problem, we need to stop the corruption.

The foreclosure fee for a first deed of trust is small compared to the fees being tacked on. You should look at other ways to solve the problem. Perhaps you should give the HOA more than nine months but strip away the collection fees. The debt collectors are of no benefit to the HOA.

MARLENE ROGOFF:
I am concerned about this bill. If passed, this bill harms homeowners and their rights against associations and community management companies. Many of the proposed sections are too vague and broad, which could lead to abuses by associations and management companies. This bill should not be passed.

I oppose section 3 of this bill. It gives the right to enter a home before foreclosure. This violates the Constitution. Section 8 refers to a closed-door session of the HOA executive committee. The HOA will not be required to provide notice to the unit's owner of a required repair to a wall. I am against all closed-door sessions of any HOA because it includes representatives of the people who live in the community and who have a right to hear all sessions of an HOA executive committee. This means an HOA can hire someone to repair the wall without giving the homeowner an opportunity to repair it.

Section 9 of the bill is subject to abuse. It refers to closed-door sessions to discuss vendors. All meetings of an HOA should be open to all owners in the HOA.

Sections 10 and 19 of the bill propose to eliminate the requirement the community management company post a bond. I oppose these sections.

Section 11 allows HOAs to invest association funds in anything in an investment policy established by the executive board. Now, investment funds of the HOA must be investments authorized by the governing documents. This could lead to abuse of thousands of dollars.

Section 12 of the bill is too broad. Section 14 allows withdrawal of funds without required signatures. If someone withdraws funds, there would be no trail to show who withdrew the funds. Section 15 is too broad. This bill should not be passed.

SENATOR COPENING:
Most of what you referred to is existing law and has nothing to do with S.B. 174. The sections you referred to are protections so the executive board could not do some of the things you think the bill is allowing them to do. The bill makes sure funds are in federally insured reserves. I will meet with you and discuss the bill.

MS. ROGOFF:
I took this off the Nevada State Legislature's Website. I am clear on it.

VICKI HAFEN SCOTT:
I support this bill. I am the treasurer of an HOA. I would like to clarify that an HOA board and management staff do not have the expertise to collect, file liens and file notices. We need an attorney or collection company to do that. If the collection company fees are not covered in the nine-month priority, costs of collection must be paid through the HOA because it will not be done for free.

When homeowners do not pay their dues, the other owners must make up the difference. In 2008, our owners experienced a 20 percent increase in dues to cover delinquent assessments. We have a budget of approximately $3 million a year. Last September, we had accumulated $1.6 million in delinquencies over a three-year period. We have increased dues because it takes one to two years to collect the nine-month priority. We are experiencing cash flow difficulties because we have real expenses—landscaping, water expenses, electricity expenses, security expenses. It is important the nine-month priority be kept in place because we charge our owners extra to cover three to six months of operating costs.

You should couple this bill with the regulations capping collection fees. That is the majority of the problem.

CHAIR WIENER:
Over the last two days in Las Vegas, approximately 70 people signed in to speak for S.B. 174. Approximately 32 signed in to speak against the measure. In Carson City, approximately 22 people signed in to speak in favor of the bill, and approximately 8 signed in to speak against the measure. That is a total of approximately 132 people who took the time to participate in this process. I will close the hearing on S.B. 174. The hearing is open for public comment.

There being nothing further to come before the Committee, we are adjourned at 11:05 a.m.

RESPECTFULLY SUBMITTED:

_____
Kathleen Swain,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE:_____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 25, 2011 Time of Meeting: 8:06 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 165	C	Senator Michael Roberson	Written testimony
S.B. 174	D	Senator Bill O'Donnell	Letters from the Real Estate Division
S.B. 174	E	Richard Rychtarik	List of issues
S.B. 174	F	Robin Huhn	Written testimony
S.B. 174	G	Robert L. Robey	Written testimony

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
March 9, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:13 a.m. on Wednesday, March 9, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Senator Michael A. Schneider, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General
Chris Ferrari, Concerned Homeowner Association Members Political Action Committee
Norman Rosensteel, President/CEO, Associated Management, Inc.
Paul D. Hershey, General Manager, Caughlin Ranch Homeowners Association

Daniel M. Hart, Fenton Grant
Favil West, Commission for Common-Interest Communities and Condominium Hotels
Gary Lein, Commission for Common-Interest Communities and Condominium Hotels
Jonathan Friedrich
Ron Brady
Heather Spaniol
Michael Schulman

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 185.

SENATE BILL 185: Makes various changes relating to real property. (BDR 10-23)

SENATOR MICHAEL A. SCHNEIDER (Clark County Senatorial District No. 1):
I will give a historical perspective on Homeowner Associations (HOAs), which I call "sex, drugs, money and HOAs." It is the reason why HOAs do not work today, as you see from the article in the *Las Vegas Review-Journal* dated March 6 and titled, "Federal Probe Into Valley HOAs Broadens" (Exhibit C) that talks about our HOAs. Another one is "Attorney at Heart of HOA Probe Faces Several Legal Battles" (Exhibit D). This attorney is one of the many in the HOA probe.

When I proposed the HOA bill in 1997, I also proposed a construction defect bill. The contract lobbyists for the trial lawyers contacted me and requested I not bring the bills forward, further stating the trial lawyers are going to vilify and crucify you. I am stubborn and believe in fair play and in America enough that I brought it forward anyhow. They did proceed to vilify and crucify me. Madam Chair, as a long-standing member of this House, you remember they would bring airplane loads of senior citizens to Carson City; give them yellow T-shirts; march them through the halls of the Legislature; buy them breakfast in Las Vegas; buy them lunch in Carson City; take them home and buy them dinner in Las Vegas. All on the pretense these are poor, abused homeowners, abused by bad builders.

My bill called to make builders repair defects, but they had other motives. Their motives amounted to organized crime. The organized crime is organized expert witnesses and organized attorneys. The expert witnesses include architects,

construction defects. You spoke in generalities when you went through the bills, and we all know the devil is in the details. I need you to go through the bill, point by point. It is the only way I am going to understand the language. There is questionable language, what I consider dangerous language. Just skimming through the bill does not do the justice we need for the people in HOAs. We all know we write law aimed at bad people, but we also have to write law aimed at good people. We need to protect the good people in the HOAs who are the members. These are the homeowners, our constituents. At the same time, we need to identify those egregious situations that are happening and fix them.

As you know, I try to seek balance in the bills I bring forward. In S.B. 174, some might say they were considered against the management companies, then some might say they might be a benefit to the management companies. It all comes back to the homeowners and how we are helping them. I know it becomes quite laborious, but I need to know what language is going to change, not just generalities.

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

CHAIR WIENER:
You got quite detailed at the back of the bill. I spent time last night reading this measure because you address the private transfer fee, which is the front end of the bill. I have many questions and your explanations will help the Committee understand what you want to accomplish. In this particular piece, if you could walk through the private transfer portion of your bill, and then we can see if we need to go through anything else.

SENATOR SCHNEIDER:
To address Senator Copening, I have tried to bring balance to this over the last decade and a half and be fair. I do not want to say I am unfair because I mention some areas which are unfair to homeowners. It seems today without the Office of the Ombudsman in the OAG with a big hammer, you will have to ratchet this down because the homeowners get taken advantage of. Senator, you established good subcommittees. I do not care for some of the people in those subcommittees. They do not work in the best interest of their homeowners; they work in the best interest of their pocketbook, almost exclusively.

Maybe I am jaded after all these years of trying to do this, coming back every year and answering the phone calls. The answering machine in my home will be jammed up with people calling. I have even spoken to Mr. Wilkinson over the years getting opinions. But Scott Young, who is the policy analyst on our Committee, the Senate Committee on Commerce, Labor and Energy, is knowledgeable. I have totally abused him over the years by asking him to help me with much of this, taking calls from constituents because it becomes so burdensome. I would like to personally thank him. He is so happy this bill and Senator Copening's bill are not in our Committee. He would have taken an early retirement had we had the HOA mess in our Committee. He has been very good; he knows the issues, and I have taken advantage of him over the years. I want to put this on record. He has been my absolute go-to guy on much of this and knows this issue as well as Mr. Wilkinson does, knows all of the horror stories.

I will go over the bill with you. We took problems which repeated themselves over the last couple of years and built this bill. Mr. Young and I looked at the problems which kept coming back, and we took a stab at addressing those problems.

My secretary just handed me an editorial out of the *Las Vegas Review-Journal* (Exhibit E) this morning about the corruption of southern Nevada, where abuses of trust and public office are as common as foreclosed homes. Everyone needs to read how the abuse has tied up our whole system down there.

SENATOR COPENING:
Did you work with any experts in the HOA industry to eliminate any unintended consequences, or did you seek counsel? I pulled together a working group of 30 people, as stated in my previous testimony, because many of them were adversaries. I did not want people who were friends, I wanted people who would bring a different perspective. Homeowners were also in the working group, so there was definitely disagreement among the working group—which is the way you arrive at what is going to be best for the people. My question is who did you work with and did you consult any of the people of your choice?

SENATOR SCHNEIDER:
I pointed out unintended consequences from previous bills we put through; this always happens once we leave here and it goes back to bill drafting.

We had worked with homeowners, and we tried to address some of the issues. Even Michael Buckley from the CICCH sent me an e-mail last night; I reviewed what the CICCH has put forward. I do not know if he e-mailed you, but I do not agree with most of what he said. He is out-of-bounds in the e-mail and the positions he has taken, and I like Michael Buckley. But CICCH has gone astray; the members are not looking at things properly, especially on the exit fees charged. The homeowners pay $2,000 to $3,000 when they move. I totally do not agree with this, I think that is unconstitutional. Even though people have come to me with similar issues, I come with a pretty heavy hand on this. I am tired of the nonsense that goes on.

No matter what we do on any of your bills or this bill, we combine them all together in one bill. We may even do it if it makes it easier on bill drafting and the staff. I do not have any pride in authorship. But I do know when we produce a bill this Session, we will be back next Session to make corrections and find things that work and do not work. Sometimes, you need to be an advocate for homeowners, managers or whatever. I am a big advocate in this bill for the homeowners; we, at all costs, have to protect homeowners. It has gone too far the other way.

CHAIR WIENER:
If you will start on references to private transfer fees, that is a substantial part of the first several pages of S.B. 185. You have the definition in section 5 through section 13. Please explain the pieces, because there is important language based on your testimony.

SENATOR SCHNEIDER:
The whole thing is the private transfer fee, not the transfer fee from when you sell your home and the State gets a transfer fee. This is the private transfer fee. What I am trying to do is limit or eliminate it.

Page 4, section 5, subsection 2, paragraph (a) states, “the term does not include any consideration payable by the buyer to the seller for the interest in real property.” We go through and spell this out, the interest charge, late fee—that is out—rent reimbursement. This is language Mr. Wilkinson helped us with. This is standard language so we eliminate all things that could be considered transfer fees. Is that correct Mr. Wilkinson?

BRADLEY A. WILKINSON (Counsel):
Correct. There are similar provisions in other states which Senator Schneider mentioned in his testimony.

SENATOR SCHNEIDER:
On page 5, section 10, subsection 1, paragraph (a) states, "a person shall not on or after July 1, 2011, create or record a private transfer fee or obligation." We realize some have been created, but what we are doing is setting a drop-off point.

CHAIR WIENER:
Page 4, section 5, subsection 2, paragraph (a) says "subsequent additional commission payable" and then paragraph (b) talks about subsequent appreciation and the value and commissions. From what you said in your testimony, this is creating a multigenerational fee requirement. It continues to trickle and trickle, a stacking of a fees.

SENATOR SCHNEIDER:
Correct.

CHAIR WIENER:
And then page 4, section 5, subsection 2, paragraph (d) says, "any fee payable to the lessor for consenting to any assignment." I call it a consent fee and do not understand; would you explain?

SENATOR SCHNEIDER:
That fee is permissible and out of the bill. We are not trying to get in the way of that fee. The rents et cetera can be transferred over as fees for running the HOA.

SENATOR COPENING:
You stated you want to limit or eliminate this fee. What section does this? It is either one or the other of this bill. Are you limiting it in a certain section or eliminating it in a certain section?

MR. WILKINSON:
Yes. That is actually contained in section 10; going forward you cannot create this as of July 1. And then if you have one which exists as mentioned in

section 10, under section 11 it has to be recorded properly in the office of the county recorder. If that is not done, it becomes void and unenforceable.

SENATOR COPENING:
The goal is eventual elimination. We know there are some processes in place, but not after July 2011.

SENATOR SCHNEIDER:
We are going forward with no more fees.

SENATOR COPENING:
I do not know enough about the private transfer fee, but do you know why it is in place? You mentioned something about developers can ask for this for up to 99 years. I had not heard of this, so I would like to see documentation. Why was the transfer fee put into place and how was it used?

SENATOR SCHNEIDER:
First of all, we have the government transfer fee where a tax is collected when you transfer your home. But the other one is put into place as a revenue generator. Some builders—and I did mention it has happened in other states, but I am not aware of a builder doing it here per se—have put them on there. I guess your grandchildren get revenue when a place sells. That is what we are trying to eliminate.

SENATOR COPENING:
Does the fee go to the association, does it go to the developer or can it go to both?

SENATOR SCHNEIDER:
When you transferred a home with a particular national builder in Las Vegas, the fee went to a nonprofit; it was the builder's favorite nonprofit, some charity he wanted to support. Every time a home sold in that subdivision, a fee was paid to this nonprofit. Some of the fees go to the association, which is what I want to eliminate, along with the developer/builder. You charge a fee and it goes to capital improvement; it subsidizes the monthly association dues.

SENATOR COPENING:
That was one of the questions, if it goes to the association—and we know the association is made up of all of the members of the association. Transfer fees in

part came about because they wanted to keep the assessments lower. Maybe one of the experts can explain this once we have additional testimony. To me, that would be very prohomeowner. It is not the greatest thing for somebody who is moving out of the community or moving in; however, the transfer fee is worked out. Initially, it may have kept the assessments low for the homeowners.

SENATOR SCHNEIDER:
It does, but it is like putting the maintenance of your association on a credit card; you keep adding to your credit card. What happens if you do not sell homes next year? The credit card bill is coming due and you do not have the money. It is a false sense of security in knowing your association dues are low.

Years ago, I proposed a bill wherein a builder can subsidize the association dues through the sale process, and many builders do. Until the builder leaves, the dues are only $50; after the builder leaves, they are $250. The builder has subsidized them to keep everything looking nice while he is selling. We made them disclose the seller is subsidizing it, and it is in the disclosure.

Let me give you an example: There was a townhouse in an HOA in my district years ago. The homeowners called me because we had passed a new version of NRS 116. They wanted me to bring them up to speed. They had a nice-looking HOA, grass looked nice, etc. I took my time and looked around. All of the homeowners and myself sat at the pool and I said, “So, what are your dues?” They were $65. I looked around and said, “You have shake roofs; they are going to have to be replaced shortly,” and they agreed. The sprinklers were hitting the stucco and it needed to be redone, painted; the sprinklers needed to be moved out five or six feet away from the buildings. I looked at the asphalt in the private streets. I said, “It looks like they need at least a new slurry coat or some of them need to be replaced,” and they agreed. I told them by just ballpark costs, you need about $2 million worth of improvements done. They said that was right. I asked how much they had in the bank, and they said around $200,000. I told them they were bankrupt; you cannot do your repairs. Now they are feeling bad; they said they worked hard to keep the dues low. I said, “Yes you have, and you need to be complimented, but by keeping your dues low, you have been fiscally irresponsible. You have not funded your reserves.”

Which gets to your point, Senator Copening—keeping those dues low and relying on home sales to fund the association is irresponsible. I could never support it, I own rental properties. I would never operate in a similar manner. You have to have a plan going forward. It is not on the "if come." What happens when those properties are foreclosed and linger for a bank to hold for two to three years? That is no way to run an association because you are not getting the dues while they are under foreclosure. Maybe two to three years down the road you will get a transfer fee.

SENATOR COPENING:
Where I get confused in the bill is in some other areas. You are taking away revenue from the association, such as charges for documentation which is now in the bill. You continuously take away revenue from the association which means the homeowners have to pay more.

SENATOR SCHNEIDER:
If you do not watch the associations, the fees go up; $3 to $3.50 per page for a photocopy, we limited that to 25 cents. We have done things to try to cap the fees. The management company says we need fees to operate. Not really, those fees are clerical work. The homeowner management company needs to charge more per door. Instead of charging $5, $6 or $7 per door, maybe they need to charge $10 or $12 per door, which is a realistic cost that covers everything. Everybody participates that way, and they pay a fair fee. When you get your documents, here they are. It is part of what your monthly assessment covers. It is a way to operate a business that is more fair.

CHAIR WIENER:
We will work through your bill as you continue to explain, so we have clarity with your intent and why you had it drafted this way.

SENATOR SCHNEIDER:
It is drafted this way by our staff.

CHAIR WIENER:
But you are the one who came up with the ideas. Our able counsel crafted it legally to address what you wanted to include. Is there something else you want to explain?

SENATOR COPENING:
On page 8, section 14, subsection 1, where you say a private transfer fee obligation may lower the value of this property. Can you tell me why you think having a fee would lower the value of the property?

SENATOR SCHNEIDER:
This is a buyer beware. You are paying a fee the house down the street does not pay. It may affect the value of your property. You may be buying into an association which may have excessive fees and you need to be aware because the same style house down the street may not have those fees which go on forever. If you weigh both houses, both houses being pretty much equal, maybe the one with the big fees is not worth as much money.

CHAIR WIENER:
On page 5, section 9, I do not remember the declaration from the Legislature. Would you explain what you mean when you talk about the marketability and transferability, free of defects in title or unreasonable restraints on the alienation of real property?

MR. WILKINSON:
It is a statement of the Legislature's public policy with respect to the sale of real property. It is reaffirming a principle; generally any kind of restraint on the alienation of property is disfavored by law. You are supposed to be able to sell your property; you own it, you can sell it, and anything that affects its marketability is frowned upon. Certainly, there are exceptions, but this is a statement reaffirming the general policy. The Legislature views establishing something like this as a restraint on the alienation of property and something which discourages the sale of property. Therefore, it violates the public policy of the State.

CHAIR WIENER:
Is this included in other states' legislation?

MR. WILKINSON:
It is a common provision you see in other states. Typically, when a statute provides something that violates the public policy of the State, you will find a previous statement of the public policy of the State and why something violates it. This is set forth in a number of places in the NRS relating to employment discrimination, etc.

CHAIR WIENER:
It makes a statement the way we do with preambles within the context of the issue at hand.

SENATOR SCHNEIDER:
On page 9, section 16 talks about the fees which may be charged or service provided by the unit owner or tenants; the maximum amount of fee charged should be established in statute by regulation adopted by the Commission. I mentioned it earlier and I am taking a blind leap of faith because I do not agree with everything the Commission does. But we have to make the system better where we in the Legislature do not have to deal with every little fee in these associations when we see them get abusive. They have the ability to do it right, then it comes back to the Legislative Commission for approval. The Commission can then send it back and say no, you did not do it right, we do not like this. Section 16 is an important piece.

CHAIR WIENER:
We pass statute, whatever it looks like, and if it involves an agency, they develop regulations that help implement statutory language. Those regulations are presented to the Legislative Commission, which is a body within our body, that meets during the interim and sometimes when we are in session. One of the Legislative Commission's primary responsibilities is to review regulations. Significant to that over the past many years is to ensure they meet legislative intent, which, for the record, Senator Schneider helped establish.

SENATOR SCHNEIDER:
In section 17 regarding radar guns, you cannot give a ticket unless you are qualified to use the radar gun. The radar guns are controversial. Senator McGinness probably does not have those in the associations in Fallon. We do have some big associations in Las Vegas—Red Rock Country Club, McDonald Ranch—where people get going pretty good speeds when they are coming down hills. I heard about one in Red Rock Canyon where a man was driving his Ferrari or Lamborghini over 100 miles per hour in a HOA. We need to slow people down, but things do get abusive with these radar guns. In the above instance, you would call the police.

SENATOR COPENING:
On page 9, section 16, subsection 1 says “an association shall not impose or receive a fee ... for any good or service provided to a unit’s owner,” that these

fees must be adopted by a regulation of the Commission. What about in a situation of a gate clicker or transponder? A wide variety of these, depending on which one the association chooses to use, could be of a different cost. But they all charge for the good when a resident comes into a gated community. Would you require the Commission to know all gate clickers that exist? How would you get around it when it says right here all goods and services must be set by fees?

SENATOR SCHNEIDER:
Let me say maybe business has to change in those. I have a home in another state in an association. We have clickers which open the gate; we are given those at no cost. If our clicker does not work, we take it back and they replace it. It is included in the dues. Every so often, they change the receiver on the gate and give us all new clickers. Or we get a clicker and reprogram the automatic door opener in the car. Maybe associations have to look at those instead of being so cheap. They could say every year, we are going to replace so many automatic clickers; and every five years, we are going to replace the transmitter and everybody gets a new clicker. Maybe it is built into your monthly fee, then you reserve for it, which seems reasonable.

SENATOR COPENING:
I would ask you to think about situations where you have a transponder which costs $50 to purchase; you have a family of four wherein each person has a vehicle versus a family with one. You have $200 in transponder fees versus $50. The other argument asks whether it would be fair for the single person with one transponder to have to carry the weight of the family of four. That is the reason some of the individual fees exist.

SENATOR SCHNEIDER:
In this case, everybody gets two or three additional transponders for whatever they cost. Is it a revenue thing? What I found in many of these associations is a revenue generator; we are making a profit on everything. I do not think it is right.

On page 15, in section 20, we have eliminated “impose reasonable fees not to exceed the amounts authorized.” We are trying to eliminate many fees.

Page 26, line 39 addresses governing documents and whether the person sanctioned for alleged violations has requested in writing that an open hearing

be conducted. Homeowners can request an open meeting at any time. Over the years, this stems from homeowners across Las Vegas Valley who are so upset with fines and their treatment by an HOA that they want me to come to their board meeting to see how they are treated. When the HOA sees me, they close the meeting and do not let anybody in. They make it private and fine people without due process. You can go to a meeting with a constituent and watch the lack of democracy at work.

On page 28, section 25 has to do with civil action.

SENATOR COPENING:
You talked about construction defects; is construction defect the only kind of civil action an HOA can take? Do other civil actions prohibit them from taking any other action?

SENATOR SCHNEIDER:
No, not that I am aware of.

MR. WILKINSON:
No, that is true. This is not phrased in terms of whether it is a construction defect case or not. “Regarding a civil action to protect the health, safety and welfare of the members of the association” is the provision under which most constructional defect cases are filed without prior approval. I am not sure what other kinds of cases might have been brought by an association other than those; there may well be some.

SENATOR SCHNEIDER:
Maybe you can take action against your gardener, tree trimmer or something like that.

Page 36 has new language on section 30, subsection 8, “the association may not charge a unit’s owner … [or] require a unit’s owner to pay, any fee related to the resale of the unit … .” This refers to what we have talked to before on the different fees such as the transfer fee. Also, “the Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for transferring the ownership of a unit.”

On page 41, section 32, subsection 5, paragraph (a) says, "a party to the nonbinding arbitration is not liable for the costs or attorney’s fees incurred by

another party to the nonbinding arbitration." We are trying to eliminate the "gotcha" thing, a loophole in our law. We want people to work things out in mediation or arbitration ahead of time so they do not get caught up in court; we need to make it easier.

SENATOR COPENING:
I would like to hear from other people who are closer to this issue to see if there are any unintended consequences which may come with it. It is muddy to me.

SENATOR SCHNEIDER:
I would be open to making the whole process easier if we want to create a new process where homeowners could get answers to their disputes quickly and it does not require a big process. That was the original thing with mediation and nonbinding arbitration. It is not working the way it should. If this process was put into the OAG, much of it would be cleaned up real quick. I have a problem with contingency fee attorneys.

I will volunteer my time to sit down and go over this. Senator Copening had mentioned making a matrix and comparing the bills. I will also volunteer Mr. Wilkinson's time.

KEITH MUNRO (First Assistant Attorney General and Legislative Liaison, Office of the Attorney General):
Our office has met with Terry Johnson, Director, Department of Business and Industry, and Senator Schneider. We are committed to working with Senator Schneider in determining the problems. He has identified many of them with respect to this legislation: what is broken, how our office can work with them and what the appropriate role is for our office.

SENATOR COPENING:
Can you share any particular thoughts with us because we do have to make decisions about legislation based upon this and whether or not we would choose to move it to the OAG. When could we expect to hear back from the working group of yours to know whether there will be a fiscal note, etc.?

MR. MUNRO:
I would assume some members of this Committee will be on the working group when it starts to whittle down language. I noted some of Senator Wiener's comments about having to particularize things with respect to this bill. As it

starts to develop, we will weigh in on any fiscal cost and the appropriate role for our office.

CHRIS FERRARI (Concerned Homeowner Association Members Political Action Committee):
I represent Concerned Homeowner Association Members Political Action Committee (CHAMP) in support of Senator Schneider's bill. He is addressing some of what we believe to be the biggest consumer abuses that occur in the process. We strongly support the cap on private transfer fees, understanding the concerns of Senator Copening and ensuring sufficient dollars to continue to operate.

Additionally, we will be working with Senator Schneider on a number of items. He was kind enough to meet with us on Monday to discuss issues that can make this bill even stronger. There are a few references throughout the bill with regard to fees which defer to the Commission for Common-Interest Communities and Condominium Hotels per Senator Schneider's comments, and we also want to consider putting those fee options in the Real Estate Commission. This five-member board appointed by the Governor looks at fees.

The CHAMP has met with Attorney General Catherine Cortez Masto on many occasions to make her aware of our concerns as they pertain to consumer protections; she has continuously expressed a significant interest in this issue. We will continue to provide a formal amendment to Senator Schneider after working with him further and discussing matters.

NORMAN ROSENSTEEL (President/CEO, Associated Management, Inc.):
We are an association management company that manages approximately 24,000 homes in northern Nevada. In looking at Senator Schneider's bill, there is a need for a lot of clarification, particularly in sections 2 through 14, as well as section 16.

Section 16, subsection 1, paragraph (b) says "if the maximum amount of the fee ... has not been established by statute ... , the actual cost to the association or community manager of providing the good or service." As a community manager, if we only charge the actual cost of providing the service, there is no profit and we cannot stay in business doing things at cost.

In Senator Schneider's opening remarks, he makes it sound like organized crime is taking over the association industry. As a 25-year member of the industry, I disagree.

PAUL D. HERSHEY (General Manager, Caughlin Ranch Homeowners Association):
I would like to give a little bit of our background, and some of the things I am going to say today are not intended to be derogatory.

I am new to the State. I have practiced in four other states: Virginia, North Carolina, South Carolina and Georgia. I have worked with U.S. Senators Jim DeMint and Lindsey Graham about the private transfer fees which have gone to Fannie Mae and Freddie Mac. The language in your bill is neither consistent with what is going on with the federal government nor with the Federal Housing Financial Agency (FHFA) on private transfer fees. The due diligence for this bill needs a relook.

Second, this bill is full of holes. While we have addressed some issues, we have not addressed everything in depth. When you look at section 17 regarding radar guns, if you believe in the National Institute of Standards and Technology, a 10-to-1 ratio is required for calibration. It is a self-calibration; you hit it with a tuning fork and it gives you mileage. I have been on the other end of this where people driving through HOAs have hurt children by speeding. This bill does not address the qualifications of the standard on who is using the gun. When you have privatized roads, the law in the State cannot address the issue of speeding. This law basically says if I go through the ArrowCreek gate and run 100 mph from that gate to my house, the only way to validate the speed is to set up a high-speed chase.

Put together a committee the way you did with S.B. 174 with all parties concerned. The CC&Rs are not written by associations, they are written by the developer in 99.9 percent of the cases. When you look at the ambiguity of this bill, the due diligence needs another look.

SENATOR ROBERSON:
I would follow up on your comment regarding transfer fees and how federal law looks at these differently, at least from your experience in the Southeast compared to what is represented in this bill.

MR. HERSHEY:
I neglected to add I was chairman of the Legislative Action Committee for the state of South Carolina for six years with Community Associations Institute (CAI). If you look at the history, what took place with Chicago Title Insurance started the ambiguity about the private transfer fees. The address of the third-party administrator or developer gets money from a transfer while all of the positions are negated; we all recognize that it should not happen. Many communities throughout this Country use transfer fees to fund their capital reserves. Kiawah, South Carolina—where they are going to hold the Ryder Cup in 2012—assessments are going from $4,000 to $26,000 if transfer fees are not allowed. We realized what was going on and we addressed it; if the transfer fee was helping to hold assessments down for members in the association by funding the capital or reserve or something along those lines, then we wanted to move forward.

Before I came to Nevada, my Committee met with U.S. Senators DeMint and Graham and started addressing it because Fannie Mae and Freddie Mac were on board with doing away with the private transfer fees. The new FHFA is now saying the community association transfer fees are not affected by the proposed rule to do away with capital transfer fees.

We did find that everything is on a case-by-case basis, but anything dealing with the property values did not deter from the property values at all. The assessment was also done by Freddie Mac and Fannie Mae.

The other interesting thing from an outsider is when we start talking about fees, most of the fees generated by associations are normally voted on by the board elected by the membership. This is my second session since being in the State, and I have listened to some of the information disseminated to this group. The inaccuracies are enlightening because 95 percent of the people living in community associations like what they have; 5 percent do not.

When you pass a special assessment, you either have to pass it at a two-thirds vote or higher; that is more stringent than required. It is all voted upon.

A committee, or something to do the due diligence all the way across the board, needs to be looked at. I recommend tabling this bill, putting together an ad hoc group and moving those issues forward.

DANIEL M. HART (Fenton Grant):
I represent the law firm of Fenton Grant, Las Vegas. We would like to register our opposition to section 15 of S.B. 185, which creates a standard difficult to meet. The first instance requires over 50 percent of those members of the HOA to vote—a standard that cannot be met. We urge you to excise that part of the bill.

FAVIL WEST (Commission for Common-Interest Communities and Condominium Hotels):
I will read from my written testimony (Exhibit F).

CHAIR WIENER:
You signed in for and against the bill; what can you support?

MR. WEST:
Depending on how you look at the radar guns, if you take our addition regarding gated communities, we could support that end of it.

CHAIR WIENER:
You would support the amendment you are providing?

MR. WEST:
That is correct. Bringing back the fact a HOA does not have to have all homeowners, we support a few areas that run back to the previous law. In certain cases; as with the litigation the Senator brought up, we need limitations.

Our problem in trying to figure this bill out is confusion; we spent a number of hours going over it. It requires some work so we can understand it.

CHAIR WIENER:
Was the litigation part the nonbinding arbitration portion of the measure?

MR. WEST:
That is correct. One other thing, people do not understand nonbinding arbitration. I was a member of the American Arbitration Association for 13 years. It needs to be defined so the regular homeowner, who the Senator is addressing, will understand it.

GARY LEIN (Commission for Common-Interest Communities and Condominium Hotels):
I am a certified public accountant (CPA) representative on the CICCH. Section 16, subsection 3, paragraph (b) and section 30, subsection 8 deal with actual costs. The issue to realize is the different sizes of associations and not one size fits all. In section 30, subsection 8 deals with the transfer fee. The language is difficult; it says a fee must be based on the actual cost the association incurs to record the transfer fee of the ownership of the unit, and the Commission shall adopt regulations establishing the maximum amount of fees the association may charge for transferring the ownership of a unit. The key is the actual cost. How do you define it? Is it the recording fee plus the labor cost, burden, insurance, copying costs; how do you define actual costs? The Commission would be charged with establishing the maximum amount, but only the actual cost could be charged and passed on to the unit owner. Will a number of homeowners challenge actual costs, leading to affidavit filings and a burden on REC?

As it relates to section 16, subsection 3, paragraph (b) again deals with the actual cost for the good or service. Senator Copening has already brought up a valid point relating to the transponder and the cost. Is it the actual cost of the transponder plus the administrative costs for handing out that service? Senator Schneider talked about passing on these costs to all the unit owners. It should be a cost paid for by the person utilizing the service.

In my practice as a CPA, I am seeing associations struggling financially. There are over 30 percent to 40 percent delinquencies in many of these communities, there is deferred maintenance occurring and there are reserves becoming underfunded. The deterioration of these associations will have a long-term effect on our community. Will putting a bigger burden back on the individuals paying their assessments make the matter worse? The person utilizing the services should pay for the costs; yes, they should be reasonable and fair, but it is inappropriate to pass on those costs to unit owners who are not utilizing the service.

JONATHAN FRIEDRICH:
I applaud Senator Schneider's repeated statements about moving the Office of the Ombudsman to the OAG. It is much-needed. The subject remains how it is funded or is this to be an additional financial burden on the OAG. Every door is paying $3 per year to the REC. Those monies could be transferred to the OAG,

and if more money was needed, it could be raised $2 per year; a $5 per year charge is not burdensome.

There are many references to regulations to be created by the CICCH in this bill. I have witnessed how this Commission has acted in the past. It gives preferences to members of the HOA industry over homeowners and takes time to create and adopt regulations and allows some members of the Commission to be overly generous by wanting to set higher rates for management and collection company fees at the expense of the public living in associations.

This bill will be a bonanza for the attorneys and management companies that service the HOAs. The bill is supposed to protect unit owners which the Commission has failed in a number of areas. One of the major concerns is the elimination of caps on charges an association or the manager can charge for documents and the hourly charge an owner pays to review the books and records of the association. If left to a management company or a board trying not to be transparent, costs will be set so high no one will have access to these documents.

What if the Governor decides to eliminate the CICCH? Then what happens to the regulations set into place? Who will set the fees? On the flip side, a number of sections in S.B. 185 go a long way to correct the abuses perpetrated upon homeowners.

On February 24, I presented the members of your Committee a binder with examples of some of the abuses that take place against homeowners. This bill goes a long way to stop the arbitration trap and make much-needed changes to NRS 38. Transfer fees are all but eliminated. The use of radar guns is once again to be prohibited.

I sent you a copy of an e-mail from the American Arbitration Association (Exhibit G), of which I am an arbitrator, not an attorney. I have circled the sections that apply to this subject.

There is also a copy of the Rules Governing Alternative Dispute Resolution adopted by the Supreme Court of Nevada (Exhibit H). The bottom paragraph talks about arbitrators having a cap of $1,000 placed on their services.

I will read from my written testimony (Exhibit I). Fees would be left up to others to set. If associations or management companies do not want a homeowner to access these documents, these prices would skyrocket. I recall in another session, Senator Breeden questioned the 25 cents as too high compared to what you can get a copy made for at a place such as Kinko's.

RON BRADY:
I am in support of sections 1 through 14. Excessive fees run into section 16, where I am against lifting the safeguards setting the rate of $10 per hour to review the records along with the 25 cents per copy. Owners should not be punished for wanting to find out about the association and its records; exorbitant fees could punish the people for wanting to look at them.

Section 32 will put a cap on the fees of an arbitrator who can charge for each party to share the cost of the arbitration fees. Having each side pay its own legal fees is much-needed, as I too have been a victim of the arbitration trap. I had my car illegally towed and wound up in arbitration. I was ambushed as many people are when they get into the arbitration process. I went into the arbitration expecting fairness, being able to tell my side of the story. I thought it would be simple. You hear about arbitrators hearing each side of the story. At the end of the yearlong process, along with legal maneuvering between the arbitrator and attorneys, I had no standing. I ran up over $16,000 worth of costs because I was not the actual owner of the property from where the vehicle was towed. I was never able to tell my facts, which goes back to the beginning of the trap where a person should go into arbitration and tell everything. When you involve attorneys and arbitrators doing everything, I understand you need to follow the law; I support that, but something in this needs to be changed.

HEATHER SPANIOL:
I have been harassed by the HOA for three years. I have been a homeowner for 11 years, of which the first 8 years were amazing. I never had an issue until this third house I now live in. It started the day I moved in and has not stopped.

In section 16, the new language must be removed; there is no explanation of how actual costs are determined—very dangerous for the homeowner.

In section 19, we already have language clear enough. This allows runaway fees for attorneys.

Section 20 does not place caps on fees and leaves it up to the association —very dangerous for the homeowner.

Section 25 allows more billable hours for attorneys with the application. It is hard enough to file against a HOA if you have a dispute, if you feel you have been wronged. We all know this is the same as a motion. The people who put these together do not think highly of the public.

Section 32 is a great step in stopping the arbitration trap, but it needs to be clarified when two parties each pay half. It needs to be capped at $750. This gives the arbitrators no incentive to go after HOAs, and it does not break homeowners as well.

Section 33 lets the CICCH set rates, giving the Commission the power. It has already been generous to the community association managers and the collection agencies; this gives it more power.

In light of the FBI probe involving 75 to 100 judges, attorneys and policemen and the $1.3 million scandal involving the Internal Revenue Service and the Sun City HOA, a gentleman involved in the scandal was here earlier speaking on behalf of HOAs. Do we really want to give these people more power than they already have? To the CAI, HOA board members and everyone else who loves their HOAs, I am not sure all of you have stated your opinion; I know Senator Copening has, she loves her HOA. If you guys love your HOAs so much, why would you spend hours upon hours making change?. It just does not make any sense. If it is so great and you are so happy with it, why would you waste your time trying to change it? It does not make a whole lot of sense to me, why would you change something you love?

Why are there so many negative bills and a little bit of positive? It is like we will give a little bit of positive, but then we incur all of these fees with it.

The more power you give the boards, attorneys and management companies to harass the homeowners, the harder you are making it to sell your home later on. Boards change. Everyone who is friends with their boards right now, you might not be next year.

Senator Copening, you were quoted in the news stating S.B. 174 has many homeowner-friendly items. I do not know what to say about that because the

costly, outrageous negative measures in S.B. 174 highly outweigh the positive. I cannot believe that was even said.

All of you work together; you are friends. I hope you do not pass this bill just because you spent so much time on it. It is harmful, not only to the homeowners but to everybody up there. When you want to sell your house, it is a selling point to not have a HOA. I will never buy a house with a HOA again.

The people lucky enough to stand up and fight for themselves have money careers or they have had money. So many low- and middle-income families are not here because they do not know about this meeting. They do not have the money to spend; they are worrying about paying their gas bills, electric bills and HOA fees.

It was in the news this morning that over 50 percent of houses in Nevada are either in foreclosure or on their way to foreclosure or have lost value. So keep giving associations more power because, guess what, the rest of us are going to lose our houses as well.

I am sick of feeling I have a landlord. I am sure everyone else is too. The scariest thing—as homeowners, as a citizen in this community—is we have nobody. The judges and lawyers are all being probed right now, who do we have to go to? We have this Committee. I beg of you to not pass these bills without making drastic, major changes.

MICHAEL SCHULMAN:
I am an attorney here representing myself. Our law firm represents in excess of 500 or 600 homeowners' associations. I teach for the Office of the Ombudsman; I also teach certification classes for the State for new managers. I had the honor of serving on Senator Copening's group with respect to S.B. 174.

I have a number of issues with this bill. I did send you a letter which set forth most of them. The problem is the bill is not written well enough for any of us to understand. While I rarely agree with Mr. Friedrich, I do respect him. He and I agree this bill would increase attorney time a lot.

Basically, the three transfer fees that Senator Schneider is trying to distinguish are not explained. The federal government is trying to outlaw the first one that

Mr. Hershey spoke about very eloquently. We all agree the kind of fee that goes to developers or their heirs should be outlawed. In fact, the federal government will pass a bill to that effect. If you do not know, they are working on it. One of the other things they fear is that those kinds of fees would be bundled and sold on Wall Street as an annuity.

The second type of fee is the one discussed by Commissioner West that my client as well as his HOA passed: an actual fee paid to the association upon the sale of a unit. We have senior communities, just as Commissioner West's community, where 5,500 people actually voted to put this fee in their governing documents. It should either not be outlawed or the State should come in and change what a group tries to do by 67 percent or 75 percent. The language is so confusing. It is described somewhere as a transfer fee. Other language says an exception for assessments, then the words "asset enhancement fee" appear somewhere. In his last bills, Senator Schneider used to try to cover this. We have a number of communities where homeowners actually vote to change their governing documents. It is not like the board chooses to do this; it is to prevent little old ladies from literally losing their homes due to assessments.

The third transfer fee is not discussed very well in the bill.

In section 17, the radar gun has been hit to death. Senator Schneider gave the example of trying to find the pizza boy. If he would acknowledge what his bill was last time, we can no longer do that. The last bill he had passed says we cannot fine an owner for service providers who break those rules.

The second thing he said is the police will actually come in and take care of it. Policemen will not come into gated communities. Therefore, if this passes with the language, we will ultimately have the death of a child and be back here and changing the law.

The third thing I want to talk about is sections 22, 23, 26 and 27, which talk about fees. Everyone up here seems to think this gives unlimited fees. I read the bill as Senator Schneider, eliminating the ability to get copying costs, not fees, or hourly fees for someone reviewing records. It has been well said by many people; why should I have to pay if someone else wants to go in and review the documents, numerous times? A substantial amount of testimony from the president of Caughlin Ranch last Legislative Session was in regard to this.

The final thing is section 25, which is obviously the bill. For different reasons, people have said they do not want this to pass. I like to call a spade a spade. This is Senator Schneider trying to eliminate construction defect cases. He knows if you are required to get 51 percent of the vote of the owners, it will not occur. He has passed legislation which does away with quorum requirements for the most important things owners do, which is to elect the boards. We will never get the vote—it is not because people do not want to go forward—because of apathy. I suggest that section be deleted to eliminate the issues raised about people having to go to court to get permission.

CHAIR WIENER:
The hearing is recessed until 8 a.m., March 10. The meeting is adjourned at 10:57 a.m.

RESPECTFULLY SUBMITTED:

_____
Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE:_____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 185	C	Senator Michael A. Schneider	*Las Vegas Review-Journal* "Federal probe into valley HOAs broadens," March 6, 2011
S.B. 185	D	Senator Michael A. Schneider	*Las Vegas Review-Journal* "Attorney at Heart of HOA probe faces several legal battles," March 6, 2011
S.B. 185	E	Senator Michael A. Schneider	*Las Vegas Review-Journal* Editorial – HOA abuse March 9, 2011
S.B. 185	F	Favil West	Written Testimony
S.B. 185	G	Jonathan Friedrich	American Arbitration Association E-mail
S.B. 185	H	Jonathan Friedrich	Rules Governing Alternative Dispute Resolution
S.B. 185	I	Jonathan Friedrich	Review and Comments

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
March 10, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:04 a.m. on Thursday, March 10, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels
Pamela Scott, Howard Hughes Corporation
Robert Robey
Jonathan Friedrich
Rana Goodman
Tim Stebbins
Randolph Watkins
Donald Schaefer
John Radocha

Dr. Robin Huhn
Delores Bornbach
Heather Spaniol
Favil West

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 185.

SENATE BILL 185: Makes various changes relating to real property. (BDR 10-23)

MICHAEL BUCKLEY (Chair, Commission for Common-Interest Communities and Condominium Hotels):
Cheap, quick alternative dispute resolution is a solution for these problems. That does not happen at proceedings of the Commission for Common-Interest Communities and Condominium Hotels (CCICCH). The Commission has no role in the arbitration process. The arbitration decisions are on the Real Estate Division's Website, including the costs, the outcomes and the awards.

Associations are local small governments and should be able to control their own streets with radar guns. If this government is closest to the people, the people should decide what to do.

Section 18 of the bill requires the declaration to include leasing restrictions and association obligations regarding common elements. The Commission supports the requirement on leasing restrictions. The Committee should be aware of the difference between the declaration recorded at the beginning of a project versus the public offering statement, which is given to purchasers when they acquire a unit in the project or a resale package. Issues regarding common elements should be included in the public offering statement because common elements change over the life of a project.

Nevada Revised Statute (NRS) 116.643 gives the Commission authority to pass additional disclosure requirements through regulation. We have not done that yet. We are a part-time commission that meets quarterly. We meet more often now regarding legislation. The regulatory process is slow because we start with a regulation and it goes to the Legislative Counsel Bureau. We cannot act until we get something back. Then, we have hearings to adopt the regulation. Our

did this at no cost to the homeowner—no special assessments and no raise in the regular assessment fees.

This is important. As the community develops and ages, different needs are met without special assessments because this fee is paid by buyers as they move into the community. This capital fee has not deterred buyers from purchasing homes in our community. They are pleased to find we have a separate reserve and adequate funding to meet our bills.

I encourage the Commission not to use S.B. 185, but to use S.B. 174, which was presented by Senator Copening. It is more balanced to the homeowners' association, investors and purchasers.

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

SENATOR COPENING:
Do you want to require that certain fees be established for reserves of other communities to help them become more stable?

MR. SCHAEFER:
You are correct. We have found that many small associations must defer reserve contributions because they cannot meet bills and reserve requirements when people do not pay. This capitalization fee can be used almost everywhere. A small transfer fee is almost a necessity.

SENATOR COPENING:
Is Sun City Aliante fiscally sound because of this fee and because the board members have invested well?

MR. SCHAEFER:
We are. We have made wise choices. We have the flexibility to do this because of the transfer fee that enhances the community.

JOHN RADOCHA:
I am here because what I have to say is important to me. I am on a fixed income. I am asking for justice as a homeowner. I am not talking about all boards of directors. I disagree with some of Senator Michael A. Schneider's bills; however, I agree with his comments. I would like to see the Ombudsman's Office disbanded. I have been a victim of retaliation and selective enforcement. Boards of directors use NRS 116 to satisfy their control over homeowners. I need documentation to write management and report a violation. If it is not in writing, it does not exist. *Nevada Revised Statute* 116.31175, subsection 1, paragraph (b) takes away my right to existing or nonexisting documents needed to prove retaliation and selective enforcement. *Nevada Revised Statute* 116 needs a Freedom of Information Act.

Where are homeowners' rights to vote by paper ballot for budgets and capital improvements? We receive a letter announcing a budget meeting. It is held 15 miles away at 4 p.m., not at the regular place. That is not fair. Give us our right to vote. We need our control back.

Where is the definition of capital improvements? I have written letters to the Ombudsman and have not heard anything for over three months. My understanding of a capital improvement is something permanent. If it is going to be permanent, we should be able to vote. If we put a speed bump on a private street, it is a common element. We should vote on capital improvements. The directors are taking our money and using it for what they want.

Do transfer fees go to the HOAs, the management companies or the lawyers? This bill leaves the door open to double-dipping for some of these organizations.

I will give you an example of what happens. If someone comes to visit and he parks his vehicle, he receives a sticker saying he will be towed. Yet, an ex-director's son can park his truck and boat in a fire lane for four days. We need fairness.

CHAIR WIENER:
I speak for the entire Committee. We all recognize and appreciate how extraordinarily important these issues are to the people who appear and testify. We take notes and we review that. We weigh everything with great consideration as we move measures forward. It is through the public's

participation as well as those who do this for a living that everything is weighed. We take it all seriously as we establish public policy.

DR. ROBIN HUHN:
Nevada Revised Statute 116.4109 limits the cost of a copy of the CC&Rs to $160. When I bought my home, I received a copy of the CC&Rs, but the print was small and hard to read. When I requested another copy, I was required to pay another $160.

I support moving the Ombudsman's program to the Office of the Attorney General. I was in the process of buying a home to use as rental income. The management company would not clarify the CC&Rs for me, nor would anyone on the board. The CC&Rs are not specific regarding rental property. If the Ombudsman was at the Attorney General's Office, there would be someone who could explain that to me.

I am opposed to the private transfer fee. I do not want to be responsible for the future of that HOA community. This fee makes me responsible for everyone in that community, even though I no longer live there.

Property management companies have no value in running HOAs. They exist to make money. They are greedy. It is a $40 billion-a-year business.

Last week, Dr. Gary Solomon spoke about HOA syndrome. This is real. I speak to people daily, and I ask them how they feel. Everyone reports the same symptoms. I have HOA syndrome. I can be here today because I am medicated. This is because of my HOA and the harassment. I am tired, anxious, irritable and paranoid. I have a fear of going to the mailbox. My mail goes to an attorney because every time I opened the mailbox and saw the letter, I became distraught. When I talk to people all over the United States, they report the same symptoms without prompting or knowing anything about HOA syndrome.

Homeowners' associations create elder abuse. The elderly are easy prey and are on fixed incomes. Board members and property management companies know that. Many of them are elderly women whose husbands took care of their finances. When their husbands pass away, they must take care of everything. The HOA may assess a fine because she is not capable of pulling a weed. The fines keep mounting because she does not understand the process. I have heard horror stories from the elderly.

SENATOR COPENING:
Please contact me and advise me of your association. I hate to hear stories like this. If you would like me to intervene, I am happy to do that and further investigate what is happening. I would like to better understand why these things are happening. I offer my services to do that if you would like to contact me.

DELORES BORNBACH:
I am a retired homeowner who does not live in an HOA. I am visiting my friend who is an HOA owner. I have spent time in the law library and attending legislative meetings. Working people do not have that time. After listening to these meetings, I am convinced the common denominator is money, not the welfare of people. No matter how many laws you pass, you cannot protect people from the evils of harassment, retaliation and greed.

MR. FRIEDRICH:
Who gets transfer fees? I provided you with a closing statement of the home I bought eight years ago (Exhibit J). There are three items at the bottom. The Property Group received $175. The HOA did not receive that money. Dyson & Dyson Real Estate Associates received a transaction fee of $200. Rancho Bel Aire received a capital contribution of $270. Many of these transfer fees go to associations, but when a master association is involved, the fee is double. For example, if a transfer fee is $200, $200 goes to the subassociation and $200 to the master association. That is $400. The HOA does not get this. The management companies get it for these two associations. It is not enriching the HOAs.

Arbitration fees should be capped. I provided you with a copy of the final billing for an arbitration involving one homeowner versus another homeowner over a tree (Exhibit K). It totaled approximately $8,000, Exhibit K, page 3.

SENATOR COPENING:
You mentioned fees that go to the master association and the subassociation. You said those are management companies. Do you know for a fact these fees are going to the management company and not to the HOA?

MR. FRIEDRICH:
I misspoke when I said the subassociation and master associations. I meant to say the subassociation and master associations' management company. Yes, I was informed of that yesterday.

SENATOR COPENING:
Do you know that to be factual?

MR. FRIEDRICH:
Yes. The gentleman who gave me that information is not here today.

SENATOR COPENING:
Is he with the management company?

MR. FRIEDRICH:
He is with a collection company that works on behalf of the management companies.

SENATOR COPENING:
It is secondhand information.

MR. FRIEDRICH:
I will have him get that information to you.

SENATOR COPENING:
Mr. Wilkinson, does NRS say anything about transfer fees and where they must go?

BRADLEY A. WILKINSON (Counsel):
I will look into that. I am not aware of any provision that speaks to transfer fees.

CHAIR WIENER:
Please let us know what you find out.

I will close the hearing on S.B. 185. Over the last two days, 13 people have signed in to speak in favor of this measure, 29 have signed in to speak against it and 5 have signed in to speak from a neutral position. I will open the hearing to public comment.

HEATHER SPANIOL:
After yesterday's meeting, Favil West attempted to intimidate me by stating people do not like what I am saying. Further, he especially did not like what I was saying. I am a nobody in this room. I am just a citizen trying to stand up for myself because I have been abused by an HOA board. It was uncomfortable to be confronted by Mr. West. I asked him what I could do to get away from him and, rather than telling me to walk away, he watched while I tried to write down what I was seeing. I do not know if his intention was to harm me or sue me. He was warning me of something. The only homeowners at these meetings speaking on behalf of these bills are on the CCICCH or affiliated. There are no normal average homeowners here on behalf of these bills. If these bills are passed, you are making the rich richer and those already struggling struggle harder.

SENATOR COPENING:
We received an e-mail from Mr. West clearing something up on the record. He recalls that you had said the previous speaker from Sun City Anthem was under an IRS investigation. He wanted to make it clear to the Committee that he was the previous speaker and has never been under an IRS investigation. I speculate that may have been one of the reasons he approached you.

MS. SPANIOL:
That is not what I said. When I told him that, he did not get out of my face. He made me feel uncomfortable. If something happens to me, it was probably Mr. West. I want that on record.

CHAIR WIENER:
Everyone who comes before our committees is a somebody. Everyone who shares opinions, insights and experiences has an impact on our decision making. We do not consider you a nobody. You are someone with a voice and a concern. That is what this public process is all about.

FAVIL WEST:
Senator Gustavson inquired about radar guns. Sun City Anthem checked on radar guns with the City of Henderson. The City advised us that where public streets are concerned, it is the traffic control. We put up radar advisory equipment which allows people to see their speed.

Regarding comments made on asset enhancement, our Commission of 7 people with a total committee of 49 people got involved in the asset enhancement. We put out approximately 6,000 ballots out of 7,144 homes. We had a 73 percent approval. No developer was involved in any meeting of that committee at any time. It was residents only. We made six presentations, and we allowed the developer five minutes to give his part of the presentation.

When we cap things, where do we stop? I am concerned about that. I do not like to see fees that hurt homeowners because I represent homeowners on the Commission. We have to be careful about where we start capping and where we stop capping.

People talk about fairness. Fairness is like beauty—it is in the eyes of the beholder. What may be fair to you might not be fair to me. We must find what is just. In our community, Sun City Anthem, we have no experience with seniors being mistreated. I am cofounder of a foundation that assists seniors in three communities. We have no record of any senior being harassed by a board. We have some problems where we ask the City for help. I see approximately 100 to 200 homeowners a week, and not one has said he does not like living in the association at Sun City Anthem.

MS. GOODMAN:
I want to correct Mr. West when he said nobody in our community has been mistreated. Mr. Norman McCullough testified last week on another bill, and he has been mistreated by my community. He fits into the HOA syndrome more than most. I attempted to help another elderly gentleman, 92 years old. I went to the Neighborhood Justice Center in an attempt to help him. I was told unless he was physically abused, they could not help him. He has been mentally abused by our board.

MR. WILKINSON:
There is no restriction in statute about transfer fees. The only provision is the requirement in the resale package that any transfer fees be disclosed.

MR. FRIEDRICH:
As a follow-up, there is another lady who has been abused in Sun City Anthem. She is an almost 86-year-old widow who obtained written approval to add some fencing on top of five-foot walls. She spent $3,000 doing it. Eight months after it was completed, she was told she was in violation of the CC&Rs. She was

told she had to remove this fencing, which she installed to keep the coyotes from attacking her little dogs in her back yard. After quite a bit of back and forth between her and the Sun City Anthem board, the board allowed her to keep the fence for up to two years and eliminated her fines of $100 a week, but she had to apologize for appearing on Channel 13. This is abuse.

CHAIR WIENER:
There being nothing further to come before the Committee, we are adjourned at 9:19 a.m.

RESPECTFULLY SUBMITTED:

_____
Kathleen Swain,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE: _____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 185	C	Michael Buckley	Notice of proposed rulemaking; request for comment from Federal Housing Finance Agency
S.B. 185	D	Pamela Scott	Proposed Amendment
S.B. 185	E	Robert Robey	Commissioner Favil West's testimony
S.B. 185	F	Robert Robey	Excerpts of Commissioner Favil West's testimony
S.B. 185	G	Jonathan Friedrich	Summerlin West Community Association Approved Operating Budget-2009
S.B. 185	H	Rana Goodman	Written testimony
S.B. 185	I	Tim Stebbins	Written testimony
S.B. 185	J	Jonathan Friedrich	Closing statement
S.B. 185	K	Jonathan Friedrich	Arbitrator's Final Billing

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
March 16, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:07 a.m. on Wednesday, March 16, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Karen D. Dennison, Common Interest Communities Subcommittee, Real Property Section, State Bar of Nevada
Michael Buckley, Common Interest Communities Subcommittee, Real Property Section, State Bar of Nevada
Renny Ashleman, City of Henderson
Michael Schulman
Robin Huhn, D.C.
Michael Randolph, HOA Services
John W. Griffin, Nevada Justice Association
Tim Stebbins

Bob Robey
Jonathan Friedrich
John Radocha

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 204.

SENATE BILL 204: Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

SENATOR ALLISON COPENING (Clark County Senatorial District No. 6):
I am sponsoring S.B. 204 at the request of the Uniform Law Commission.

The Nevada Legislature adopted the 1982 version of the Uniform Common-Interest Ownership Act (UCIOA) in 1991. It was a culmination of a nine-year effort by the Commission to offer comprehensive legislation providing an overall structural scheme applicable to the three forms of common ownership of real property: condominiums, planned communities or planned unit developments and cooperatives. These are now referred to as common-interest communities (CICs).

The Commission was established in 1892 and is a nonprofit, unincorporated association. Its members are practicing lawyers, judges, legislators, legislative staff and law professors who have been appointed by state governments to research, draft and promote enactment of uniform state laws in areas where uniformity is desirable and practical. State uniform law commissioners come together to study and review the laws of the states to determine areas in which the law should be uniform. It should be emphasized that the Commission can only propose legislation. No uniform law is effective until a state legislature adopts it.

Since it was first written in 1982, the UCIOA has been amended twice by the Commission.

KAREN D. DENNISON (Common Interest Communities Subcommittee, Real Property Section, State Bar of Nevada):
The Common Interest Communities Subcommittee is made up of real estate law practitioners. The group is representative of all the stakeholders in this bill, including developers, builders, homeowner associations and managers. We

I will continue going through the provisions of S.B. 204. Most of the changes in section 39 are grammatical changes. Subsection 1, paragraphs (i) and (j) require that bylaws address procedural rules and any other matters required by the law governing that type of entity.

Section 40 moves provisions regarding removal of executive board members to a separate section. This is also covered in S.B. 174, and the language of the two bills will need to be conformed. The intent was that when existing law covered a number of topics, we put it into a separate section so it would be easier to find.

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

MR. BUCKLEY:
Section 41 is a technical change. This section now has a cross-reference to section 2.

Section 42, subsection 1 incorporates the concept of ballots that has been added to NRS 116.311, subsection 2. It refers to the ballot provisions of section 43. Subsection 3 clarifies that a quorum is determined when the vote is taken rather than when the meeting starts. Subsection 4 specifies that *Robert's Rules of Order* are to be used as the default procedural reference. The intent is that there be a default way of running meetings if an HOA has not adopted them.

Section 43 deals with ballots. The intent was to allow balloting and specify in greater detail how vote by ballot is to occur. The intent is to lay out a procedure to tell the HOA how to conduct a vote by ballot.

Section 44, subsection 1 states that unit owners are not liable for damages to the common elements just by the fact of being unit owners. Subsection 2 clarifies that the proper party in a common element lawsuit is the HOA, not the unit owners. Subsection 3 is a cross-reference to NRS 116.4116, subsection 4. It allows for a warranty inspection process before the end of the declarant control period.

Section 45 states that in addition to property, casualty and liability insurance, an association should have fidelity insurance. This was addressed in greater detail in section 10 of S.B. 174. The two sections should be combined.

Sections 46 and 47 are basically stylistic changes.

Section 48, subsections 1 and 2 are stylistic changes. Subsection 4 clarifies that an HOA can have cost centers, where particular units are charged for particular services. In assisted living facilities, for example, food services are charged on a different basis than other common elements. The new definition that was enacted last Session refers to services.

Subsection 6 is a uniform change. This is addressed in section 12 of S.B. 174. The concept is that if someone damages a common element, the HOA can look to the person who did the damage for repair. If someone creates a problem for a common element, the HOA can look to the wrongdoer for payment rather than its own insurance.

Section 49 deals with the lien for assessments. This is dealt with in section 12 of S.B. 174. As Ms. Dennison mentioned, we did not address the issue of collection costs being a part of the superpriority, since we thought that was a policy decision. We did make all the technical UCIOA changes to this section, some of which might not be in S.B. 174.

Section 49, subsection 11 says if the HOA enforces a lien, it has the right to obtain the appointment of a receiver to collect any rents and have them applied to the assessments owed by that unit.

Section 50, subsection 1, paragraph (a) clarifies that if somebody gets a judgment against the HOA, it would cover not just the common elements but any other property the HOA owns. The remaining changes in section 50 are basically grammatical and cleanup.

Section 51 is an amendment to NRS 116.31175. It is not a uniform change but is also addressed in section 2 of S.B. 30. Basically, NRS 116.31175 and NRS 116.31177 deal with types of records that unit owners can inspect. Section 51 puts all of these things in one statute and repeals NRS 116.31177, which is now incorporated into NRS 116.31175. The intent is to put everything into one statute.

CHAIR WIENER:
Is there any further business or public comment to come before the Committee? Hearing none, I will adjourn this meeting at 10:26 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 204	C	Karen D. Dennison	"Analysis of SB 204"
S.B. 204	D	Dr. Robin Huhn	Written testimony opposing S.B. 204
S.B. 204	E	Tim Stebbins	Written testimony opposing S.B. 204
S.B. 204	F	Bob Robey	Written testimony opposing S.B. 204
S.B. 204	G	Jonathan Friedrich	Written testimony opposing S.B. 204
S.B. 222	H	Senator Allison Copening	Written testimony introducing S.B. 222
S.B. 222	I	Bob Robey	Proposed amendment to S.B. 222
S.B. 222	J	Jonathan Friedrich	Written testimony regarding S.B. 222

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
March 17, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:11 a.m. on Thursday, March 17, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Orrin Johnson, Washoe County Public Defender's Office
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Rex Reed, Ph.D., Administrator, Offender Management Division, Department of Corrections
Jeff Mohlenkamp, Deputy Director, Support Services, Department of Corrections

CHAIR WIENER:
I will open the work session with Senate Bill (S.B.) 30.

SENATE BILL 30: Makes various changes relating to common-interest communities. (BDR 10-477)

LINDA J. EISSMANN (Policy Analyst):
Senate Bill 30 (Exhibit C) is sponsored by the Gail J. Anderson, Administrator of Real Estate Division (RED) of the Department of Business and Industry. It changes the way common-interest communities (CIC) withdraw money in two different ways. First, it allows a unit-owners' association to withdraw money from its operating account without required signatures if the withdrawal is to transfer money to the Office of the State Treasurer for certain fees and if the amount is $10,000 or more. Secondly, it requires the executive board of a homeowners' association (HOA) to establish internal controls to ensure security of the money and proper authorization for withdrawal if the HOA uses electronic signatures to withdraw money from its reserve or operating accounts.

The bill also repeals existing law concerning where and how certain financial records must be made available and instead requires them be available in a manner similar to other HOA records. The bill requires financial records be available at the HOAs office or in a business location not to exceed 60 miles from the CIC; existing law says the business office or within the same county.

The bill retains an existing provision that a copy of the financial records be made available at a cost not to exceed 25 cents per page to a unit owner or to the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels within 14 days of receiving the request.

The purpose of the proposed amendment is to more closely reconcile S.B. 30 with the language of S.B. 174, section 14.

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

Following the hearing, we received an amendment, page 2 of Exhibit C, from Gail Anderson with RED. Section 14 of S.B. 174 also deals with the electronic transfer of money. Section 14 of S.B. 174 and section 1 of S.B. 30 are similar, but slightly different. The amendment makes the two sections more similar. Ms. Anderson's amendment would put some of the language from S.B. 174 into S.B. 30. In the amendment to S.B. 30, the blue language is the language taken from S.B. 174.

In S.B. 30, the bill allows withdrawing money from the account without signatures, to the State Treasurer, for fees in the amount of $10,000 or more. However, in S.B. 174 it is an electronic transfer of money to a state agency, not specifically the State Treasurer. It also allows for electronic transfers to the U.S. government or an agency thereof. There is not a provision specifically for $10,000 or more.

Senate Bill 30 requires that the executive board of an association establish internal controls, which is also in S.B. 174. However, S.B. 174 adds that electronic transfer of money has to be done pursuant to a written agreement entered into between the association and the financial institution; this is not in S.B. 30, nor is the requirement that the executive board has expressly authorized the electronic transfer of money. Those are the differences between the two bills.

Finally, one issue originally in S.B. 30 was regarding the language 25 cents per page and costs per copy. On page 3 of Exhibit C, Ms. Anderson's amendment to S.B. 30 requests that whatever the cost ends up being, her preference is that the cost "not to exceed" language be included making it consistent throughout *Nevada Revised Statutes* (NRS) 116.

During the development of my amendment, concern was expressed that HOAs should not establish their own internal controls, as doing so may lead to embezzlement. There was also discussion that it would be better for the Commission for Common-Interest Communities and Condominium Hotels to establish internal controls. There was also discussion related to section 2 of S.B. 30 regarding the financial documents being made available in draft form and discussion about the availability of electronic documents.

SENATOR COPENING:
Does the requirement of 25 cents per page for the first 10 pages and 10 cents per page thereafter only apply to the minutes of the association? Is it set out in chapter 116 of the NRS to say except for the minutes? I understand Ms. Anderson is saying we need to reconcile this area. I am not certain we can reconcile the issue now as it is a different subject matter. Are we being asked to reconcile it now?

MS. EISSMANN:
Section 2 in S.B. 30 relates to general documents the association provides and is not necessarily specific to minutes. The minutes are 25 cents per page for the first ten pages and 10 cents per page thereafter. The bill states they are not to exceed 25 cents per page. It is not specific to minutes. Mr. Wilkinson, will you clarify?

BRADLEY A. WILKINSON (Counsel):
That is correct.

SENATOR COPENING:
Until anything more can be argued against it, I am comfortable. In 2009, we had extensive testimony, and stakeholders agreed to the 25 cents per page for the first ten pages for the minutes and 10 cents per page thereafter. The reason I am comfortable in not going less than that is I am told even our State agencies charge $1 or more for a copy. Before we take it any lower, I prefer talking to the stakeholders to see what is affordable.

CHAIR WIENER:
I will close the hearing on S.B. 30.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 30 WITH THE AMENDMENT MS. ANDERSON PROVIDED.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR WIENER:
I will open the hearing on S.B. 72.

SENATE BILL 72: Revises provisions governing the assignment of certain criminal offenders to residential confinement. (BDR 16-120)

BILL DRAFT REQUEST 12-182: Authorizes a court to establish the validity of a will or trust before the death of the testator or settler. (Later introduced as Senate Bill 263.)

SENATOR MCGINNESS MOVED TO INTRODUCE BDR 12-182.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR WIENER:
The meeting is adjourned at 9:07 a.m.

RESPECTFULLY SUBMITTED:

Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 30	C	Linda J. Eissmann	Work session document
S.B. 72	D	Linda J. Eissmann	Work session document
S.B. 159	E	Linda J. Eissmann	Work session document
S.B. 180	F	Linda J. Eissmann	Work session document
S.B. 186	G	Linda J. Eissmann	Work session document

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
April 13, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:11 a.m. on Wednesday, April 13, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Senator Steven A. Horsford, Clark County Senatorial District No. 4
Assemblyman Jason M. Frierson, Assembly District No. 8
Assemblywoman Dina Neal, Assembly District No. 7

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Michael E. Buckley
Pamela Scott, Howard Hughes Corporation
Karen Bennett-Haron, Las Vegas Township Justice Court, Department 7, Clark County

Tierra Jones, Deputy Public Defender, Clark County Public Defender's Office
Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Kristin Erickson, Nevada District Attorneys Association

CHAIR WIENER:
I will open the work session with Senate Bill (S.B.) 174.

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

LINDA J. EISSMANN (Policy Analyst):
Senate Bill 174 was sponsored by Senator Allison Copening. The bill was heard by this Committee on February 24 and 25. I will read from the work session document on S.B. 174 (Exhibit C). Since the hearing, we received four documents from Senator Copening's working group that have been referenced several times.

SENATOR ALLISON COPENING (Clark County Senatorial District No. 6):
For the amendments that the working group has put together, I would like to invite Michael Buckley and Pamela Scott to make the presentation. Look at a document that Ms. Eissmann put in the work session document, page 16 of Exhibit C. When we went through S.B. 174, the working group put together a supplementary document explaining all of the sections we were changing and what they meant. After the hearing, we had about two inches worth of amendments. My assistant took every amendment and recommendation and put it underneath each of the sections. On section 1, you will see an amendment from Angela Rock, John Leach, Jonathan Friedrich and Gail Anderson, Administrator, Real Estate Division (RED), Department of Business and Industry. Then this document went back to the steering committee of the working group to consider these amendments and make recommendations. We continued this process to make sure it was fully vetted.

Many of you are aware of the situation of Paradise Spa in Las Vegas. That is the older homeowners' association (HOA) that was raided. This is something that Senator Roberson, Senator Breeden and I have been involved in, and former Senator Bill O'Donnell testified; he sent me an update at 8:12 a.m. The reason

I wanted to share this was it comes back to the provisions in S.B. 174 and how important it is to protect homeowners from bad things happening. Senator O'Donnell said the situation there was an investor who bought up the majority of the units—261—so the investor had control of the majority of the board. He got himself on the board as treasurer, stopped paying his assessments—almost $1 million these past few years—and broke the HOA.

Senator O'Donnell said he was able to talk to the gas company and get an extension from the past due bill from being payable on April 8 to April 18 because this investor also controlled all of the natural gas meters—everything is on one meter. Senator O'Donnell said the HOA's insurance bill of $42,000 was due yesterday. He said the premiums and deductible had increased because of all the problems caused by this investor, and the board did not have enough to pay it. He said all of the board members are volunteering their time to do whatever it takes to keep the place running. This investor's assessments and everything he owes for the month totals $41,760. As of yet, it is unpaid. Senator O'Donnell said the HOA is okay now, but it is going day by day. The HOA is broke, and who knows what is going to happen.

The majority of residents who live in the units are senior citizens. I have been in touch with Gail Anderson with the RED to prevent these people from being put out on the streets. Former Senator O'Donnell said there is nothing more we can do right now, but I hope the HOA can hang on. Many of the provisions in S.B. 174 are to help HOAs against people like this investor.

MICHAEL E. BUCKLEY:
I will read from the work session document on page 7 of Exhibit C, the proposed amendment for S.B. 174 submitted by Senator Copening's HOA working group, April 11.

In section 4, subsection 5, paragraph (a), change language from: "The association may, but it not" to "is not required to ..." rather than force the association not to have an election. The proposal is to allow the association to take advantage of not having to have an election but have it if it so wishes.

Section 4, subsection 5, paragraph (b) is where if there are only enough nominated candidates to fill the vacancies, these people would be elected to the board. This states when the term begins. Section 4, subsection 10 is where the association would retain cumulative voting.

On page 7 of Exhibit C and page 13 of the bill, lines 8 and 14, section 5, subsection 2, paragraph (a) is to change the time to 90 days. On page 7, section 6, subsection 1 of the proposal is that the entity must accept the wall "in writing." We also had a proposal to change the word "governmental entity" on page 14 of the bill, line 22 to "another person"; instead of referring to a governmental entity, we should just refer to a person.

The proposed amendment on page 7 of Exhibit C, page 14 of the bill, line 27, is to delete "unit's owner" and replace it with "the owner of the real property on which the wall is located." That reflects it might not be the unit owner that owns the property, it might be owned by somebody, for example, the HOA.

On page 7 of Exhibit C and page 22 of the bill, section 10, line 36, which is the insurance section, we want to add the words "and subject to reasonable deductibles." That would authorize the HOA to have reasonable deductibles by statute. You see some technical language on page 7, a bracket around "all" and also the brackets around "or, in the case of a converted building, against fire and extended coverage perils. The total amount of." Those changes come from the Uniform Common-Interest Ownership Act and more accurately describe this kind of insurance. This makes it clear there is no difference about the use of the building, but it has to be maintained in terms of the kind of insurance.

At the top of page 8 of Exhibit C, the proposal is to change the word "liability" to "commercial general liability," which is the term used in the industry. That comes from the Uniform Common-Interest Ownership Act. The proposal amends section 10, [sub]section 2; there are some deletions you can see and the new language on page 8 of Exhibit C reflects language from the Uniform Common-Interest Ownership Act, which makes it more clear in terms of how it is describing the property.

On page 8 of Exhibit C, section 10, [sub]section 3 deletes the reference to mail and says "given" because the law states elsewhere how the notices are to be given.

On page 8 of Exhibit C, the proposal is to delete subsection 3 of section 11. To clarify, the proposed amendment affects page 24 of S.B. 174 by deleting subsection 3, paragraph (c), lines 22 through 24. This identifies how an association can invest its funds. On second look, the language was more broad

than people felt comfortable with. The proposal is to delete section 12, subsection 6 and leave existing law in place.

In section 14, subsection 3, paragraph (e), subparagraphs (1) through (3) are changed in Exhibit C, so our proposal is to not follow the proposal in section 14. The language on page 29 of the bill, subparagraphs (1) through (3) are limitations if an association permits electronic transfers; subparagraphs (1) through (3) are the requirements or the formalities the association needs to go through to authorize these electronic transfers. I know the Commission for Common-Interest Communities and Condominium Hotels (CCICCH) supported these subparagraphs (1) through (3) as you will see in section 11, subsection 3, paragraph (c) of the bill.

Section 15 follows on another page. Section 16, which is on page 31 of the bill, has a proposal to delete subsection 2 because the crime of harassment is under *Nevada Revised Statutes* (NRS) 200; the thought is to not add a criminal statute into NRS 116.

On page 33 of the bill, lines 35 and 36, there is a slight language change to section 18, subsection 3. Members of the executive board are not personally liable to victims of crimes occurring within the common-interest community. It is basically changing the word "property" to "common-interest community."

The proposed amendment would delete section 18, subsection 4, paragraph (d), on page 34 of the bill, lines 3 through 5. The intent was to move language, not to change it.

The proposal on page 9 of Exhibit C for section 4 of the bill adds the capitalized words that nominated candidates' disclosures would be made available to any unit's owner. This is the situation where the nominated candidates are only enough to fill the vacancies, so the ballots with their disclosures do not go out. This would require the HOA to make those disclosures available to all unit owners without charge upon request.

On page 18 of S.B. 174, section 8, line 36 deal with the situation which would permit an HOA to not notify everybody of an executive session of the board since the units' owners are not entitled to attend a meeting in executive session. This new language would make it clear that the normal rules dealing

with executive sessions still apply and that the board would have to disclose this at its next meeting.

Our proposal would delete the language in section 9, lines 32 to 35 on page 21 of the bill that addresses what an HOA can discuss in executive session. The proposal is to remove the ability to discuss the physical and mental health of managers, as that would be an invasion of privacy or perhaps violate privacy laws.

On page 29 of the bill section 14 was probably incorporated into S.B. 30. But the way the bill is written now, the HOA must meet these three requirements if it wants to transfer funds electronically, which now only apply to subsection (e). The belief was that these three requirements should apply to any electronic transfer, so we need subsection 3, paragraphs (a) through (e), not just paragraph (e).

SENATE BILL 30 (1st Reprint): Makes various changes relating to common-interest communities. (BDR 10-477)

The amendment on page 11 of Exhibit C deals with section 15 of the bill regarding the superpriority. The proposal for when you measure the superpriority is in subsection 2, paragraphs (a) and (b). This would follow the practice of the Uniform Law Commissioners in Colorado, who measured from either the foreclosure by the first deed of trust holder or the foreclosure by the association. This might end up saving expenses for associations and people who bid at foreclosures because if the associations have a superpriority lien from when the first deed of trust holder forecloses, there is less need for the association to take and pursue all of the normal collection efforts in order to perfect its lien.

On the top of page 13 of Exhibit C is the proposal to make subsection 3 clear that the superpriority applies to all HOAs whether or not the documents so provide.

Subsection 4 is another instance where we have discussions with the representatives of the title industry. There is a concern that after a foreclosure and the superpriority lien have been paid off, there is an attempt or misunderstanding about whether the HOA has any lien rights for those delinquent amounts. This would make it clear—once the superpriority lien has

been paid—that the association has lost its lien rights against the unit for the delinquent amounts. Of course, current amounts still continue to be collectible against the unit's owner, the HOA is free to take those actions and the current assessments continue to become a lien. Once the HOA has had its lien paid, it is not entitled to get more funds; there is only one superpriority. That is an important clarification and protection to all people who bid at foreclosure sales and protection to the title industry as well.

CHAIR WIENER:
We will now go through the amendments proposed by others during the hearing. Mr. Buckley, if any of these have been requested or suggested to the Committee for consideration in what you have just explained, let us know.

MR. BUCKLEY:
I can do that quickly for you unless you want to go through them one by one.

CHAIR WIENER:
Yes, if you will, instead of going back and forth.

MR. BUCKLEY:
Page 3 of Exhibit C has the amendments to the bill presented at the hearing. Section 4, subsection 5, paragraphs (a) and (b); section 4, subsection 10; section 6, subsection 1; section 8, subsection 3; section 9, subsection 3; section 15, subsection 2; section 18, subsection 3; section 11, subsection 3, paragraph (c) and section 4, subsection 5 are included in the amendment.

CHAIR WIENER:
Under item 11a on page 5 of Exhibit C, I had all sections deleted. Is any part of item 11a in the amendment?

MR. BUCKLEY:
Section 1 came out, so yes, that was addressed.

CHAIR WIENER:
I also had item 11c, which is section 14, subsection 3, paragraph (e). Was that addressed as well?

MR. BUCKLEY:
Yes, that is correct.

CHAIR WIENER:
I also had item 11d, which is section 14, subsection 4. Was that addressed?

MR. BUCKLEY:
I do not believe so.

CHAIR WIENER:
And item 13 of Exhibit C, which is section 6 of S.B. 174.

MR. BUCKLEY:
The reference to governmental entity was deleted.

MS. EISSMANN:
I will read from page 4 of the work session document, Exhibit C, beginning with item 6.

SENATOR COPENING:
I wonder if there will be some unintended consequences if sections 7 and 8 are deleted because we need to have law that says how meetings are guided.

MS. EISSMANN:
This is to delete the new language in sections 7 and 8, not to delete those statutes. The current statutes would remain the same.

CHAIR WIENER:
I can understand the confusion because it says to delete the sections. Is that the intention of the new language proposed in the bill?

MS. EISSMANN:
It would be to delete sections 7 and 8 of the bill, which provide new language. Therefore, those sections of NRS 116 would not be in the bill and they would remain as written.

SENATOR COPENING:
I do not know the motivation, but I look at section 8, subsection 5, that allows the HOA to send statements to homeowners by e-mail by request, which will cost the homeowners nothing. Otherwise, that deletion means homeowners must come down to a physical location, pick up a meeting agenda and, in some cases, drive many miles to get there. That does not make any sense to me.

SENATOR BREEDEN:
I agree with Senator Copening; we need to have every avenue available for people to be notified of meetings.

MR. BUCKLEY:
I would like to point out that language in section 7 has been moved to section 5, so all of the intricately connected sections are in one place. Other than what Senator Copening mentioned, there is not much change in the law; there is more movement to put things in the right place.

MS. EISSMANN:
In item 7 on page 4 of Exhibit C, Jonathan Friedrich's handout offered the day of the meeting argued against the sections of the bill stating that we should retain existing law and not adopt the suggested amendments. His amendment would delete most of the sections of the bill, deleting new language and returning to existing law. Dr. Robin Huhn offered a handout that she supported the amendments suggested by Mr. Friedrich.

On page 4 of Exhibit C, item 8(a), Rana Goodman had suggested amendments. If you look back at section 8, page 19 of the bill, starting at line 8, "if the association offers to send notice of a meeting of the executive board by electronic mail," her amendment would be "the board should be required to offer to send notice by electronic mail." Item 8(b) on page 4 of Exhibit C concerns section 9, which starts on page 21 of the bill. Tim Stebbins echoed that the term "misconduct" should be clearly defined. In section 10 of the bill, Ms. Goodman believed the crime insurance should be carried by the management company and she said to eliminate provisions against retaliatory acts against executive board members which was in section 16 and already addressed.

In item 10, Robert Robey suggested revising sections 7 and 8, so that instead of referring to electronic mail, it should be retained in electronic format. The argument was that people who do not get e-mail should be able to receive electronic format, a broader term than simply electronic mail. My interpretation of that is it could be on a compact disc or some other electronic means besides electronic mail. His comment was to also delete section 8 that would allow the executive board to hold secret meetings without public notice.

On page 5 of Exhibit C, item 11d was in section 14, subsection 4. This was a recommendation from Angela Rock. That section should be amended to read,

> in addition to any other remedy provided by law, upon a violation of this section, a person in violation of this section may also be in violation of the association's governing documents, if the documents so provide, and the executive board may hear this issue as a violation of the governing documents, and a person aggrieved by the violation may bring a separate action.

SENATOR COPENING:
I ask if Pamela Scott or Michael Buckley can speak to that. I know it was considered, but I do not understand why; maybe it does not work.

PAMELA SCOTT (Howard Hughes Corporation):
That is a wrong reference. Section 14, subsection 4 relates to electronic transfer. I am not sure where this was intended to be.

CHAIR WIENER:
We will come back to this one.

MS. SCOTT:
Someone in the room said section 16.

CHAIR WIENER:
Was that addressed by the working group?

MR. BUCKLEY:
Page 32 of the bill is section 16, not section 14. This is the section that deals with retaliatory action, and all this would do is permit the HOA to consider retaliatory action as a violation of the governing documents, not just a violation of the statute.

MS. SCOTT:
That is correct.

CHAIR WIENER:
Is retaliatory action addressed in the amendment you are proposing?

MS. SCOTT:
I am not sure. Retaliatory action was addressed last Session or the Session before as it related to a board taking retaliatory action against homeowners. The language added this time states that not only should a board not take retaliatory action against a homeowner, homeowners should not be taking retaliatory action against board members or employees. This language was not particularly addressed anywhere else. I do not have a problem with the language, and as Mr. Buckley said, it makes it a violation of the governing documents to take a retaliatory action. Law always prevails over governing documents.

MS. EISSMANN:
I will read page 5 of Exhibit C, item 12. Richard Rychtarik suggested several amendments, but I do not know if they are specific to a section or general comments. His comment in item 12(e) was about recall petitions too easy to come by and never ending in his HOA.

SENATOR COPENING:
Many of these would beg quite a bit of discussion, but we do not have the opportunity to get into detailed discussion about all of these and how they might work. A couple of other amendments, which also need to be fully vetted, came from the Realtors and one from Olympia Group. I told both of those groups that after this, we can get together on the other side, fully vet it and bring people together. I would be happy to include Mr. Rychtarik's comments as well. We are not going to be able to do things such as property tax. But we could wrap some of them into an amendment. I offer that for the pleasure of the Committee and Chair.

MS. EISSMANN:
I will read page 5 of Exhibit C, item 14.

SENATOR COPENING:
Mr. Wilkinson, is the word "misconduct" found elsewhere in NRS 116 or any other statute that would define misconduct?

BRADLEY A. WILKINSON (Counsel):
That provision is patterned after the Open Meeting Law when you can have executive sessions of bodies. It is not defined anywhere. I do not know if there has been interpretation of that in case law, but it is used throughout NRS without definition.

CHAIR WIENER:
We have had everything presented and offered that we could get into the work session document. We can go back to the amendment as was provided by the sponsor with the inclusions of those concerns that were addressed and offered by others, and then we can address the other concerns individually. We have a lengthy amendment proposed by the sponsor that includes amendments requested beginning on page 3 of Exhibit C—items 5a, 5b with all three bullet points, 5c, 5d, 5e, 5f, 5g, 9, 11a, b and c and 13. That is what is under consideration at this time. We will then take the other points separately that were not included in the amendment as proposed by the sponsor.

> SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 174 WITH HER AMENDMENT AND ALL THOSE INCLUDED FROM THE OTHER WITNESSES.

SENATOR ROBERSON:
I am going to choose my words carefully. This legislation reminds me of a rotten apple that you try to slice and dice to find the good parts. Unfortunately, I think it is rotten to the core. I cannot support this legislation. On the record, I will ask one more time because four members of this Committee have cosponsored it. Are we going to hear or have a vote on S.B. 195?

SENATE BILL 195: Revises provisions relating to the costs of collecting past due financial obligations in common-interest communities. (BDR 10-832)

CHAIR WIENER:
I talked to the sponsor of S.B. 195 the other day and shared that I have contacted Mr. Buckley. I have had a face-to-face conversation with the chair of the Legislative Commission. My concerns are that we are in the regulatory process with strong recommendations to Mr. Buckley and his CCICCH. We had two bills before this Committee that would start at a much lower fee than is being considered under regulation, and to take into account the bills before the Committee because the regulatory process is in process could be much more expeditious. That was my request to Mr. Buckley: to reconsider the amounts, the fees and the proposal that they provided and to amend it down to reflect the work by this Committee so it could be done expeditiously.

SENATOR ROBERSON:
There will not be a vote taken on S.B. 195? Okay. My concern is that the regulatory body can make and change regulation, and there is a lot of support on this Committee for putting this legislation into statute. Senator Kihuen, Senator McGinness, Senator Gustavson and myself collectively represent several hundred thousand people in this State, and we would like to have our voices heard. I am requesting again that we have a vote on that bill.

SENATOR COPENING:
There is some confusion because S.B. 174 does not have anything to do with collection fees. In fact, where we amended section 15 is statute. Section 15 is the only thing that deals with anything to do with collection costs and attorney's fees. It is statute; superpriority already allows for those collection costs to be in superpriority, so there is nothing in here that has anything to do with a collection bill. I will remind you also that my bill is not coming forward for a vote either. I would encourage the body to pass this. This is good law that was worked on by 30 individuals. It is law to protect the HOA. Bear in mind Paradise Spa; it is broke. It will continue to be broke. Gas is about to be turned off on many seniors who live in Senator Breeden's and Senator Roberson's district if they cannot get the bill paid. Section 15 will allow them to go after those costs from the person who did something criminally wrong. Without the passage of this bill, the seniors will just go broke; they are without gas and they are out on the street. I do not know what other way to put this. The main parts of this bill have nothing to do with S.B. 195.

SENATOR KIHUEN:
I think we need further clarification on the amendments for section 15. I do not know if Mr. Buckley or someone wants to give us further detail.

MR. BUCKLEY:
Page 11 of Exhibit C is the proposed amendment to section 15. A number of these changes came from the Uniform Common-Interest Ownership Act amendments of 2008, which is in S.B. 204. I am not sure if Senator Kihuen has any particular questions. Beginning with subsection 1, the reference to a statutory lien clarifies that the lien that an HOA has exists by statute as something different from a judgment lien. That is a Uniform Law change. The next change is the word "attributable to" instead of "levied against." That is a Uniform Law change; it is better language. Neither one of those two changes are substantive changes; they are better language. The next change is added

words of "reasonable attorney's fees and other fees to cover the cost of collecting a past due obligation which are imposed pursuant to NRS 116.310313."

SENATOR KIHUEN:
Can you define reasonable fees?

MR. BUCKLEY:
I can give you the lawyer definition, and that is what a reasonable person would think would be reasonable. It is a term used in law intended to allow whoever is determining the amount to consider what would be a reasonable amount rather than say just what is billed. It gives whomever makes this determination the power to determine whether, based on all of the work, this is an appropriate fee or too much. It is used in all kinds of contracts and elsewhere in law. It is basically an attempt to limit attorney's fees. I think it is even in the Supreme Court rules that a lawyer can only charge reasonable fees. It cannot be defined in terms of it equals X, Y or Z, but it is a long-recognized attempt to give whomever is making the determination ability to say, "I do not think that is enough. I think that is too much," whatever.

SENATOR KIHUEN:
That is what I have a concern with. We are charging $140 for a form letter; according to the people sending out those form letters, that is a reasonable fee. I have a concern with that if it is not defined.

MR. BUCKLEY:
First of all, the collection cost regulation—NRS 116.310313—is where the actual amounts are defined; they are not defined here. This would refer back to the limitation in NRS 116.310313, which allows the CCICCH to determine reasonable costs. Common-interest communities are governed by declarations, and these are covenants running with the land. The whole concept behind NRS 116 and common-interest communities is that there is this document, the declaration, which provides some of the things that are here but allows the HOA to collect the cost of collecting and assessments if people do not pay. Without the word "reasonable," I am not sure there is any ability of the CCICCH or a court to make a determination. You need to have something that says they have to be reasonable; otherwise there is no limit.

SENATOR COPENING:
Mr. Buckley, what looks odd here is new language that for the first time would allow attorney fees and any fees to cover the cost of collecting a past due obligation. To my understanding, this is already in law and allowable, and the provisions we put in cap the amount. It needs to be reasonable, or did I misunderstand something?

MR. BUCKLEY:
No, you are correct about declarations, since HOAs were created allowing the HOAs to collect their costs when they have to pursue a delinquent assessment. The law was changed in the last Session to let the CCICCH limit costs of collection. You are right, this language refers back to the cap in NRS 116.310313, which is not presently there. Without this, HOAs are left to the declaration language.

SENATOR COPENING:
Meaning that without something like this, they can charge whatever they want and gouge a homeowner?

MR. BUCKLEY:
The protection is NRS 116.310313, which requires the CCICCH to set reasonable collection costs it actually requires. Without this, it does not limit HOA collections; this does limit it.

SENATOR BREEDEN:
Mr. Buckley, you mentioned last Session this issue came up and the CCICCH can cap fees. I guess we are here because the CCICCH did not cap fees. Am I correct?

MR. BUCKLEY:
No, the CCICCH held hearings beginning at the end of 2009 in accordance with the statute and held a number of hearings over 2010. In December 2010, the CCICCH came out with a regulation addressing foreclosure fees. It did come up with caps, then the Governor's moratorium on the regulations stopped that regulation. There is a regulation in place, but it was stopped. I am told that now it is back to go before the Legislative Commission. It was heard numerous times in 2010; there was much input and public comment. People thought the fees were too low; some thought they were too high, but the CCICCH did address it.

SENATOR BREEDEN:
Okay, so your new regulation does cap fees; if they are approved, it caps fees moving forward? Yes, no?

MR. BUCKLEY:
Yes, it does.

SENATOR BREEDEN:
My understanding is Senator Copening's whole intent is to assist HOAs as well as homeowners, but my concern is that we have to stop the property management companies from charging all of those fees. Parts of her bill help the HOAs without giving them too much authority I think we are all for that because she is working really hard for that. I hear Senator Kihuen and myself saying the fees are an issue and the power of HOAs has gotten out of hand.

SENATOR COPENING:
To my esteemed colleagues and in my caucus: We did have a conversation the other day, and I did ask to have the sections of the bill identified that were in disagreement. I only hear section 15 being the part in question; if that is the case, I am willing to rescind my motion and accept everything else except section 15. We can have more of a discussion on section 15, perhaps involve people in the working groups so they can fully understand what this is supposed to do. Section 15 limits what property management companies—HOAs, whatever you want to call them, whoever is responsible for charging those fees—what they can charge. I am willing to take this out to see the bill go through because there are so many important measures protecting homeowners in here. If we are getting caught up in this one section, it would be a travesty to see this bill go down for that reason.

CHAIR WIENER:
I am going to base it on what Mr. Buckley shared—that with the debate over reasonable attorney's fees might be what would ensure that cap. I need clarity Mr. Buckley. If we were to remove section 15 from consideration, how would that affect what you are doing and the strong recommendation I sent in the letter to you about coming down even further on recommendations you may make to the Legislative Commission. If you take that out, where are we?

MR. BUCKLEY:
Number 1, if section 15 comes out, there still will be a limit on collection costs under NRS 116.310313, which the CCICCH is required to address by regulation. I would point out, though, that language in subsection 3 of NRS 116.3103115 determines how the superpriority is collected. If this passes, the CCICCH believes there should be less collection costs because the HOA does not have to take as many steps, knowing they get paid if the first deed of trust forecloses. The other thing is that there are situations where we believe some collection companies or HOAs are trying to assert a lien after there has been a foreclosure when they are not entitled to that lien. That amendatory language in subsection 4 is a positive thing that would help clear title following a foreclosure. When people buy at a foreclosure, they would know they paid the superpriority and there are no more liens. That has been subject to dispute.

I would also say that section 15 does allow the superpriority as part of the costs of the superpriority. Without this bill, the issue will still be open and there are courts that have said it is included. There are people who have said it is not included. Life will go on with people taking positions on one side or the other until the Nevada Supreme Court makes a ruling. But this would have clarified it. People will still be paying collection costs as part of the superpriority. The one thing I did think that was helpful were those provisions that measured how it was included and made sure there was no lien after foreclosure.

SENATOR COPENING:
I withdraw my motion.

CHAIR WIENER:
Obviously, there are more things we need to discuss. I am going to roll S.B. 174 to Friday, April 15, to get some answers. I have some questions as well. I will be seeking answers to things that arose during our conversation this morning.

I will open the work session on S.B. 185.

SENATE BILL 185: Makes various changes relating to real property. (BDR 10-23)

sanction that even if you go to nonbinding arbitration, if you appeal an award and you do not get a better decision, that the judge has the ability to award costs to the party who did not prevail.

I do not think we addressed any of items 3, 5 or 6 of the proposed amendments in Exhibit H.

CHAIR WIENER:
Any questions on what has been presented or items 3, 5 or 6? Because this seems like a package deal at this point, I am going to roll any final work we do on S.B. 254 to our work session on Friday, April 15.

The meeting is adjourned at 11:04 a.m.

RESPECTFULLY SUBMITTED:

_____
Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE: _____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 174	C	Linda Eissmann	Work session document
S.B. 185	D	Linda Eissmann	Work session document
S.B. 204	E	Linda Eissmann	Work session document
S.B. 349	F	Senator Steven A. Horsford	Written Testimony
S.B. 349	G	Senator Steven A. Horsford	Update on Crime and Punishment in Nevada and Las Vegas
S.B. 254	H	Linda Eissmann	Work session document

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
April 15, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 7:10 a.m. on Friday, April 15, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Orrin J. H. Johnson, Washoe County Public Defender's Office
Keith Lee, Lawyers Title Insurance Corporation; First American Title Company
Michael Buckley, Commission for Common-Interest Communities and Condominium Hotels
Pamela Scott, Howard Hughes Corporation
Renny Ashleman, City of Henderson

CHAIR WIENER:
We will begin this work session with Senate Bill (S.B.) 103. The State Gaming Control Board brought S.B. 218 as the regulatory agency bill. Senate Bill 103 was brought, and everything from S.B. 103 was moved into S.B. 218, which was passed out of this Committee. One portion of legislation was moved from S.B. 218 into S.B. 103 that dealt with the Live Entertainment Tax. That is what we have before us today.

SENATE BILL 103: Authorizes a licensed interactive gaming service provider to perform certain actions on behalf of an establishment licensed to operate interactive gaming. (BDR 41-828)

SENATE BILL 218: Revises provisions governing the regulation of gaming. (BDR 41-991)

LINDA J. EISSMANN (Policy Analyst):
The amendment you received this morning (Exhibit C) is identical to the amendment in the work session document (Exhibit D), pages 2 through 8.

CHAIR WIENER:
Senate Bill 103 clarifies the Live Entertainment Tax.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 103 AND REREFER TO THE SENATE COMMITTEE ON FINANCE.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR ROBERSON VOTED NO.)

* * * * *

CHAIR WIENER:
We will address S.B. 150, which deals with public storage facilities. I am concerned about protected property and how to ensure that property is kept safe. This includes medical, insurance and financial records. People store their records in boxes, and we want to ensure those records are secure and treated with respect. This will be a model bill for the Country in terms of steps taken to hold people accountable for this important information. Bradley Wilkinson will go over the amendment.

SENATE BILL 356: Establishes the crime of stolen valor. (BDR 15-999)

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 356.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR WIENER:
We will address S.B. 174. We received a mock-up of what we have discussed and paperwork we received (Exhibit I), and we have a work session document (Exhibit J).

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

SENATOR COPENING:
I want to bring your attention to page 25 of Exhibit I. I worked with people for many hours going over this bill to ensure there were no misunderstandings about what the bill does. One of the comments was to make sure we included an amount in the collections portion. The cap of $1,950 appears on page 25 of Exhibit I, line 16, which is the wrong place. This was added to mirror what the Commission on Common-Interest Communities and Condominium Hotels adopted to cap the collection fees. It should be on page 26 of Exhibit I at line 4 in the subsection relating to collection costs, which says this is the maximum that can be collected. Other than that, we reviewed all these things.

CHAIR WIENER:
I sent a letter to Michael Buckley and met with the Chair of the Legislative Commission regarding my concerns about this issue. In my letter, I requested to start at the difference between the measures we considered, which would be $1,500. My intention was to make it lower. I have received a response from Mr. Buckley that will be presented for consideration.

SENATOR KIHUEN:
For the record, under this bill the fees cannot exceed $1,950. We will not have bills of $40,000 and $50,000 for late charges, etc. I want to confirm costs will not exceed $1,950. I would prefer a lower amount, but inserting a cap solves the problem for now because there is no cap.

SENATOR COPENING:
These are the costs a collection company can charge. A homeowners' association (HOA) can retain an attorney to foreclose on a home, for example, and it is part of the superpriority lien. We are not changing law. However, a board of directors of an association can charge whatever they want for attorney fees. Therefore, we included "reasonable" attorney fees. "Reasonable" is defined in statute. The court goes by a median price for attorney's fees, depending on the kind of work the attorney is doing. We wanted to make sure we included the word "reasonable."

SENATOR KIHUEN:
Aside from reasonable attorney fees, will $1,950 be the absolute cap on any other fees?

SENATOR COPENING:
I believe so, but I am not an expert in this area.

KEITH LEE (Lawyers Title Insurance Corporation; First American Title Company):
When a decision is made to issue a notice of default and go forward with a sale, *Nevada Revised Statute* (NRS) 116 requires notice be given to everyone in the chain of title and everyone who has requested special notice of any proceeding against that particular title. We issue a trustee sale guarantee (TSG) that ranges in fees from $290 to $400, depending upon several factors. My understanding was we would be carved out of this cap. In reviewing this, I am not sure we are carved out.

In direct answer to Senator Kihuen's question, the intent was the fee would be capped at $1,950, but the TSG and other items necessary to ensure clear title would be in addition to that. That is what the regulation says. The title fees are capped by the rate schedule filed with the Division of Insurance, Department of Business and Industry.

That would be additional cost if we go forward with the intent during our negotiations and the pending regulation.

SENATOR KIHUEN:
Aside from the $1,950, there would be these additional charges you are discussing, the $290 to $400?

MR. LEE:
Yes. That was the understanding. I do not know if that is still the intent because I do not see that carveout in this mock-up.

MR. WILKINSON:
I was trying to ascertain exactly what the intent was. We are talking specifically about the items included in the superpriority lien, not necessarily the cap on fees set forth in NRS 116.310313. Presumably, those could be different. I have not studied this language carefully enough to determine that. We can do whatever the Committee desires. We can draft this in a manner that would include those costs or not include them.

SENATOR KIHUEN:
I would prefer we cap it at $1,950 with all the fees included. This has been my concern. People are struggling, and these management and collection companies have been abusing people. I want to make sure there is an absolute cap aside from the reasonable attorney fees.

SENATOR COPENING:
Our intent was to mirror the Commission's regulations. The Commission's regulations say collection fees are capped at $1,950. Those are the fees a collection company can charge. The foreclosure process includes other fees, such as title company fees, the collection company is not privy to. Those are costs of doing business the HOA must pay if it is going through the title process. The money does not go into the pockets of the collection companies. I realize now by including what we did in this bill, we are creating an unintended consequence because NRS 116.310313 is the regulation. We thought by making it well known that we did not want collection companies getting more than $1,950, we may be doing the wrong thing regarding other charges that may come with a foreclosure.

If we can pass this, we will fix it on the Senate Floor with whatever you need, Senator Kihuen, to make sure we know collection costs are capped. Anything a collection company can get is capped at $1,950.

MR. LEE:
If it is any solace to you, the way the regulation is written and everyone involved in the collection process agreed, the title company charges—$290 to $350—are absolute charges. No surcharge can be placed on that. Neither the collection agency nor the HOA can bump that amount so as to realize something. The HOA or debt collection agency could do a title search and come up with the names, but title searching is not easy. Title companies have been doing this for years and have a system that works. Most important, they give a guarantee, the TSG, that the information they have is correct. They insure that up to a certain amount, usually in the range of $50,000. There is recourse if a mistake is made so there is no cloud on title. There is no risk that sometime down the road there might be a break in the chain of title causing difficulty with the way the title goes forward.

MR. WILKINSON:
This provision in Exhibit I, page 25, line 10 refers to the "cost of collecting a past due obligation which are imposed pursuant to NRS 116.310313." *Nevada Revised Statute* 116.310313 states:

> "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation ... .

This type of fee would be included in that definition and would therefore be included within the $1,950 cap.

SENATOR ROBERSON:
It is unclear to me where this language should be. If we are being asked to vote on this now, it would help to see where the language should be.

I received an e-mail the day before yesterday regarding a friend who lives in Anthem. We have a serious problem with collection agencies. This person bought an existing home in Anthem nine years ago. The original owner lived in the home and had landscaping installed. When my friend moved in, he received a notice from the HOA requiring a landscaping plan. He said he did not have one because he bought an existing home with landscaping. He was assessed a fine of $400. That is the only documentation he received from the HOA or management company for nine years. He went to pay off the loan on his home and received a letter from Associated Community Management wherein that $400 is now $27,827. This is a problem.

The proposed language does nothing to prevent this problem because it appears the $1,950 cap does not include reasonable attorney fees. The word "reasonable" does not give me a lot of comfort. I do not see where management or collection companies would be prevented from continuing to charge large amounts of money for attorney's fees, whether they are attorneys or they hire an attorney. I do not see how this closes that hole allowing management and collection companies to charge outrageous fees.

I asked the other day if S.B. 195 was going to be heard for a vote. I was told no, we are not going to institute caps because the regulators are going to handle that. I am confused because we have a cap of sorts in S.B. 174. In this case, we are not waiting for the regulators to make this decision. I do not understand that.

SENATE BILL 195: Revises provisions relating to the costs of collecting past due financial obligations in common-interest communities. (BDR 10-832)

SENATOR COPENING:
You are right. We did say we were not going to do that. I am open to removing it. I was working with some of my colleagues who wanted that. We wanted to make sure it could not be raised, but our intent was to lower it. That was important to Senator Kihuen. We can take it out, but I do not want to do that without Senator Kihuen. That was where his comfort level was.

SENATOR ROBERSON:
The point is, we are not being consistent. When it comes to Senator Elizabeth Halseth's bill, we want to wait for the regulators to decide. When it comes to your bill, it is okay to put in the cap. I have a problem with this.

SENATOR KIHUEN:
Page 26, lines 3 and 4 of the mock-up, Exhibit I, say, "... any reasonable attorney's fees and other fees to cover the cost of collecting a past due obligation ... ." If we were to put in this cap of $1,950, would it cover those fees?

MR. WILKINSON:
As Senator Copening pointed out, that language would fit better on line 5, page 26 of Exhibit I. If the cap was there, it would include attorney's fees and other fees to cover the cost of collecting. We would have to be careful of the wording and make it clear on the record. It refers specifically to NRS 116.310313. I would read those things together to mean everything authorized under NRS 116.310313 would be capped at $1,950.

SENATOR KIHUEN:
That is my concern. We agreed on the reasonable attorney's fees. Many attorneys have abused the word "reasonable." I am not comfortable with the other fees. If the $1,950 cap would cover these other fees, it would make me feel better. It would not please me 100 percent, but I just want to make sure the cap will cover those fees.

MR. WILKINSON:
It is important to make it clear on the record regarding the amount of the superpriority with respect to attorney's fees and all costs if the intent is to cap it at $1,950. We can draft that in a manner to make it clear.

CHAIR WIENER:
Are the other fees concerning you because the bill says reasonable attorney's fees and other fees? It is the other fees you want addressed in the $1,950?

SENATOR KIHUEN:
Yes.

CHAIR WIENER:
Reasonable attorney's fees would be separate?

SENATOR KIHUEN:
Other fees are not defined.

MICHAEL BUCKLEY (Commission for Common-Interest Communities and Condominium Hotels):
Mr. Wilkinson is clear that if the $1,950 is moved to page 26 of Exhibit I, it would be everything. It would include title costs, attorney's fees and everything within the $1,950. It would be an absolute cap. That is not the same as the Commission. As Mr. Lee pointed out, the Commission distinguished between out-of-pocket amounts—the recorder's fees, title fees, etc. We included those as separate costs because of the concern that anything not recovered comes back to the other owners who are paying their dues and would be picking up the slack for those who are delinquent.

SENATOR COPENING:
We have established we are okay with keeping the reasonable attorney's fees separate. We are concerned about the other fees that are undefined. Since we know the other fees could be passed along to all the homeowners, what are they?

PAMELA SCOTT (Howard Hughes Corporation):
The other fees were probably included to address the $200 that can go to a management company for preparing a file to turn over to collection. That would come under the $1,950. I understand Mr. Lee's concerns, and the associations should have the same concerns because it does cost to record and send registered mail. That is a hard cost. It does not go to the collection company. The association will have to eat that cost if it is included in the $1,950.

SENATOR ROBERSON:
Mr. Buckley is under the impression the $1,950 would include reasonable attorney's fees, or it would include attorney's fees generally. Senator Copening is saying it would not; that would be outside of the $1,950. We are not all comfortable with that. We need to get a handle on who is correct in the interpretation of this amendment.

CHAIR WIENER:
That is what we are deciding. They will take their lead from whatever we decide to include in this amount. Based on the conversation we just had regarding Senator Kihuen's concern about other add-on fees, reasonable attorney's fees would be outside that. As we discussed in Committee, the word "reasonable" is not addressed. That is where some of the egregious charges come from. There are legal standards for "reasonable." Courts have evaluated what "reasonable"

should be. We added "reasonable," which we have not had before. Is your concern the hard cap of collection and other fees and "reasonable" attorney's fees being outside the cap?

SENATOR KIHUEN:
Yes. Ideally, I would want to cap 100 percent of everything, but I understand a definition for "reasonable" attorney's fees is in statute. I am not happy with the $1,950. I would prefer a lower amount. Some fees in the regulation—$150 for a lien letter and $400 for a notice of default—could be lower. There is no cap now. I would rather have something than nothing in this bill.

SENATOR ROBERSON:
I hear the argument that if these fees are charged and a collection company is not able to collect on them, all the other homeowners who are paying their dues would have to absorb those costs. That misses the point. We should be looking at the HOA management companies and boards. The boards have a fiduciary duty to the residents of their communities. They need to do a better job in negotiating agreements with collection companies so the law-abiding homeowners are not stuck with the bill. We are looking at the wrong issue when we say bills like this will protect the homeowners who pay their dues. That makes no sense.

A judge will decide whether attorney's fees are reasonable. If a homeowner gets stuck with a $27,000 lien, does he or she have to hire an attorney and go to court to argue with the collection company over whether its attorney's fees are reasonable? For practical purposes, how often will a homeowner be able to do that? Will the homeowner have to take it because he or she does not have the money to argue their position in court? I can assure you, the collection company attorneys have the money. They can tie this up in court forever. It is more and more put on the backs of homeowners. The word "reasonable" attorney's fees does not give me a lot of comfort because the homeowners will ultimately have to fight that in court.

The superpriority question seems to be the big issue. It is being proposed we codify that the fees, potentially the attorney's fees, have a superpriority lien. It is my understanding this issue is being debated in the courts. I am concerned because the collection companies want this bill. I would like Chris Ferrari's comments about this new language we have just seen.

CHAIR WIENER:
We have had debate on this issue. This is probably the only new language putting in a cap, and there are often caps in statute. I do not want to rehear a bill. We need to move forward. We have had two days of hearings on this and a day of hearing on each other bill.

SENATOR ROBERSON:
Senator Copening, how do you see this working if a homeowner gets a bill for $27,000 or $2,700, and it includes attorney's fees? How is that homeowner supposed to dispute whether those attorney's fees are reasonable? Must they hire an attorney and spend more in legal fees to argue with other attorneys about whether those attorney's fees are reasonable?

SENATOR COPENING:
We wanted to make sure the word "reasonable" was included regarding attorney's fees so HOAs, boards and management companies could not go crazy with attorney's fees. Including "reasonable" attorney's fees is a protection for homeowners.

The Commission adopted caps that must be approved by the Legislative Commission. Those caps will preclude costs of collection from being more than $1,950. Our Chair sent a letter to the Commission saying this Committee is not satisfied with that and would like a lower cap. I expect the Chair of the Commission will take that into consideration and probably hold additional hearings. *Nevada Revised Statute* 116 allows aggrieved homeowners to go before the Commission, and it includes many steps—mediation and arbitration—at no or very low cost. We are trying to include these caps so egregious fees do not occur.

Originally in this bill, we struck the first section. The first section included an extra step of due process by allowing a homeowner to appeal to the Commission if he or she received an unfavorable ruling from the Ombudsman's Office. We received approximately 15 e-mails from people who did not like section 1. We tried to do what the homeowners wanted, and we struck section 1. Administrator Gail J. Anderson from the Real Estate Division created a bill allowing that extra due process because it is good for homeowners. Attorney's fees are part of the superpriority. People do not like it, and it is being disputed in court.

SENATOR ROBERSON:
Where are attorney's fees already part of the superpriority in this statute?

SENATOR COPENING:
It is not in my bill. It is already in the law.

SENATOR ROBERSON:
Where, other than new language, does it say attorney's fees?

MR. BUCKLEY:
There is a decision in the Eighth Judicial District Court that attorney's fees and collection costs are part of the superpriority. There are a number of lawsuits dealing with this issue. There are decisions on both sides. It will not be settled until the Nevada Supreme Court makes a decision or this legislation addresses it. We are only talking about the superpriority. In cases of a delinquency, the association will most likely be paid when the lender forecloses. Senator Roberson's issue of the fine is not addressed in this bill; it is a separate issue. It cannot be foreclosed. It is a lien but cannot be foreclosed.

To put this into context, S.B. 254, which would create mediation at a reduced cost and speedy arbitration, would create a forum where people could use the Real Estate Division or speedy arbitration to resolve an issue on attorney's fees. But remember, fines cannot be imposed unless a hearing is held with due process. If there was not a hearing, a fine would not be right. This bill only deals with the superpriority amount, and it would include everything capped at $1,950.

SENATOR ROBERSON:
This is about superpriority. Attorney's fees are not included in superpriority in statute. As Mr. Buckley pointed out, this issue is being litigated in the courts. What we are doing today is fundamentally changing statutory law to allow attorney's fees in the superpriority lien. For those of you on this Committee who are concerned about homeowners being stuck with attorney's fees in the superpriority, this does not help. This statutorily blows a hole wide open to allow attorney's fees whether reasonable or not. We can debate that. But for the first time, we are allowing attorney's fees to be included in the superpriority lien by statute. That is my problem with this bill.

SENATOR COPENING:
It is law that they are awarded. I will point to the e-mail sent about Paradise Spa in Senator Roberson and Senator Breeden's district. The HOA was raided. An investor bought the majority of the units. He foreclosed on them. He stopped paying his assessments before foreclosing approximately two years ago. Paradise Spa, which is mostly senior citizens, is nearly broke. On April 18, the gas, which is on one meter owned by this investor, will be shut off. The residents got an extension. It was supposed to be shut off on April 8 in 261 units where mostly senior citizens live.

I have stayed on top of this to ensure these senior citizens are not out on the street. The unpaid assessments are nearly $1 million. This facility has gone downhill. In a few days, the gas will be turned off. I do not know when these people will be evicted. They have accumulated significant fees. They are chasing past due amounts of nearly $1 million, and their collection costs are way beyond $1,950. They had to enlist the help of an attorney to get this investor out of their unit. He has been arrested. These people do not have the money to come up with $1 million and pay the gas bill of $41,000. The gas will be turned off unless people help them. If you take this away, they are done. These are your constituents, Senator Roberson.

SENATOR ROBERSON:
That is a complete red herring. There is allegedly criminal activity going on. We do not need this statute to deal with that. I do not see how this statute helps that situation. They are my constituents, but that is a false argument.

RENNY ASHLEMAN (City of Henderson):
The mock-up includes language never discussed that is contrary to my agreement with the working committee. The working committee agreed to the language, "unless a person has accepted the responsibility." On page 11 of Exhibit I, section 6, subsection 1 says, "... unless a governmental entity has accepted responsibility ... ." This is a concern to the City of Henderson. It should say "person" rather than "governmental entity." These walls are not on our property. They are not our responsibility. We were only interested in the issue because they were a safety concern on our right-of-way.

CHAIR WIENER:
That was agreed to.

MR. ASHLEMAN:
It was agreed to. The language in lines 24 through 27 on page 11 of Exhibit I was not agreed upon by anyone and does not appropriately describe the relationship between the people. There are thousands of these walls. You can imagine us having to accept or deny responsibility for interior walls. We did not build them. They are not on our property. We did not ask anyone to do anything about them. Please remove that language.

CHAIR WIENER:
You want the word "person" at line 14 on page 11 of Exhibit I?

MR. ASHLEMAN:
Yes. I do not want the new language on page 11 of Exhibit I, lines 24 through 27.

MR. WILKINSON:
This is an important distinction, and it is a drafting issue. It needs to be clear. The term "person" as used in NRS does not include a governmental entity unless we specifically state that it does. If the desire is to exclude "governmental entity," the effect of using the term "person" would be to entirely exclude "governmental entities" unless we said "person," and then we further said as used in the statute that a "person" includes a "governmental entity."

CHAIR WIENER:
My understanding was that sometimes a municipality does need to get involved. Sometimes, it is the complex itself. I do not remember entirely excluding a municipality. It would be if it is appropriate to bring in the municipality; if it is appropriate, it is the complex. It was not just one or the other.

MR. ASHLEMAN:
I have no objection to using the word "person or other entity." Would that pick up the municipalities?

SENATOR COPENING:
You are right. This is wrong. We took all the amendments we went through the other day and asked our legal staff to include them in a mock-up. They misunderstood, and we got it this morning. I can see there are things missing in the portion saying, "not the responsibility of the unit owner." It is not in here.

There are mistakes. I apologize. Did you review the amendments we went through?

MR. ASHLEMAN:
Yes.

SENATOR COPENING:
Were they good?

MR. ASHLEMAN:
I had agreed to the one Mr. Buckley presented.

SENATOR COPENING:
That is what was supposed to be in Exhibit I. We will fix this section. If Exhibit I does not match up to the amendments we reviewed two days ago, we need to match them so we do not include something incorrect.

CHAIR WIENER:
In the work session, we went through item by item what the parties agreed to.

SENATOR MCGINNESS:
You recognize the problem, but everyone who has a part in this has not been able to come to the table. We got this amendment this morning just like Mr. Ashleman. I am concerned we will try to fix it on the Senate Floor or fix it in the other House. That makes me nervous.

CHAIR WIENER:
I am ready for a motion on the bill with the amendments as we discussed in our work session document, Exhibit J. We walked through each one two days ago with the addition of the cap. We need clarity on the $1,950 cap on page 26 of Exhibit I, "any reasonable attorney's fees" and capping all other fees at $1,950. Is that the intention?

SENATOR BREEDEN:
There is nothing in statute; it is just status quo. We have heard from many constituents who have been affected by these escalated fees. We need a starting place to help our constituents. This is a good start.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 174.

SENATOR COPENING SECONDED THE MOTION.

SENATOR KIHUEN:
For the record, I will support this bill now because it puts a cap on the fees. I am not 100 percent comfortable with the cap, but it is better than the status quo. I reserve my right to change my vote on the floor. I want to consult further with my constituents who will be directly impacted by this bill before I vote on the Senate Floor.

SENATOR ROBERSON:
This is not a good start. It is a step backward because under the statute, there is no provision allowing attorney's fees to be included within the superpriority lien. Today, we are taking a step in the wrong direction by allowing attorney's fees, for the first time in statute, to be part of the superpriority lien.

THE MOTION CARRIED. (SENATORS GUSTAVSON, McGINNESS AND ROBERSON VOTED NO.)

*****

CHAIR WIENER:
We will address S.B. 185. We have a work session document (Exhibit K). I am requesting a one-week waiver.

SENATE BILL 185: Makes various changes relating to real property. (BDR 10-23)

SENATOR COPENING MOVED TO REQUEST A ONE-WEEK WAIVER FROM SENATE LEADERSHIP ON S.B. 185.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR WIENER:
Is there any public comment? There being nothing further to come before the Committee, we are adjourned at 8:33 a.m.

RESPECTFULLY SUBMITTED:

_____
Kathleen Swain,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE:_____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 103	C	Linda Eissmann	Proposed Amendment 6332 to SB 103
S.B. 103	D	Linda Eissmann	Work Session Document
S.B. 150	E	Bradley A. Wilkinson	Work Session Document
S.B. 283	F	Linda Eissmann	Work Session Document
S.B. 347	G	Linda Eissmann	Work Session Document
S.B. 356	H	Valerie Wiener	Work Session Document
S.B. 174	I	Senator Valerie Wiener	Proposed Amendment 6328
S.B. 174	J	Senator Valerie Wiener	Work Session Document
S.B. 185	K	Senator Valerie Wiener	Work Session Document
S.B. 204	L	Senator Valerie Wiener	Work Session Document
S.B. 254	M	Senator Valerie Wiener	Work Session Document
S.B. 254	N	Senator Valerie Wiener	Proposed Amendment 6327

(Reprinted with amendments adopted on April 26, 2011)

FIRST REPRINT **S.B. 174**

SENATE BILL NO. 174–SENATOR COPENING

FEBRUARY 17, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-105)

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 concerning the removal or abatement of a public nuisance on the exterior of a unit under certain circumstances; revising provisions relating to elections for members of an executive board; revising provisions concerning the removal of members of an executive board; revising provisions governing meetings of units' owners and meetings of an executive board; revising provisions governing the maintenance and repair of walls within a common-interest community; revising insurance and bond requirements for unit-owners' associations and community managers; revising provisions relating to the maintenance and investment of association funds; revising provisions concerning the assessment of certain common expenses against a unit's owner; revising provisions governing the withdrawal of money from the operating account of an association; revising provisions concerning liens on a unit for certain assessments, charges and fees; prohibiting a unit's owner from engaging in certain threatening conduct or retaliatory actions; revising provisions governing the award of punitive damages in certain circumstances; revising provisions governing management agreements and community managers; exempting certain associations from the requirement to obtain a state business license; making various other changes relating to common-interest communities;

requiring the Legislative Commission to appoint a subcommittee to study the laws and regulations governing common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 3 of this bill revises the circumstances under which the employees or agents of a unit-owners' association may enter the grounds of a unit which is being foreclosed to abate a nuisance.

Section 4 revises the procedures for the election of members of the executive board when the number of nominations for such membership is equal to or less than the number of members to be elected.

Under existing law, a member of the executive board may be removed from the executive board if the number of votes cast equals at least 35 percent of the total number of voting members of the association and the majority of all votes cast are cast in favor of removal. (NRS 116.31036) **Section 5** of this bill requires the number of votes cast in favor of removal to be at least 35 percent of the total number of voting members of the association and a majority of the votes cast.

Section 6 of this bill revises provisions governing the responsibility to maintain or repair walls within a common-interest community.

Existing law requires notice of a meeting of the executive board to be provided to the units' owners, except in an emergency. (NRS 116.31083) Under **section 8** of this bill, if a meeting of the executive board will consist only of an executive session, the association is not required to provide notice of the meeting to the units' owners. Such a meeting is subject to existing law governing executive sessions and, at its next regular meeting, the executive board must disclose that it met in executive session and must state the general subject matter of the meeting. **Section 8** also authorizes an association to comply with the requirement to include an agenda with a notice of an executive board meeting by stating on the notice that the agenda will be sent at the request of a unit's owner to the electronic mail address of the unit's owner.

Existing law requires the minutes of meetings of the units' owners and the executive board to be provided to any unit's owner upon request and at no charge if those minutes are provided in electronic format. **Sections 7 and 8** of this bill require those minutes to be provided at no charge if provided by electronic mail.

Section 9 of this bill authorizes an executive board to meet in executive session: (1) to discuss the alleged misconduct or professional competence of an association vendor; and (2) to discuss with the vendor the vendor's alleged misconduct, professional competence or failure to perform under a contract.

Existing law requires an applicant for a certificate as a community manager, or the employer of that applicant, to post a bond in a certain form and amount. (NRS 116A.410) **Sections 10 and 19** of this bill remove this requirement and require an association to provide crime insurance that includes coverage for dishonest acts by certain persons.

Section 11 of this bill: (1) revises provisions governing the deposit, maintenance and investment of association funds; and (2) exempts petty cash and change funds from the requirement to deposit all association funds in certain financial institutions. **Section 13** of this bill requires the executive board to make available to each unit's owner the policy for the investment of association funds at the same time and in the same manner as the budget is made available to the units' owners.

Section 12 of this bill amends provisions concerning the imposition of interest charges on late assessments to provide that: (1) interest may, but is not required to, accrue; and (2) interest may accrue at a rate less than the rate specified in statute.

Section 14 of this bill authorizes money in the operating account of an association to be withdrawn without the required signatures to make certain electronic transfers of money.

Existing law provides that an association has a lien on a unit for certain charges imposed against a unit's owner. (NRS 116.3116) **Section 15** of this bill revises provisions governing the amount of the association's lien which is entitled to priority over the first security interest on the unit.

Existing law prohibits a member of the executive board of an association, a community manager and officers, employees and agents of an association from taking, or directing or encouraging, retaliatory action against a unit's owner under certain circumstances. (NRS 116.31183) **Section 16** of this bill prohibits a unit's owner from taking, or directing or encouraging, retaliatory action against a member of the executive board, an officer, employee or agent of an association, or another unit's owner under certain circumstances. **Section 16** also prohibits a unit's owner from making certain threats against a member of the executive board, an officer, agent or employee of the association or another unit's owner.

Section 18 of this bill adds community managers to a prohibition against punitive damages being awarded in certain circumstances.

Section 20 of this bill revises the requirements for management agreements entered into between an association and a community manager, including, without limitation, removing the requirement that the management agreement include provisions for dispute resolution. **Section 20** also requires a community manager to transfer the electronic books, records and papers of a client in a certain manner.

Section 21 of this bill revises the duty of a community manager to deposit, maintain and invest association funds so that such activities must be performed at the client's direction.

Existing law exempts nonprofit corporations from the requirement to obtain a state business license. (NRS 76.020, 76.100) **Sections 22 and 23** of this bill exempt from this requirement associations which are organized as certain other types of nonprofit or cooperative organizations.

Section 24 of this bill requires the Legislative Commission to appoint a subcommittee consisting of three members of the Senate and three members of the Assembly to conduct a study during the 2011-2013 interim concerning the laws and regulations governing common-interest communities.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. NRS 116.310312 is hereby amended to read as follows:

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

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

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

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions if the unit's owner refuses or fails to take any action or comply with any requirement imposed on the unit's owner within the time specified by the association as a result of the hearing:

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

(b) Remove or abate a public nuisance on the exterior of the unit which ~~[:]~~ ***adversely affects the use and enjoyment of any nearby unit and:***

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

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

(3) Results in blighting or deterioration of the unit or surrounding area ***.*** ~~[; and~~

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

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

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

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

6. Except as otherwise provided in this subsection, a lien described in subsection 4 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116. If the federal regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.

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

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

9. As used in this section:

(a) "Exterior of the unit" includes, without limitation, all landscaping outside of a unit and the exterior of all property exclusively owned by the unit owner.

(b) "Vacant" means a unit:

(1) Which reasonably appears to be unoccupied;

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

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

Sec. 4. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, all of whom must be units' owners. The executive board shall elect the officers of the association. Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners. The members of the executive board and the officers of the association shall take office upon election.

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

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

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

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

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

5. ~~[Before the secretary or other officer specified in the bylaws of the association causes notice to be given to each unit's owner of his or her eligibility to serve as a member of the executive board pursuant to subsection 4,]~~ ***Unless*** the executive board ~~[may determine that]~~ ***determines otherwise,*** if, at the closing of the prescribed period for nominations for membership on the executive board, the number of candidates nominated for membership on the executive board is equal to or less than the number of members to be elected to the executive board at the election ***:*** ~~[, then the secretary or other officer specified in the bylaws of the association will cause notice to be given to each unit's owner informing each unit's owner that:]~~

(a) The association ~~[will not]~~ ***may*** prepare or mail ~~[any]~~ ballots to units' owners pursuant to this section ~~[and the]~~ ***;***

(b) The nominated candidates shall be deemed to be duly elected to the executive board ~~[unless:~~

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

~~(2) The number of units' owners who submit such a nomination causes the number of candidates nominated for~~

~~membership on the executive board to be greater than the number of members to be elected to the executive board.~~

~~(b) Each unit's owner who is qualified to serve as a member of the executive board may nominate himself or herself for membership on the executive board by submitting a nomination to the executive board within 30 days after the notice provided by this subsection.~~**]** ***effective at the beginning of the next regularly scheduled meeting of the executive board following the expiration of the terms of the previous members of the executive board;***

(c) The disclosures of the nominated candidates required by subsection 7 must be made available to a unit's owner upon his or her request at no charge; and

(d) Not less than 10 days before the next regularly scheduled meeting of the executive board, the association must send to each unit's owner notification that the candidates nominated have been elected to the executive board.

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

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

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

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

~~7.~~**]** If **,** ~~**[**the notice described in subsection 5 is given and if,~~**]** at the closing of the prescribed period for nominations for membership on the executive board **,** ~~**[**described in subsection 5,~~**]** the number of candidates nominated for membership on the executive board is greater than the number of members to be elected to the executive board, then the association ~~**[**shall:~~**]** ***must:***

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

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

~~**[**8.~~**]** ***7.*** Each person who is nominated as a candidate for a member of the executive board pursuant to subsection 4 ~~**[**or 5~~**]** must:

(a) Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict

of interest for the candidate if the candidate were to be elected to serve as a member of the executive board; and

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

➥ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his or her candidacy information. Except as otherwise provided in this subsection, the association shall distribute the disclosures, on behalf of the candidate, to each member of the association with the ballot or, in the event ballots are not prepared and mailed pursuant to subsection ~~[6,]~~ ***5,*** in the next regular mailing of the association. The association is not obligated to distribute any disclosure pursuant to this subsection if the disclosure contains information that is believed to be defamatory, libelous or profane.

~~[9.]~~ ***8.*** Unless a person is appointed by the declarant:

(a) A person may not be a member of the executive board or an officer of the association if the person, the person's spouse or the person's parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

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

(1) That master association; or

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

~~[10.]~~ ***9.*** An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, the person shall file proof in the records of the association that:

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

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

10. Except as otherwise provided in subsection ~~[6]~~ ***5*** or NRS 116.31105, the election of any member of the executive board must be conducted by secret written ballot in the following manner:

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

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

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

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

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

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

~~[12.]~~ ***11.*** An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in the candidate's campaign for election as a member of the executive board, except that the candidate's campaign may be limited to 90 days before the date that ballots are required to be returned to the association. A candidate may request that the secretary or other officer specified in the bylaws of the association send, 30 days before the date of the election and at the association's expense, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner a candidate informational statement. The candidate informational statement:

(a) Must be no longer than a single, typed page;

(b) Must not contain any defamatory, libelous or profane information; and

(c) May be sent with the secret ballot mailed pursuant to subsection ~~[11]~~ ***10*** or in a separate mailing.

➥ The association and its directors, officers, employees and agents are immune from criminal or civil liability for any act or omission

which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to this subsection.

~~[13.]~~ ***12.*** Each member of the executive board shall, within 90 days after his or her appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that the member has read and understands the governing documents of the association and the provisions of this chapter to the best of his or her ability. The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158.

Sec. 5. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section ~~[:~~

~~(a) The]~~ ***, the*** number of votes cast ***in favor of removal*** constitutes ~~[at]~~ ***:***

(a) At least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election ***.*** ~~[are cast in favor of removal.]~~

2. ***A removal election may be called by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. To call a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this subsection and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If a removal election is called pursuant to this subsection and:***

(a) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to this section:

(1) The secret written ballots for the removal election must be sent in the manner required by this section not less than 15 days or more than 60 days after the date on which the petition is received; and

(2) The executive board must set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots and not later than 90 days after the date on which the petition was received.

(b) The voting rights of the owners of time shares will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board must set the date for the removal election so that the removal election is held not less than 15 days or more than 90 days after the date on which the petition is received.

➥ The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.

3. Except as otherwise provided in NRS 116.31105, the removal of any member of the executive board must be conducted by secret written ballot in the following manner:

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

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

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

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

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

~~[3.]~~ ***4.*** If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his or her role as a member of the board, the association shall indemnify the member for his or her losses or claims, and undertake all costs of defense, unless it is proven that the member acted with willful or wanton misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. ~~[Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against:~~

~~(a) The association;~~

~~(b) The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board; or~~

~~(c) The officers of the association for acts or omissions that occur in their capacity as officers of the association.~~

~~4. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.~~]

Sec. 6. NRS 116.31073 is hereby amended to read as follows:

116.31073 1. Except as otherwise provided in subsection 2 and NRS 116.31135, [~~the association is responsible~~] ***unless a person or governmental entity has accepted responsibility in writing*** for the maintenance, repair, restoration and replacement of [~~any security~~] ***a*** wall which is located within [~~the~~] ***a*** common-interest community [~~.~~

~~2. The provisions of this section do not apply if the governing documents provide that a unit's owner or an entity other than the association~~] ***or any part thereof, the owner of the real property on which the wall is located or any other person specified in the governing documents of the common-interest community*** is responsible for the maintenance, repair, restoration and replacement of the [~~security~~] wall.

[~~3. For the purpose of carrying out the~~]

2. Any maintenance, repair, restoration [~~and~~] ***or*** replacement of a [~~security~~] wall [~~pursuant to this section:~~

~~(a) The association, the members of its executive board and its officers, employees, agents and community manager may enter the grounds of a unit after providing written notice and, notwithstanding any other provision of law, are not liable for trespass.~~

~~(b) Any such maintenance, repair, restoration and replacement of a security wall must be performed:~~

~~(1) During normal business hours;~~

~~(2) Within a reasonable length of time; and~~

~~(3) In a manner that does not adversely affect access to a unit or the legal rights of~~] ***that is performed because of any damage caused by the willful or negligent act of*** a unit's owner [~~to enjoy the use of his or her unit.~~

~~(c) Notwithstanding any other provision of law, the executive board is prohibited from imposing an assessment without obtaining prior approval of the units' owners unless the total amount of the assessment is less than 5 percent of the annual budget of the association.~~

~~4. As used in this section, "security wall" means any wall composed of stone, brick, concrete, concrete blocks, masonry or~~

~~similar building material, including, without limitation, ornamental iron or other fencing material, together with footings, pilasters, outriggers, grillwork, gates and other appurtenances, constructed around the perimeter of a residential subdivision with respect to which a final map has been recorded pursuant to NRS 278.360 to 278.460, inclusive, to protect the several tracts in the subdivision and their occupants from vandalism.~~**]** ***, a tenant or an invitee of the unit's owner or tenant is the responsibility of the unit's owner.***

Sec. 7. NRS 116.3108 is hereby amended to read as follows:

116.3108 1. A meeting of the units' owners must be held at least once each year. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

2. Special meetings of the units' owners may be called by the president, by a majority of the executive board or by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. **[**~~The same number of units' owners may also call a removal election pursuant to NRS 116.31036.~~**]** To call a special meeting **,** **[**~~or a removal election,~~**]** the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this section and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. **[**~~If the petition calls for a special meeting, the~~**]** ***The*** executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received **[**~~. If the petition calls for a removal election and:~~

~~(a) The voting rights of the owners of time shares will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 60 days after the date on which the petition is received; or~~

~~(b) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to NRS 116.31036, the secret written ballots for the removal election must be sent in the manner required by NRS 116.31036 not less than 15 days or more than 60 days after the date on which the petition is received, and the executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots.~~

~~.~~] ***, the request for a special meeting is received from the president or the vote of the majority of the executive board to call a special meeting, whichever is applicable.*** The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be hand-delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request, ~~[in]~~ ***by*** electronic ~~[format]~~ ***mail*** at no charge to the unit's owner or, if the association is unable to provide the copy or summary ~~[in]~~ ***by*** electronic ~~[format,]~~ ***mail,*** in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

4. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

6. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection, a copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request, ~~[in]~~ ***by*** electronic ~~[format]~~ ***mail*** at no charge to the unit's owner or, if the association is unable to provide the copy or summary ~~[in]~~ electronic ~~[format,]~~ ***mail,*** in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

7. Except as otherwise provided in subsection 8, the minutes of each meeting of the units' owners must include:

(a) The date, time and place of the meeting;

(b) The substance of all matters proposed, discussed or decided at the meeting; and

(c) The substance of remarks made by any unit's owner at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

8. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

9. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

10. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his or her intent to record the meeting to the other units' owners who are in attendance at the meeting.

11. The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

Sec. 8. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every quarter, and not less than once every 100 days and must be held at a time other than during standard business hours at least twice annually.

2. Except ***as otherwise provided in subsection 3 or*** in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

(a) Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;

(b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or

(c) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. ***If a meeting of the executive board will consist only of the executive board meeting in executive session, the secretary or other officer specified in the bylaws of the association is not required to cause notice of the meeting to be given to the units' owners. Such a meeting is subject to the provisions of subsections 2 to 7, inclusive, of NRS 116.31085. At the next regular meeting of the executive board, the executive board shall disclose that the executive board met in executive session pursuant to this subsection and state the general subject matter of the meeting.***

4. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

~~[4.]~~ ***5.*** The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting ***,*** ~~[or]~~ the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners ~~[.]~~ ***or, if the association offers to send notice of a meeting of the executive board by electronic mail, a statement that an agenda will be sent by electronic mail at the request of a unit's owner to an electronic mail address designated in writing by the unit's owner.*** The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the audio recording, the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request, ~~[in]~~ ***by*** electronic ~~[format]~~ ***mail*** at no charge to the unit's owner or, if the association is unable to provide the copy or summary ~~[in]~~ ***by*** electronic ~~[format,]~~ ***mail,*** in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

~~[5.]~~ ***6.*** The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. A period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for both the beginning and the end of each meeting. During the period devoted to comments by the units' owners and discussion of those comments at the beginning of each meeting, comments by the units' owners and discussion of those comments must be limited to items listed on the agenda. In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

~~[6.]~~ ***7.*** At least once every quarter, and not less than once every 100 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

(a) A current year-to-date financial statement of the association;

(b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;

(c) A current reconciliation of the operating account of the association;

(d) A current reconciliation of the reserve account of the association;

(e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and

(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

~~[7.]~~ ***8.*** The secretary or other officer specified in the bylaws shall cause each meeting of the executive board to be audio recorded and the minutes to be recorded or otherwise taken at each meeting of the executive board, but if the executive board is meeting in executive session, the meeting must not be audio recorded. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the audio recording of the meeting, the minutes of the meeting and a summary of the minutes of the meeting to be made available to the units' owners. Except as otherwise provided in this subsection, a copy of the audio recording, the minutes or a summary of the minutes must be provided to any unit's owner upon request, ~~[in]~~ ***by*** electronic ~~[format]~~ ***mail*** at no charge to the unit's owner or, if the association is unable to provide the copy or summary ~~[in]~~ ***by*** electronic ~~[format,]~~ ***mail,*** in paper format at a cost not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

~~[8.]~~ ***9.*** Except as otherwise provided in subsection ~~[9]~~ ***10*** and NRS 116.31085, the minutes of each meeting of the executive board must include:

(a) The date, time and place of the meeting;

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting;

(d) A record of each member's vote on any matter decided by vote at the meeting; and

(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if the unit's owner requests that the minutes reflect his or her remarks or, if the unit's owner has prepared written remarks, a copy of his or her prepared remarks if the unit's owner submits a copy for inclusion.

~~[9.]~~ ***10.*** The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

~~[10.]~~ ***11.*** The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

~~[11.]~~ ***12.*** A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the

unit's owner, before recording the meeting, provides notice of his or her intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

~~[12.]~~ ***13.*** As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 9. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to open or consider bids for an association project as defined in NRS 116.31086, or to enter into, renew, modify, terminate or take any other action regarding a contract.

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive.

(b) Discuss the character, alleged misconduct ~~[,]~~ ***or*** professional competence ~~[, or physical or mental health]~~ of a community manager ***,*** ~~[or]~~ an employee of the association ~~[.]~~ ***or a vendor who has entered into a contract with the association.***

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

(e) Discuss with a vendor of the association the vendor's alleged misconduct, professional competence or failure to perform under a contract.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board.

If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:

(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses;

(b) Is entitled to due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the hearing panel; and

(c) Is not entitled to attend the deliberations of the executive board.

5. The provisions of subsection 4 establish the minimum protections that the executive board must provide before it may make a decision. The provisions of subsection 4 do not preempt any provisions of the governing documents that provide greater protections.

6. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to the person's designated representative.

7. Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 10. NRS 116.3113 is hereby amended to read as follows:

116.3113 1. Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available ~~[, both of the following:]~~ ***and subject to reasonable deductibles:***

(a) Property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against ~~[all]~~ risks of direct physical loss commonly insured against ~~[or, in the case of a converted building, against fire and extended coverage perils. The total amount of]~~ ***, which*** insurance after application of any deductibles must be not less than 80 percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies ***;*** ~~[.]~~

(b) ~~[Liability]~~ ***Commercial general liability*** insurance, including insurance for medical payments, in an amount determined by the

executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for ~~[~~death,~~]~~ bodily injury ~~[~~,~~]~~ and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units ~~[~~.~~]~~ ***; and***

(c) Crime insurance which includes coverage for dishonest acts by members of the executive board and the officers, employees, agents, directors and volunteers of the association and which extends coverage to any business entity that acts as the community manager of the association and the employees of that entity. Such insurance may not contain a conviction requirement, and the minimum amount of the policy must be not less than an amount equal to 3 months of aggregate assessments on all units plus reserve funds.

2. In the case of a building ~~[~~that is part of a cooperative or~~]~~ that contains units ~~[~~having~~]~~ ***divided by*** horizontal boundaries described in the declaration, ***or vertical boundaries that comprise common walls between units,*** the insurance maintained under paragraph (a) of subsection 1, to the extent reasonably available, must include the units, but need not include improvements and betterments installed by units' owners.

3. If the insurance described in subsections 1 and 2 is not reasonably available, the association promptly shall cause notice of that fact to be ~~[~~hand-delivered or sent prepaid by United States mail~~]~~ ***given*** to all units' owners. The declaration may require the association to carry any other insurance, and the association ~~[~~in any event~~]~~ may carry any other insurance it considers appropriate to protect the association or the units' owners.

4. An insurance policy issued to the association does not prevent a unit's owner from obtaining insurance for the unit's owner's own benefit.

Sec. 11. NRS 116.311395 is hereby amended to read as follows:

116.311395 1. Except as otherwise provided in subsection 2, an association ~~[~~, a member of the executive board, or a community manager~~]~~ shall deposit ~~[~~or invest~~]~~ ***and maintain*** all funds of the association ~~[~~at~~]~~ ***in*** a financial institution ***whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation and*** which:

(a) Is located in this State;

(b) Is qualified to conduct business in this State; or

(c) Has consented to be subject to the jurisdiction, including the power to subpoena, of the courts of this State and the Division.

2. ~~[Except as otherwise provided by the governing documents, in addition to the requirements of]~~ ***Funds held by the association as petty cash, imprest funds or change funds are not required to be deposited or maintained in accordance with subsection 1. The amount of petty cash, imprest funds and change funds held by the association must be set forth in the policy established by the executive board for the investment of the funds of the association.***

3. ~~[subsection 1, an association shall deposit, maintain and invest all funds of the association:~~

~~(a) In a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation;~~

~~(b) With a private insurer approved pursuant to NRS 678.755; or~~

~~(c) In a government security backed by the full faith and credit of the Government of the United States.~~

~~3.]~~ The Commission shall adopt regulations prescribing the contents of the declaration to be executed and signed by a financial institution located outside of this State to submit to consent to the jurisdiction of the courts of this State and the Division.

Sec. 12. NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4 to 7, inclusive:

(a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore. The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the

major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements or any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore are necessary. Notwithstanding any provision of the governing documents to the contrary, to establish adequate reserves pursuant to this paragraph, including, without limitation, to establish or carry out a funding plan, the executive board may, without seeking or obtaining the approval of the units' owners, impose any necessary and reasonable assessments against the units in the common-interest community. Any such assessments imposed by the executive board must be based on the study of the reserves of the association conducted pursuant to NRS 116.31152.

3. Any assessment for common expenses or installment thereof that is 60 days or more past due ~~[bears]~~ ***may bear*** interest at a rate ~~[equal to]~~ ***which may not exceed*** the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date the assessment becomes past due, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the balance is satisfied.

4. Except as otherwise provided in the governing documents:

(a) Any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(c) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

5. Assessments to pay a judgment against the association may be made only against the units in the common-interest community at the time the judgment was entered, in proportion to their liabilities for common expenses.

6. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his or her unit.

7. The association of a common-interest community created before January 1, 1992, is not required to make an assessment

against a vacant lot located within the community that is owned by the declarant.

8. If liabilities for common expenses are reallocated, assessments for common expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

9. The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting.

Sec. 13. NRS 116.31151 is hereby amended to read as follows:

116.31151 1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are ~~[necessary,]~~ ***required to adequately fund the reserves,*** and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more ~~[special]~~ ***reserve*** assessments will be necessary to repair, replace or restore any major component of the common elements or any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties but not to exceed 60 miles from the physical location of the common-interest community; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

4. The executive board shall, at the same time and in the same manner that the executive board makes the budget available to a unit's owner pursuant to this section, make available to each unit's owner ~~[the]~~ ***:***

(a) The policy established ***by the executive board*** for the ~~[association]~~ ***investment of the funds of the association; and***

(b) The policy established by the executive board concerning the collection of any fees, fines, assessments or costs imposed against a unit's owner pursuant to this chapter. The policy must include, without limitation:

~~[(a)]~~ ***(1)*** The responsibility of the unit's owner to pay any such fees, fines, assessments or costs in a timely manner; and

~~[(b)]~~ ***(2)*** The association's rights concerning the collection of such fees, fines, assessments or costs if the unit's owner fails to pay the fees, fines, assessments or costs in a timely manner.

Sec. 14. NRS 116.31153 is hereby amended to read as follows:

116.31153 1. Money in the reserve account of an association required by paragraph (b) of subsection 2 of NRS 116.3115 may not be withdrawn without the signatures of at least two members of the executive board or the signatures of at least one member of the executive board and one officer of the association who is not a member of the executive board.

2. Except as otherwise provided in subsection 3, money in the operating account of an association may not be withdrawn without the signatures of at least one member of the executive board or one officer of the association and a member of the executive board, an officer of the association or the community manager.

3. Money in the operating account of an association may be withdrawn without the signatures required pursuant to subsection 2 to:

(a) Transfer money to the reserve account of the association at regular intervals; ~~[or]~~

(b) Make automatic payments for utilities ~~[.]~~ ***;***

(c) Make an electronic transfer of money to a state agency pursuant to NRS 353.1467;

(d) Make an electronic transfer of money to the United States Government, or any agency thereof, pursuant to any federal law requiring transfers of money to be made by an electronic means authorized by the United States Government or the agency thereof; or

(e) Make an electronic transfer of money to make a payment to a vendor or community manager for goods or services provided by the vendor or community manager pursuant to a written agreement which requires the vendor or community manager to provide goods or services to the association during a period specified in the written agreement between the vendor or community manager and the association.

4. An association may use electronic signatures to withdraw money in the operating account of the association if:

(a) The electronic transfer of money is made pursuant to a written agreement entered into between the association and the financial institution where the operating account of the association is maintained;

(b) The executive board has expressly authorized the electronic transfer of money; and

(c) The association has established internal accounting controls to safeguard the assets of the association which comply with generally accepted accounting principles.

5. As used in this section, "electronic transfer of money" has the meaning ascribed to it in NRS 353.1467.

Sec. 15. NRS 116.3116 is hereby amended to read as follows:

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

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

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

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

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

~~[➥ The]~~

3. A lien ***under this section*** is also prior to all security interests described in paragraph (b) ***of subsection 2*** to the extent of ~~[any]~~ ***:***

(a) Any charges incurred by the association on a unit pursuant to NRS 116.310312 ***;*** and ~~[to the extent of]~~

(b) An amount equal to the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding ~~[institution of an action to enforce the lien ,]~~ ***:***

(1) The association's mailing of a notice of delinquent assessment in accordance with paragraph (a) of subsection 1 of NRS 116.31162 with respect to the association's lien; or

(2) A trustee's sale of the unit under NRS 107.080 or a foreclosure sale of the unit under NRS 40.430 to enforce the security interest described in paragraph (b) of subsection 2,

➥ and fees not to exceed $1,950 to cover the cost of collecting a past due obligation which are imposed pursuant to NRS 116.310313, unless federal regulations adopted by the Federal

Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) ***of subsection 2*** must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

~~[3.]~~ ***This subsection supersedes any contrary provision in the governing documents of the association.***

4. After a trustee's sale of a unit under NRS 107.080 or a foreclosure sale of a unit under NRS 40.430 to enforce a security interest described in paragraph (b) of subsection 2, upon payment to the association of the amounts described in subsection 3, any unpaid amounts for which subsection 1 creates a lien and which accrued before the trustee's sale or foreclosure sale are a personal obligation of the person who owned the unit at the time the amounts became due and the association does not have a lien on the unit for those amounts.

5. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

~~[4.]~~ ***6.*** Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

~~[5.]~~ ***7.*** A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

~~[6.]~~ ***8.*** This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

~~[7.]~~ ***9.*** A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

~~[8.]~~ ***10.*** 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 or 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.

~~[9.]~~ ***11.*** 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.

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

(1) 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.

Sec. 16. NRS 116.31183 is hereby amended to read as follows:

116.31183 1. An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

(a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

(b) Recommended the selection or replacement of an attorney, community manager or vendor; or

(c) Requested in good faith to review the books, records or other papers of the association.

2. ***A unit's owner shall not take, or direct or encourage another person to take, any retaliatory action against a member of the executive board, an officer, employee or agent of the association, or another unit's owner because the member of the executive board, the officer, employee or agent, or the unit's owner has:***

(a) Performed his or her duties under the governing documents or the provisions of this chapter; or

(b) Exercised his or her rights under the governing documents or the provisions of this chapter.

3. In addition to any other remedy provided by law, upon a violation of this section, a ~~[unit's owner]~~ ***person aggrieved by the violation*** may bring a separate action to recover:

(a) Compensatory damages; and

(b) Attorney's fees and costs of bringing the separate action.

Sec. 17. NRS 116.4106 is hereby amended to read as follows:

116.4106 1. The public offering statement of a common-interest community containing any converted building must contain, in addition to the information required by NRS 116.4103 and 116.41035:

(a) A statement by the declarant, based on a report prepared by an independent registered architect or licensed professional engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(b) A list of any outstanding notices of uncured violations of building codes or other municipal regulations, together with the estimated cost of curing those violations; and

(c) The budget to maintain the reserves required pursuant to paragraph (b) of subsection 2 of NRS 116.3115 which must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget was prepared, the current estimate of the amount of cash reserves that are necessary to repair, replace and restore the major components of the common elements and the current amount of accumulated cash reserves that are set aside for such repairs, replacements and restorations;

(3) A statement as to whether the declarant has determined or anticipates that the levy of one or more ~~[special]~~ ***reserve*** assessments will be required within the next 10 years to repair, replace and restore any major component of the common elements or to provide adequate reserves for that purpose;

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves described in subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of reserves required pursuant to NRS 116.31152; and

(5) The funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a period of years.

2. This section applies only to a common-interest community comprised of a converted building or buildings containing more than 12 units that may be occupied for residential use.

Sec. 18. NRS 116.4117 is hereby amended to read as follows:

116.4117 1. Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or

any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief.

2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for damages or other appropriate relief for a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

(a) By the association against:

(1) A declarant;

(2) A community manager; or

(3) A unit's owner.

(b) By a unit's owner against:

(1) The association;

(2) A declarant; or

(3) Another unit's owner of the association.

(c) By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.

3. ***Members of the executive board are not personally liable to the victims of crimes occurring within the common-interest community.***

4. Except as otherwise provided in ~~[~~NRS 116.31036,~~]~~ ***this subsection,*** punitive damages may be awarded for a willful and material failure to comply with any provision of this chapter if the failure is established by clear and convincing evidence.

~~[~~4.~~]~~ ***Punitive damages may not be recovered against:***

(a) The association;

(b) The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board; or

(c) The officers of the association for acts or omissions that occur in their capacity as officers of the association.

5. The court may award reasonable attorney's fees to the prevailing party.

~~[~~5.~~]~~ ***6.*** The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.

7. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.

Sec. 19. NRS 116A.410 is hereby amended to read as follows:

116A.410 1. The Commission shall by regulation provide for the issuance by the Division of certificates. The regulations:

(a) Must establish the qualifications for the issuance of such a certificate, including, without limitation, the education and experience required to obtain such a certificate. The regulations must include, without limitation, provisions that:

(1) Provide for the issuance of a temporary certificate for a 1-year period to a person who:

(I) Holds a professional designation in the field of management of a common-interest community from a nationally recognized organization;

(II) Provides evidence that the person has been engaged in the management of a common-interest community for at least 5 years; and

(III) Has not been the subject of any disciplinary action in another state in connection with the management of a common-interest community.

(2) Except as otherwise provided in subparagraph (3), provide for the issuance of a temporary certificate for a 1-year period to a person who:

(I) Receives an offer of employment as a community manager from an association or its agent; and

(II) Has management experience determined to be sufficient by the executive board of the association or its agent making the offer in sub-subparagraph (I). The executive board or its agent must have sole discretion to make the determination required in this sub-subparagraph.

(3) Require a temporary certificate described in subparagraph (2) to expire before the end of the 1-year period if the certificate holder ceases to be employed by the association, or its agent, which offered the person employment as described in subparagraph (2).

(4) Require a person who is issued a temporary certificate as described in subparagraph (1) or (2) to successfully complete not less than 18 hours of instruction relating to the Uniform Common-Interest Ownership Act within the 1-year period.

(5) Provide for the issuance of a certificate at the conclusion of the 1-year period if the person:

(I) Has successfully completed not less than 18 hours of instruction relating to the Uniform Common-Interest Ownership Act; and

(II) Has not been the subject of any disciplinary action pursuant to this chapter or chapter 116 of NRS or any regulations adopted pursuant thereto.

(6) Provide that a temporary certificate described in subparagraph (1) or (2) and a certificate described in subparagraph (5):

(I) Must authorize the person who is issued a temporary certificate described in subparagraph (1) or (2) or certificate described in subparagraph (5) to act in all respects as a community manager and exercise all powers available to any other community manager without regard to experience; and

(II) Must not be treated as a limited, restricted or provisional form of a certificate.

(b) ~~[Must require an applicant or the employer of the applicant to post a bond in a form and in an amount established by regulation. The Commission shall, by regulation, adopt a sliding scale for the amount of the bond that is based upon the amount of money that applicants are expected to control. In adopting the regulations establishing the form and sliding scale for the amount of a bond required to be posted pursuant to this paragraph, the Commission shall consider the availability and cost of such bonds.~~

~~(c)]~~ May require applicants to pass an examination in order to obtain a certificate other than a temporary certificate described in paragraph (a). If the regulations require such an examination, the Commission shall by regulation establish fees to pay the costs of the examination, including any costs which are necessary for the administration of the examination.

~~[(d)]~~ ***(c)*** Must establish a procedure for a person who was previously issued a certificate and who no longer holds a certificate to reapply for and obtain a new certificate without undergoing any period of supervision under another community manager, regardless of the length of time that has passed since the person last acted as a community manager.

~~[(e)]~~ ***(d)*** May require an investigation of an applicant's background. If the regulations require such an investigation, the Commission shall by regulation establish fees to pay the costs of the investigation.

~~[(f)]~~ ***(e)*** Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate.

~~[(g)]~~ ***(f)*** Must establish rules of practice and procedure for conducting disciplinary hearings.

2. The Division may collect a fee for the issuance of a certificate in an amount not to exceed the administrative costs of issuing the certificate.

3. As used in this section, "management experience" means experience in a position in business or government, including, without limitation, in the military:

(a) In which the person holding the position was required, as part of holding the position, to engage in one or more management activities, including, without limitation, supervision of personnel, development of budgets or financial plans, protection of assets, logistics, management of human resources, development or training of personnel, public relations, or protection or maintenance of facilities; and

(b) Without regard to whether the person holding the position has any experience managing or otherwise working for an association.

Sec. 20. NRS 116A.620 is hereby amended to read as follows:

116A.620 1. Any management agreement must:

(a) Be in writing and signed by all parties;

(b) Be entered into between the client and the community manager or the employer of the community manager if the community manager is acting on behalf of a corporation, partnership, limited partnership, limited-liability partnership, limited-liability company or other entity;

(c) State the term of the management agreement;

(d) State the basic consideration for the services to be provided and the payment schedule;

(e) Include a complete schedule of all fees, costs, expenses and charges to be imposed by the community manager, whether direct or indirect, including, without limitation:

(1) The costs for any new ~~[client]~~ ***association*** or start-up costs;

(2) The fees for special or nonroutine services, such as the mailing of collection letters, the recording of liens and foreclosing of property;

(3) Reimbursable expenses;

(4) The fees for the sale or resale of a unit or for setting up the account of a new member; and

(5) The portion of fees that are to be retained by the client and the portion to be retained by the community manager;

(f) State the identity and the legal status of the contracting parties;

(g) State any limitations on the liability of each contracting party ~~[;]~~ ***, including, without limitation, any provisions for indemnification of the community manager;***

(h) Include a statement of the scope of work of the community manager;

(i) State the spending limits of the community manager;

(j) Include provisions relating to the grounds and procedures for termination of the community manager;

(k) Identify the types and amounts of insurance coverage to be carried by each contracting party, including, without limitation:

(1) A ~~[requirement that]~~ ***statement as to whether*** the community manager ~~[or his or her employer shall]~~ ***will*** maintain insurance covering liability for errors ~~[or]~~ ***and*** omissions ~~[,]~~ ***or*** professional liability ***;*** ~~[or a surety bond to compensate for losses actionable pursuant to this chapter in an amount of $1,000,000 or more;]~~

(2) An indication of which contracting party will maintain fidelity bond coverage; ~~[and]~~

(3) A statement as to whether the client will maintain directors and officers liability coverage for the executive board; ***and***

(4) A statement as to whether each contracting party must be named as an additional insured under any required insurance;

(l) ~~[Include provisions for dispute resolution;~~

~~(m)]~~ Acknowledge that all records and books of the client are the property of the client, except any proprietary information and software belonging to the community manager;

~~[(n)]~~ ***(m)*** State the physical location, including the street address, of the records of the client, which must be within 60 miles from the physical location of the common-interest community;

~~[(o)]~~ ***(n)*** State the frequency and extent of regular inspections of the common-interest community; and

~~[(p)]~~ ***(o)*** State the extent, if any, of the authority of the community manager to sign checks on behalf of the client in an operating account.

2. In addition to any other requirements under this section, a management agreement may:

(a) Provide for mandatory binding arbitration; ~~[or]~~

(b) ***Provide for indemnification of the community manager in accordance with and subject to the appropriate provisions of title 7 of NRS; and***

(c) Allow the provisions of the management agreement to apply month to month following the end of the term of the management agreement, but the management agreement may not contain an automatic renewal provision.

3. Not later than 10 days after the effective date of a management agreement, the community manager shall provide each member of the executive board evidence of the existence of the required insurance, including, without limitation:

(a) The names and addresses of all insurance companies;

(b) The total amount of coverage; and

(c) The amount of any deductible.

4. After signing a management agreement, the community manager shall provide a copy of the management agreement to each

member of the executive board. Within 30 days after an election or appointment of a new member to the executive board, the community manager shall provide the new member with a copy of the management agreement.

5. Any changes to a management agreement must be initialed by the contracting parties. If there are any changes after the execution of a management agreement, those changes must be in writing and signed by the contracting parties.

6. Except as otherwise provided in the management agreement, upon the termination or assignment of a management agreement, the community manager shall, within 30 days after the termination or assignment, transfer possession of all books, records and other papers of the client to the succeeding community manager, or to the client if there is no succeeding community manager, regardless of any unpaid fees or charges to the community manager or management company. ***If any books, records or other papers of the client are in an electronic format, the community manager must transfer possession of the books, records or other papers in a shareable format which:***

(a) Does not require a person seeking access to the books, records or other papers to enter a password to obtain such access; and

(b) Allows the client to immediately save, print and use the books, records or other papers.

7. Notwithstanding any provision in a management agreement to the contrary, a management agreement may be terminated by the client without penalty upon 30 days' notice following a violation by the community manager of any provision of this chapter or chapter 116 of NRS.

Sec. 21. NRS 116A.630 is hereby amended to read as follows:

116A.630 In addition to any additional standards of practice for community managers adopted by the Commission by regulation pursuant to NRS 116A.400, a community manager shall:

1. Except as otherwise provided by specific statute, at all times:

(a) Act as a fiduciary in any client relationship; and

(b) Exercise ordinary and reasonable care in the performance of duties.

2. Comply with all applicable:

(a) Federal, state and local laws, regulations and ordinances; and

(b) Lawful provisions of the governing documents of each client.

3. Keep informed of new developments in the management of a common-interest community through continuing education, including, without limitation, new developments in law, insurance coverage and accounting principles.

4. Advise a client to obtain advice from an independent expert relating to matters that are beyond the expertise of the community manager.

5. Under the direction of a client, uniformly enforce the provisions of the governing documents of the association.

6. At all times ensure that:

(a) The financial transactions of a client are current, accurate and properly documented; and

(b) There are established policies and procedures that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation:

(1) Proper maintenance of accounting records;

(2) Documentation of the authorization for any purchase orders, expenditures or disbursements;

(3) Verification of the integrity of the data used in business decisions;

(4) Facilitation of fraud detection and prevention; and

(5) Compliance with all applicable laws and regulations governing financial records.

7. Prepare or cause to be prepared interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of an association is fairly presented in accordance with all applicable laws and regulations.

8. Cause to be prepared, if required by the Division, a financial audit performed by an independent certified public accountant of the records of the community manager pertaining to the common-interest community, which must be made available to the Division.

9. Make the financial records of an association available for inspection by the Division in accordance with the applicable laws and regulations.

10. Cooperate with the Division in resolving complaints filed with the Division.

11. Upon written request, make the financial records of an association available to the units' owners electronically or during regular business hours required for inspection at a reasonably convenient location, which must be within 60 miles from the physical location of the common-interest community, and provide copies of such records in accordance with the applicable laws and regulations. As used in this subsection, "regular business hours" means Monday through Friday, 9 a.m. to 5 p.m., excluding legal holidays.

12. ~~[~~Maintain~~]~~ ***At the direction of the client, deposit, maintain*** and invest association funds in ~~[~~a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation,

~~National Credit Union Share Insurance Fund, Securities Investor Protection Corporation, or a private insurer approved pursuant to NRS 678.755, or in government securities that are backed by the full faith and credit of the United States Government.~~] ***accordance with NRS 116.311395.***

13. Except as required under collection agreements, maintain the various funds of the client in separate financial accounts in the name of the client and ensure that the association is authorized to have direct access to those accounts.

14. Provide notice to each unit's owner that the executive board is aware of all legal requirements pursuant to the applicable laws and regulations.

15. Maintain internal accounting controls, including, without limitation, segregation of incompatible accounting functions.

16. Ensure that the executive board develops and approves written investment policies and procedures.

17. Recommend in writing to each client that the client register with the Division, maintain its registration and file all papers with the Division and the Secretary of State as required by law.

18. Comply with the directions of a client, unless the directions conflict with the governing documents of the client or the applicable laws or regulations of this State.

19. Recommend in writing to each client that the client be in compliance with all applicable federal, state and local laws, regulations and ordinances and the governing documents of the client.

20. Obtain, when practicable, at least three qualified bids for any capital improvement project for the client.

21. Develop written collection policies, approved by the executive board, to comply with all applicable federal, state and local laws, regulations and ordinances relating to the collection of debt. The collection policies must require:

(a) That the executive board approve all write-offs of debt; and

(b) That the community manager provide timely updates and reports as necessary.

Sec. 22. NRS 76.020 is hereby amended to read as follows:

76.020 1. Except as otherwise provided in subsection 2, "business" means:

(a) Any person, except a natural person, that performs a service or engages in a trade for profit;

(b) Any natural person who performs a service or engages in a trade for profit if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, a Schedule E (Form 1040), Supplemental Income and Loss Form, or its

equivalent or successor form, or a Schedule F (Form 1040), Profit or Loss From Farming Form, or its equivalent or successor form, for that activity; or

(c) Any entity organized pursuant to this title, including, without limitation, those entities required to file with the Secretary of State, whether or not the entity performs a service or engages in a business for profit.

2. The term does not include:

(a) A governmental entity.

(b) A nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

(c) A person who operates a business from his or her home and whose net earnings from that business are not more than 66 2/3 percent of the average annual wage, as computed for the preceding calendar year pursuant to chapter 612 of NRS and rounded to the nearest hundred dollars.

(d) A natural person whose sole business is the rental of four or fewer dwelling units to others.

(e) A business whose primary purpose is to create or produce motion pictures. As used in this paragraph, "motion pictures" has the meaning ascribed to it in NRS 231.020.

(f) A business organized pursuant to chapter 82 or 84 of NRS ~~.~~ ***or a unit-owners' association, as that term is defined in NRS 116.011 or 116B.030, that is organized pursuant to chapter 81 of NRS.***

Sec. 23. NRS 76.100 is hereby amended to read as follows:

76.100 1. A person shall not conduct a business in this State unless and until the person obtains a state business license issued by the Secretary of State. If the person is:

(a) An entity required to file an initial or annual list with the Secretary of State pursuant to this title, the person must obtain the state business license at the time of filing the initial or annual list.

(b) Not an entity required to file an initial or annual list with the Secretary of State pursuant to this title, the person must obtain the state business license before conducting a business in this State.

2. An application for a state business license must:

(a) Be made upon a form prescribed by the Secretary of State;

(b) Set forth the name under which the applicant transacts or intends to transact business, or if the applicant is an entity organized pursuant to this title and on file with the Secretary of State, the exact name on file with the Secretary of State, the entity number as assigned by the Secretary of State, if known, and the location in this State of the place or places of business;

(c) Be accompanied by a fee in the amount of $100; and

(d) Include any other information that the Secretary of State deems necessary.

➥ If the applicant is an entity organized pursuant to this title and on file with the Secretary of State and the applicant has no location in this State of its place of business, the address of its registered agent shall be deemed to be the location in this State of its place of business.

3. The application must be signed pursuant to NRS 239.330 by:

(a) The owner of a business that is owned by a natural person.

(b) A member or partner of an association or partnership.

(c) A general partner of a limited partnership.

(d) A managing partner of a limited-liability partnership.

(e) A manager or managing member of a limited-liability company.

(f) An officer of a corporation or some other person specifically authorized by the corporation to sign the application.

4. If the application for a state business license is defective in any respect or the fee required by this section is not paid, the Secretary of State may return the application for correction or payment.

5. The state business license required to be obtained pursuant to this section is in addition to any license to conduct business that must be obtained from the local jurisdiction in which the business is being conducted.

6. For the purposes of this chapter, a person shall be deemed to conduct a business in this State if a business for which the person is responsible:

(a) Is organized pursuant to this title, other than a business organized pursuant to chapter 82 or 84 of NRS ~~[,]~~ ***or a unit-owners' association, as that term is defined in NRS 116.011 or 116B.030, that is organized pursuant to chapter 81 of NRS.***

(b) Has an office or other base of operations in this State;

(c) Has a registered agent in this State; or

(d) Pays wages or other remuneration to a natural person who performs in this State any of the duties for which he or she is paid.

7. As used in this section, "registered agent" has the meaning ascribed to it in NRS 77.230.

Sec. 24. 1. The Legislative Commission shall appoint a subcommittee consisting of three members of the Senate and three members of the Assembly to conduct a study during the 2011-2013 interim concerning the laws and regulations governing common-interest communities in this State. The Legislative Commission shall designate a chair and vice-chair of the subcommittee.

2. Any recommendations for legislation proposed by the subcommittee must be approved by a majority of the members of

the Senate and a majority of the members of the Assembly appointed to the subcommittee.

3. The Legislative Commission shall submit a copy of the final written report of the study and any recommendations for legislation to the Director of the Legislative Counsel Bureau for transmission to the 77th Session of the Nevada Legislature.

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MINUTES OF THE MEETING
OF THE
ASSEMBLY SUBCOMMITTEE ON JUDICIARY

Seventy-Sixth Session
May 6, 2011

The Committee on Judiciary Subcommittee was called to order by Chairman James Ohrenschall at 8:19 a.m. on Friday, May 6, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Richard Carrillo
Assemblyman Richard McArthur

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Allison Copening, Clark County Senatorial District No. 6
Senator Mike McGinness, Central Nevada Senatorial District

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Julie Kellen, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Eleissa Lavelle, Private Citizen, Las Vegas, Nevada
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Garrett Gordon, representing Southern Highlands Community Association
Pamela Scott, Director, Community Association Management, Howard Hughes Corporation
Michael Randolph, Treasurer, Paradise Greens Homeowners Association
Tim Stebbins, Private Citizen, Henderson, Nevada
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
April Minjares, Private Citizen, Las Vegas, Nevada
Rana Goodman, Private Citizen, Henderson, Nevada
Yvonne Schuman, representing Concerned Homeowners Association Members PAC
James Reeve, President, Canyon Crest Homeowners Association
Gary Seitz, Private Citizen, Las Vegas, Nevada
Doris Vescio, Private Citizen, Henderson, Nevada
Norman McCullough, Private Citizen, Henderson, Nevada
Robin Huhn, Private Citizen, Las Vegas, Nevada
Monica Wise, Private Citizen, Las Vegas, Nevada
Heather Spaniol, Private Citizen, Las Vegas, Nevada
Robert Robey, Private Citizen, Las Vegas, Nevada
Sarah Goldstein, representing Golden Crest Property Inc.
Patricia Gaither, Private Citizen, Las Vegas, Nevada
Michele Mittemiller, Private Citizen, Las Vegas, Nevada
Patricia Grimes Davis, Private Citizen, Las Vegas, Nevada

Chairman Ohrenschall:
[Roll was called.] Senator Copening, I appreciate your patience and for being here this morning. We will open the hearing on Senate Bill 254 (1st Reprint).

Senate Bill 254 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-264)

Senator Allison Copening, Clark County Senatorial District No. 6:
I am here today to introduce S.B. 254 (R1) for your consideration. This bill deals with Alternative Dispute Resolution (ADR) procedures for homeowners that live in common-interest communities (CIC).

[Continued to read from prepared testimony (Exhibit C).]

Chairman Ohrenschall:
Are there any questions? [There were none.] Please proceed with your next witness.

Eleissa Lavelle, Private Citizen, Las Vegas, Nevada
I appreciate the opportunity to speak this morning on this bill. I have been involved for more than 25 years in representing associations, homeowners, as well as developers. I am also a mediator and arbitrator through the process already established with the ADR program through the Ombudsman's Office, and also through the American Arbitration Association as a designated mediator and arbitrator. I am firmly committed to ADR for a number of reasons. I believe this bill is in line with the best possible purposes for ADR as an alternative to going to court.

Specifically, with respect to homeowners associations (HOA), disputes are very common. People disagree, with good reason, over the way their communities are sometimes run, or the way the covenants, conditions, and restrictions (CC&Rs) are enforced with respect to the way rules may be established, a number of issues that come up. There must be a mechanism by which these disputes can be resolved quickly, effectively, and with the least amount of cost. I believe this bill, as a progression of what is already in place, is doing that. Nevada has been a leader with CICs on many fronts, including dispute resolution. However, no process is perfect, and we are continually trying to address the issues we have seen in the problems that have come up with HOAs.

Primarily, these problems are twofold, and this bill is trying to fix these problems. First of all, cost is an issue. It is expensive to litigate. It is more expensive to go to court by far. By the time you pay for attorneys and all the processes that are required, court is the most expensive alternative. Many years ago, we developed the process of sending homeowner disputes to arbitration or mediation. Mediation was not required, but it was selected if both parties agreed to it. Everybody had to arbitrate. The purpose of that was to have these cases heard and resolved by individuals who were under the auspices of the Real Estate Division, Department of Business and Industry, who had been trained by the Division and had a specific knowledge in this area of homeowners' disputes because it is specialized. We believe that people who are suffering with these issues, both HOAs and the homeowners, need to have the most effective people hearing these disputes. I do not know if that has been happening. I believe it has for the most part, but that was the idea of the bill. It has been effective. Most of these cases go through arbitration, and because the quality of the arbitrators and their decisions has been very good, most of these cases do not find their way to court.

What I have seen as an arbitrator, mediator, and a representative of both homeowners and associations is that these people are not talking to one another. The disputes get out of hand because by the time you hit ADR and arbitration, people's backs are against the wall, everybody is fighting, and nobody wants to talk to each other. The purpose of this bill is to get people talking to each other as quickly as possible. They need to sit down face-to-face and work with a facilitator, a mediator, who is an impartial third party and assists the parties in communicating and reaching a mutually acceptable resolution of their dispute. A mediator does not decide or impose an outcome but simply assists the parties to communicate their positions and interests. If they do not reach a settlement, there are other methods available. They can still go to arbitration or litigate.

The effectiveness of mediation in person-to-person disputes is absolutely profound. I am also a volunteer mediator at the Neighborhood Justice Center in Clark County, and I asked that center for some statistics. For those of you who are not aware of what this program is, it is where volunteers mediate. They are trained to mediate. Most of these disputes are homeowner-to-homeowner kinds of issues, including dogs barking, trespassing, angry neighbors, et cetera. They can sometimes be more complicated than that, but in my experience dealing with these kinds of angry, unhappy disputes within people's own homes are the most complex and difficult matters to resolve. That is precisely what we are facing with HOA disputes. According to the Neighborhood Justice Center records, its overall settlement rate over the last three years is 76.5 percent. They mediate almost 1,000 cases per year. That is dramatic. Can you imagine if 76 percent of the homeowner disputes we are facing in arbitration and litigation were resolved through this mediation program? It would solve enormous problems for homeowners and associations. These communities could get back to being neighborhoods rather than war zones.

As far as a mandatory mediation program is concerned, the Nevada Supreme Court has had a mandatory settlement process. This is after a lower court has ruled. They are required to go through a settlement process at the appellate level, and even after a judge has said who wins and loses, they still settle 53 percent of the cases. The effect of mediation early and often is significant. The result is that it stays out of arbitration and eliminates cost. When cases stay out of court, it eliminates cost. Sometimes these mediations can address broader issues that will never even reach a dispute level because they can be resolved at this point.

The other track is arbitration if these cases do not resolve. The mediator will have an inside view of what the dispute is all about. Although it is absolutely confidential, the mediator can suggest to the Ombudsman that this dispute go to arbitration if it is a rules or governing documents violation. If it is a statutory violation, the mediator can suggest to the Ombudsman that the dispute go to an intervention process. You have some quicker routing in that process. In the past, there has been some confusion. This eliminates a lot of time and cost, as well. What has been proposed in the amendment to this bill is an American Arbitration Association style short-track arbitration process. Again, the purpose is to eliminate as much cost as possible. This is to the benefit of both homeowners and boards.

I have stressed the confidentiality aspect of this. I think this is very significant. Sometimes people will have their backs against the wall and simply will not speak to one another, especially if they know that what they say is going to come back to hurt them. The benefit of mediation is that people feel free to communicate with a mediator. The mediator and parties are free to creatively come up with a resolution for these disputes and, hopefully, put them to bed for a long time so there is no cost.

I am a proponent of this bill. I believe that disputes cannot be eliminated completely. For people who live in communities with rules, the rules are there for a good reason. Sometimes the rules can be unreasonable, but for the most part, these are all volunteer homeowners who are sitting on boards trying to do the best job they can to run their communities in a way that benefits everyone. There will always be conflicts, and as a result, there must be a way to quickly and efficiently manage these disputes. It will cost a lot of money to go to court, and it will cost a little less money to arbitrate. We are proposing to reduce those costs even further and get these communities back to being neighborhoods rather than fighting with each other.

Chairman Ohrenschall:
Do you have any idea what the average cost is for a mediator versus an arbitrator?

Eleissa Lavelle:
The plan for this program is that it will not be a cost to either homeowners or boards. That is the beauty of this. There is funding already available that has been in place for many years, but has simply not been utilized in the best possible way to eliminate these disputes. These funds have been earmarked for dispute resolution. The idea is that this money will be targeted to pay the cost of mediators, which will be capped and limited as part of the regulations. Homeowners and boards will not have to pay for this program, so they can get

a majority of their disputes resolved at no initial cost to them. The arbitration costs have been expensive. Arbitrators charge for their time. Many times, these parties are represented by attorneys, and they charge for their time.

An arbitration process, even the way it has been handled, is still less expensive than a court proceeding simply because there are fewer rules. The discovery is limited, and the disputes are limited. Arbitrators can be expensive, so this bill proposes a fast-track. It is a way of capping these costs early so that people go into these processes if they cannot settle them through mediation. At this point, the amount has not been established, but that can certainly be worked out through the rules.

Chairman Ohrenschall:
So the way the system works now is that a homeowner and HOA go to mediation first, and if that does not work, they go to arbitration? I just want to make sure I understand how it works now.

Eleissa Lavelle:
The claim or complaint is filed with the Ombudsman's Office. The Ombudsman will immediately direct the parties to a mediator who is going to be on an established panel of trained mediators and it is acknowledged that these mediators understand how to run these disputes and have been properly trained. The mediation must occur within 60 days.

Chairman Ohrenschall:
That is existing law right now?

Eleissa Lavelle:
No, it is not.

Chairman Ohrenschall:
That is the proposal of this bill?

Eleissa Lavelle:
Right. Under existing law, there is no requirement to mediate. Under existing law, parties can choose to mediate, but they typically do not, or they do not mediate until arbitration is practically concluded and thousands of dollars have been spent. This plan tells people to sit down immediately to try to get this resolved right away within the first 60 days after the dispute is filed. This is at no cost to the homeowners and no cost to the board. Hopefully, it will not have to go further. That is the point of this bill.

Chairman Ohrenschall:
Do you know how long these funds that are available for mediation will last?

Eleissa Lavelle:
I do not know. Ms. Anderson may be able to address that issue.

Chairman Ohrenschall:
Are there any questions?

Assemblyman McArthur:
I want to follow up. I do not see any place in the bill that said there was no cost for the mediation. Is that in here?

Eleissa Lavelle:
The idea is that it is going to be funded. I thought that it was. I will have to take a look at it again.

Assemblyman McArthur:
I understand the intent. I just did not remember seeing that in here when I read the bill.

Eleissa Lavelle:
That is certainly the intent. I think there is a provision in section 1, subsection 5 that says, "The Commission shall adopt regulations governing the maximum amount that may be charged for fees and costs of mediation and the manner in which such fees and costs of mediation are paid." That would be paid out of the funds.

Assemblyman McArthur:
It does not say that.

Eleissa Lavella:
Not specifically. Subsection 6 states, "The Division may provide for the payment of the fees of a mediator selected or appointed . . . ." Let me address this. Unfortunately, you are going to incur costs regardless of what you do. The idea of this bill is that there is a fund available. For the first time, the Ombudsman's Office will be able to regulate what these costs are going to be. That has not happened in the past. It will happen in this bill. The objective is to get cases resolved. Unfortunately, if you are going to have professionals involved in this, there will be some payment, but it will be limited and directed by the Ombudsman's Office and there are funds available from which these disputes can be resolved.

Assemblyman McArthur:
I just think we need to clear that up and tighten it up, so we all understand that is the intent.

Eleissa Lavelle:
I understand.

Chairman Ohrenschall:
Ms. Anderson has come up to the witness stand, and I think she will be able to elaborate on that question by Assemblyman McArthur.

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry:
The CIC fund, as Ms. Lavelle has referenced, has had an amount in the budget for use in subsidizing claims. This would open for that use. The intention, as the sponsor of the bill has worked with me on what she would like to see, is that the fund would be utilized to fast-track and assign immediate mediation to these matters. The Real Estate Division has placed a fiscal note on the bill to allow the funding to be dedicated to be used for this purpose. There is money in the fund in the CIC's reserve, which is funded by the unit owners. That would easily cover that cost. That is how this would work.

Regarding the cost control that Ms. Lavelle has referenced, the Division will need to do contracts with those that want to be on the mediation panel. Part of the contract process will be that the mediator will agree to mediate for "x" amount of dollars. The Commission on Common-Interest Communities and Condominium Hotels (CICCH) will discuss this, give guidance, and set parameters. That is how the cost will be contained. If you want to be on this mediation panel, you will agree to do the mediation for these costs so the individuals are not charged at different rates. There needs to be more of a set fee. That is the intention of how the Commission would like to review set costs on handling this, so there is not a cost up front to either the association or the unit owners.

Assemblyman McArthur:
You mentioned the funding. Is this being paid by homeowners? Is that where this funding is coming from now? Do associations pay into this?

Gail Anderson:
Correct. The unit fees fund the CIC budget account. The unit fees are paid by master associations in the state or associations in the state.

Assemblyman McArthur:
All associations are paying into this fund right now? I have not seen it broken out for something like this.

Gail Anderson:
There has been a category, but right now I cannot tell you the budget category for mediation or arbitration in that budget account that has not been fully utilized. Part of that was because of the regulation the Commission had passed at the time which said it must be binding arbitration. Parties were not interested in entering binding mediation.

Assemblyman McArthur:
We were not using it . . .

Gail Anderson:
It was probably because of the limitation. The Commission wanted a result to come out of the arbitration.

Assemblyman Carrillo:
This Neighborhood Justice Center, the first I had heard about it was at 1st Tuesday at a Metropolitan Police Department (Metro) substation. It was probably about a year ago that I first heard about it. My biggest concern is letting people know that this is out there. This mediation can be utilized. How are the property management companies going to let the homeowners know about this? It seems like the information is not getting out even though it is available and a good tool. I know it is not something we can put in statute, but if it is not utilized, it is never going to do any good. Maybe you can stress that a little bit as to how we can make this happen and try to eliminate a lot of these problems that these homeowners have. Many times people do not want to talk to each other. If this can bring neighborhoods together, I think this is great.

Gail Anderson:
I will clarify that the program that is being proposed in S.B. 254 (R1) would not be run through the Neighborhood Justice Center. It would come through the Ombudsman's Office and through a panel of mediators. I believe Ms. Lavelle can clarify. She was comparing that process to the success rate. This program would be through the Ombudsman's Office, which does deal directly with homeowner and board disputes. Once this program is in place, we can certainly communicate it. We have many means. When someone files a complaint, we will immediately put him into that process. I think through our community managers and the extensive information systems we have, people will be aware

of it. I will clarify that this is not through the Neighborhood Justice Center. I believe that was a comparison to their success.

Eleissa Lavelle:
Let me follow up. That is exactly right. I was using those statistics to let you all understand that I know there is a tremendous benefit to mediation. This program is designed to run through the Real Estate Division, and the mediators who would be selected are going to be trained and have specific information and understanding of HOA disputes. As I mentioned, these are specialized issues. Whoever is dealing with these issues must understand the way these communities work, must understand the statutes, must understand the CC&Rs, and the way all of these functions work. That is why this is going to run through the Real Estate Division and not through any other agency.

Currently, the way the statute operates is that it is in the statute. If a dispute is filed, people understand by reading the statute. If they try to file a complaint in court, the court will send it back to the Real Estate Division. That is the other way, in addition to public information, that this will be utilized.

Chairman Ohrenschall:
Ms. Anderson, you mentioned there is a fiscal note on this bill. I am not finding one on the legislative website.

Gail Anderson:
I will verify that. I believe we had submitted one to reinstate funding of $100,000 for the mediation program. When I say reinstate, it had not been used in base, so we needed to get it reinstated. I will verify that.

Chairman Ohrenschall:
With that $100,000, that is what would currently be available if this bill passes?

Gail Anderson:
Correct. That is what we had put forward considering the number of claims we anticipate. We anticipate 300 claims, and we estimate $400 per claim. So, we believe around that amount would cover it.

Chairman Ohrenschall:
Do you envision having a pool of mediators available the way the Nevada Supreme Court does with the foreclosure mediation?

Gail Anderson:
That is correct. As Ms. Lavelle indicated, part of the agreement contracts we would have with the mediators is that they would have training with our Attorney General, so we are consistent in rulings and interpretation of the law as much as possible.

Chairman Ohrenschall:
Perhaps my next question is better suited for Ms. Lavelle. In section 1, subsection 7, paragraph (b), in the scenario where the mediation is unsuccessful, I want to make sure I am understanding the proposed new language correctly. The mediator would recommend the claim be referred to arbitration under *Nevada Revised Statutes* (NRS) 38.330 or back to the Division for proceedings pursuant to NRS Chapter 116. That would not be binding, correct? Or, would it be?

Eleissa Lavelle:
Let me explain how this would work. Typically, and I know what has happened because I hear it a lot from people who are in dispute resolutions, they are not quite certain if they should be requesting intervention through the Division or if they should be looking for an arbitration. Sometimes, they do not get that resolved until quite a ways down the road. It takes time and money to get there. This process proposes that the mediator will have heard the dispute, will have understood what the issues are, and based upon the training the mediator has received, will know from having heard this dispute whether it more properly relates to a dispute over enforcement of governing documents or a statutory regulation is involved. Because of that information, the mediator will direct which path it goes to. No other information the mediator has learned through that process will be disclosed. It is a way of cutting through some of the time and effort to figure out where these cases ought to be filed and directed.

Chairman Ohrenschall:
The mediator's recommendation would be binding?

Eleissa Lavelle:
Let me clarify that. If the mediator sends it to arbitration, and the arbitrator or parties believe it should not be in arbitration, there is nothing that would preclude the parties from saying, "No, this is incorrect. It should be in the other direction." This is a recommendation, and section 1, subsection 7, paragraph (b) says, "Recommend that the claim be referred" to one or the other.

Chairman Ohrenschall:
This bill proposes that the CICCH adopt regulations and set a maximum the mediators can charge. I guess this bill does not envision any kind of maximum that arbitrators can charge. Is that correct?

Eleissa Lavelle:
There is the provision in the bill for the fast-track arbitration. It would be ruled similar to those of the American Arbitration Association fast-track arbitration. Up to this point, there has been no maximum amount charged. This bill does not address that except to the effect that it will now address fast-track arbitration and caps on those fees. If the parties decide they want to go through a quick program, presumably the Commission will enact rules and regulations that will address the issue of cost because that is the whole point of doing it quickly.

Chairman Ohrenschall:
It is not mandated in this bill that the Commission promulgate those regulations, correct?

Eleissa Lavelle:
It is suggested it does.

Chairman Ohrenschall:
Can you point me to that section?

Eleissa Lavelle:
I do not have it highlighted. I can take a look at it and let you know in just a minute.

Chairman Ohrenschall:
Certainly. That will be fine. This Subcommittee has met quite a few times this session, and we did discuss trying to set a maximum on arbitrator fees. We looked at a Nevada Supreme Court rule that set it at $1,000, with certain exceptions allowed by the Court. I do not know if that is something the Commission might consider. Do you have any idea what arbitrators charge? Do they go higher than the $1,000 the Nevada Supreme Court set?

Eleissa Lavelle:
Mediation is a little bit different than arbitration. Mediation is going to be a set period of time in a dispute resolution. Although there is preparation, it is not quite the same. An arbitrator's fees can vary, and I am not saying that they are out of line. An arbitrator's role is somewhat different. Depending on the dispute, you may have very extensive discovery issues. I was called several

times as an arbitrator because people were fighting over the scope of depositions when they are all out of state. You may have fairly complex motions to resolve. Sometimes the hearings can go on for days. That is the issue with arbitration. You do not always know what the dispute is going to be about. I agree with you that there should be some regulation. In some part, that is why this fast-track program has been initiated. It is so people can recognize that if they do not want to put in much time or effort, there is going to be a maximum involved. To create a 100 percent rule for every dispute is problematic because disputes vary. Should there be a cap of some kind or regulation? Yes, I believe there should be. Can you mandate it at $1,000? I do not think you will get any arbitrators of any quality to make these decisions. The purpose of the rule is, therefore, not going to be effectuated.

Senator Copening:
To answer the first question that you had, yes, in section 1, subsection 5, it says, "The Commission shall adopt regulations governing the maximum amount that may be charged for fees and costs of mediation and the manner in which such fees and costs of mediation are paid." I just wanted to get that on the record.

Chairman Ohrenschall:
I did see that. I guess the answer is that there is no direction for the Commission to promulgate regulations establishing any kind of maximum for arbitrators the way the Nevada Supreme Court has set up. It has a $1,000 maximum with certain exceptions to be provided for by the courts.

Eleissa Lavelle:
There is. It is in section 19, subsection 5, which states, "Unless all the parties to the arbitration otherwise agree in writing . . ."

Chairman Ohrenschall:
I am sorry, could you repeat that?

Eleissa Lavelle:
It is section 19, subsection 5. This would be an amendment of NRS 38.330. It provides that:

> Unless all the parties to the arbitration otherwise agree in writing, the arbitration of a claim pursuant to this section must be conducted in accordance with:
>
> (a) The rules of the American Arbitration Association or its successor organization concerning the manner in which to provide speedy arbitration; or

(b) Other comparable rules for speedy arbitration approved by the Commission or the Division.

Right now, the Commission has no jurisdiction over NRS Chapter 38. This gives the Commission overall responsibility and authority to establish rules for both mediation and arbitration in respect to the fees and costs that are being charged.

The fast-track arbitrations under the American Arbitration Association are designed to occur with or without lawyers and without a great deal of discovery. The idea is that you can get through them very quickly. The costs may be as little as $1,000. It is not an established amount in this rule.

Chairman Ohrenschall:
To all the audience down in Las Vegas, I would appreciate it if you would be respectful of the witness. Everyone will get the chance to make their comments, but please be respectful to anyone that is testifying. If you cannot do that, you do not belong in that room.

Ms. Lavelle, it is your feeling that section 19, subsection 5, mandates to the CICCH that they would promulgate some kind of cap by rule. Am I understanding that right?

Eleissa Lavelle:
Yes.

Chairman Ohrenschall:
Is that for all arbitrations or just for the fast-track or speedy arbitrations?

Eleissa Lavelle:
It would be the fast-track. People would immediately be routed to the fast-track unless they decide to opt out. This is not an opt in, but it will go fast-track unless the parties decide otherwise. They will get the benefit of the quicker rule.

Chairman Ohrenschall:
Thank you for clarifying that. There is a ten-second delay between Las Vegas and Carson City, so I apologize for interrupting you.

Assemblyman McArthur:
I do have a couple of questions. Senator Copening, I want to get some of this cleared up so we can get this bill through. First, is this mediation between homeowner and homeowner, or it also between homeowner and the HOA?

Eleissa Lavelle:
It can be either. Homeowners have the right to enforce the covenants and to enforce the statutes. They have the ability to bring a case if they choose to against another homeowner for enforcement issues.

Assemblyman McArthur:
Section 1, subsection 1, says, "Not later than 5 days . . . ." It does not say working days, so I assume straight days. If it is straight days, that is a pretty short time period. You can get something on a Friday, and by the end of the weekend, you must have everything done. Did you mean working days or five straight days? Do you want to leave it five days?

Eleissa Lavelle:
If you want to amend it to say business days, that would be up to Ms. Anderson. This is the Division's responsibility. We are trying to get this done quickly, but if it is more convenient for the Division to be working on this on a business day approach, that would make sense.

Assemblyman McArthur:
I am just asking so we can clarify it. We should probably put in there whether it is straight days or working days. Straight days seems kind of short.

Eleissa Lavelle:
I think that makes sense.

Assemblyman McArthur:
The reason I wanted this pay thing straightened out in section 1, subsection 5, line 23 says, ". . . the parties are responsible for the payment of all fees and costs of mediation . . . ." That is why I want the language tightened up, so we have the intent in there.

Eleissa Lavelle:
It makes sense to clarify that.

Chairman Ohrenschall:
Senator Copening, is there anyone else you would like to bring up in support of the bill?

Senator Copening:
I think there are some who would like to speak as citizens. I will remove myself to make this available.

Garrett Gordon, representing Southern Highlands Community Association:
As Assemblyman McArthur mentioned, many times this is a dispute between the HOA and the owner. It is in the best interest of all the homeowners to have a prompt, cost-effective manner to resolve disputes. In the event these things get dragged out, not only is it a burden on the complaining homeowner, but the cost of this effort is absorbed by all homeowners. We do support the program. We would be happy to work with the Subcommittee and Senator Copening for any cleanup necessary based on comments today.

Chairman Ohrenschall:
Has your client had a lot of experience with mediation? Has it been able to prevent lengthy and costly court battles?

Garrett Gordon:
I am happy to get some specific numbers for you from Southern Highlands. From my general conversations with Angela Rock from Southern Highlands, yes, it has been a good process. Based on working with the Ombudsman's Office and the Real Estate Division, I think many of the disputes have been resolved there. Off the top of my head, I do not know how many disputes have gone to court, but I will be happy to get you that information.

Chairman Ohrenschall:
I am just trying to find out what kind of experiences your client has.

Is there anyone else in favor of the measure in Carson City? [There was no one.] Is there anyone down in Las Vegas in favor of the bill?

Pamela Scott, Director, Community Association Management, Howard Hughes Corporation:
As an employee of the developers of Summerlin, I have personally been involved in about half a dozen arbitrations. I am saying that because there have been arbitrations that have been done for very little expense because they have been quick and have lasted an hour or two and included a house visit. It went quickly and inexpensively. We have also been involved with some very expensive ones because someone has asked for depositions, and we have had to pull documents from files, and there is always an attorney reviewing all of that. There is also the arbitrator's time. Arbitrators do charge by the hour, and I would think that if there were a cap, it would need to be a cap on their hourly fee because many of the arbitrators are attorneys.

We at Summerlin are very supportive of the fast-track mediation and arbitration process. As Ms. Lavelle said, arbitration is effective and can be low-cost or free. It is confidential, and if the matter needs to go forward, what was said is not going to end up in court. The 60 days is fantastic because there have been cases that have gone on for years. The cost of arbitration can be $20,000 or higher depending on how many depositions, discovery, et cetera. We are very much in favor of the American Arbitration Association fast-track arbitration process that limits the amount of discovery. I cannot think of any reason we would not want to support this bill or that you would not want to support this bill. It will help homeowners and associations. It will save legal fees, arbitration fees, and time.

Chairman Ohrenschall:
Are there any questions? [There were none.]

Michael Randolph, Treasurer, Paradise Greens Homeowners Association:
We are a 19-unit gated community. We are small. With the fast-track program, this will keep the cost down when there are problems and people quit talking in the community where there are issues. Instead of going to arbitration, which can run into the thousands of dollars, we can go through the mediation and get the matter resolved in a very short period of time. We love the 60-day window. This way we can keep it quick, reasonable, and inexpensive and move on with our lives.

Chairman Ohrenschall:
It sounds like you have had experience with mediation. Have you found it to be successful? We hear all these stories about HOAs that are basically at war. Have you found mediation to be successful to avoid lengthy and costly court battles?

Michael Randolph:
In the eight years that I have been on the board of the Paradise Greens Association, through mediation, we have been able to resolve all of our issues and have never had to take them to the next step of arbitration.

Chairman Ohrenschall:
How large is your HOA?

Michael Randolph:
Nineteen units.

Chairman Ohrenschall:
That is very small. Are there any questions? [There were none.] Is there anyone else wishing to speak in support of S.B. 254 (R1) in Las Vegas? [There was no one.] Is there anyone neutral to this bill in Las Vegas or in Carson City?

Tim Stebbins, Private Citizen, Henderson, Nevada:
I have some questions about the wording in S.B. 254 (R1). My focus is more on the violation or contesting of documents, but it also sucks in any alleged violation of the statute of NRS Chapter 116. It has not been done that way before. It kind of adds another layer.
Also, there seems to be a major emphasis on punishments for a party filing a bad faith, false, fraudulent, or frivolous claim.

Chairman Ohrenschall:
Can you direct me to where that is in the bill? That is in subsection 5?

Tim Stebbins:
Yes, and there are several parts that talk about frivolous complaints or bad faith complaints. It is fair enough to have that in there because we do not want that kind of thing to happen, but in the bill, there are almost no penalties for any party filing a bad faith, false, fraudulent, or frivolous response to the claim.

[Continued to read from prepared testimony (Exhibit D).]

Chairman Ohrenschall:
Are there any questions? [There were none.]

Is there anyone in opposition to the bill? I will start here in Carson City. Is there anyone in Las Vegas?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
Senate Bill 254 (R1) goes way beyond mediation. That has been the main subject of the discussion by the presenter up to this point. This bill is a full-employment act for mediators and arbitrators. I did send up a proposed amendment (Exhibit E), and I hope you all have it. It also has many exhibits attached to it.

I happen to have been an arbitrator with the American Arbitration Association, and in my career with them, which lasted many years, I did have one mediation case.

I take exception to a lot of what has been testified to. Under the current statute, the funds are only available for the nonbinding arbitration. As we all know, it takes the CICCH a long time to get a regulation through the process. It must be written and there are public hearings. It then must go to the Legislative Counsel Bureau (LCB) for review. It can take six months to a year before a regulation is actually adopted. This should be taken into consideration.

This bill has a tremendous number of holes in it. It is punitive, hurtful, and harmful, not only to the homeowner but to the economy of our state. Who would want to move into a community in this state where if they simply complained about an out-of-control board, they could lose their home? There is a section in here that deals with the charges. If you look through it very carefully, on page 16, section 15, lines 28 to 31, if someone does not pay the arbitrator's fees, then it becomes a common expense, which becomes a lien on the property, which can lead to foreclosure. This is very cleverly disguised.

Chairman Ohrenschall:
Could you give us that citation again? It was section 15. What subsection?

Jonathan Friedrich:
Page 16, section 15, lines 28 to 31.

Chairman Ohrenschall:
It is actually section 16.

Jonathan Friedrich:
Also, slightly above that, it talks about charges, which starts on line 21. This is a very draconian portion that is concealed and hidden in the bill. I have been a victim of arbitration costs and expenses. Arbitration is not cheap. My bill alone is over $50,000 over the fact that a budget ratification meeting was never held. The cost of a court action was a lot cheaper. I disagree with previous testimony.

Chairman Ohrenschall:
I am looking at section 16, subsection 2, where it defines charges: "'Charges' means: (a) Any charge which an association may impose against an owner of residential property pursuant to the governing documents . . . (b) Any penalties, fines, fees and other charges . . . ." You said that you believe someone's home could be foreclosed upon for this. I am not sure I am seeing that.

Jonathan Friedrich:
On line 26, it uses the word "assessments." If an assessment is not paid, it becomes a lien under common expenses.

Chairman Ohrenschall:
I understood assessment to mean your monthly dues. Am I misunderstanding?

Jonathan Friedrich:
It goes beyond that. It also says, ". . . penalties and fines and any late charges, interest and costs of collecting the charges." That is on line 27.

Chairman Ohrenschall:
At some point, maybe after this hearing, I will consult with the Legal Division to see if they agree with your interpretation. If that is true, that is not something I can support. I cannot support someone losing his house to foreclosure because of being behind on these charges. I am not 100 percent certain that is how Legal will interpret that part of the statute.

Jonathan Friedrich:
I am not an attorney, but that is my layman's interpretation.

Chairman Ohrenschall:
I will check with Legal after this hearing. If you are correct, that is not something I can support. Thank you for bringing that to our attention.

Jonathan Friedrich:
I did propose an alternative, an amendment to this bill. Very simply, it would use the current intervention affidavit form, number 530. All parties would have to go to a conference with the Ombudsman, and this would be mandatory to try to resolve it on a very low level.

[Continued to read from proposed amendment.]

These are suggestions. A couple of other items very quickly. Right now, the way the bill is written, there is no cost funding. It says if funds are available. We have heard testimony that there is $100,000, but right now, that money has not been allocated to this program. There are many problems with this bill as currently written. If this bill goes through, you will see many harmed homeowners who can lose their homes for complaining about an out-of-control board.

Chairman Ohrenschall:
Are there any questions? [There were none.]

April Minjares, Private Citizen, Las Vegas, Nevada:
I am against this bill. I did not used to be on the board, and I had to fight against the current board of the subassociation. I found out it was doing kickbacks with regards to parking. I had to fight like heck to get on the board. Finally, I am president of the board, and our community wants parking. We sent out a survey, and over 91 percent of the people that responded want parking. Now, the board of Southern Highlands does not want to allow for it. Out of 160 homes, it wants three-quarters of the people to have voted for it. If we were to go through this process of arbitration or mediation, and there are no caps to the cost, and if we lose, it will cost our entire community. Our budget is not that big. This is ridiculous. There is nothing reasonable about these costs. Furthermore, there is the fact that 91 percent of the homeowners want parking. A subassociation going against a master association is ridiculous. I am opposed to this bill, and there are holes everywhere to put money in the pockets of the attorneys, the CIC, and the Community Associations Institute (CAI). I would much rather go to small claims court where I know someone is not going to be biased or being paid by somebody else.

Chairman Ohrenschall:
Are there any questions? [There were none.]

Rana Goodman, Private Citizen, Henderson, Nevada:
I am going to approach my opposition to this in a slightly different way. The working group that Senator Copening put together is put together mostly with developers, attorneys, and management companies. I would like to ask you why none of these work groups show representation of homeowners? The starting point for complaints between boards and homeowners should be the homeowner versus the board. I can only speak for my HOA, which is made up of 7,144 homes. The homeowners do not get to speak to the board. We send a registered letter, and we get a very polite "Thank you for your concern" back. The next step is the Ombudsman's Office. You can file a complaint there, and you are supposed to have a meeting with the Ombudsman and the board of directors where you state your complaint. The Ombudsman is supposed to say, "Yes, you are right. No, you are wrong." This is not supposed to cost anybody anything. That is what we all pay $3 a rooftop for. Every home in every association in Nevada pays this.

In our particular association, no director on our board has ever agreed to meet with the Ombudsman, unless he took our attorney with them for that meeting. Of course, no homeowner has ever agreed to that because we have always

resented having to hire an attorney to represent us when our dues are paying an attorney to oppose us. It does not make any sense. What happens then is that the complaint is usually withdrawn.

To go to an arbitration or mediation, which this bill calls for, when most of the homeowner complaints are simply something you have done wrong pursuant to your CC&Rs, or the board thinks you have done wrong according to the CC&Rs, like too many weeds in your yard or too many ornaments. I have an iguana on the bridge in my yard and a rabbit under my tree. The board may think that is too many. I am not going to go to arbitration and pay him to tell me I can have one ornament in my yard versus two. That makes no sense. The board should tell me how many I can have. It is a simple resident versus board dispute. It seems to me that instead of the CAI telling the boards, "Do not talk to your homeowners," they should be telling them to start talking to the homeowners and end all of this nonsense.

Instead of you, our legislators, listening to the people who are funding your campaign issues, you should be listening more to those who are voting and putting you in office. I say that with all respect. It is time that the voters are the people who are listened to.

I am tired of our associations being run by attorneys, management companies, and the collection agencies. The collection agencies are the ones that are making the money. During the last Senate hearings, I was so sickened to hear collection agencies say, "If this bill is passed as written, we will not be making a profit." That is such a joke, and I cannot believe no one laughed out loud.

Chairman Ohrenschall:
Are there any questions? [There were none.]

Yvonne Schuman, representing Concerned Homeowners Association Members PAC:
I want to thank you for this opportunity to testify against S.B. 254 (R1). As you know, there have been many bills introduced in both chambers this session that affect CICs and more particularly, homeowners.

[Continued to read from prepared testimony (Exhibit F).]

Chairman Ohrenschall:
I want to understand correctly a couple of the points you brought up. In section 5, subsection 5, your concern is that it might have a chilling effect on folks filing complaints because they will be afraid of being sanctioned?

Yvonne Schuman:
Yes, section 5, subsection 5 is the one about the chilling effect. That is the one where it contains these ambiguous terms such as "bad faith" and "reasonable cause." The Commission will be able to interpret these without any constraint. The chilling effect will come from section 10 where homeowners may be fined up to $1,000 for filing a claim in bad faith. The purpose of delay is in section 5, subsection 5, so they are connected. When section 5 and section 10 are read together, they will have a chilling effect on homeowners.

Chairman Ohrenschall:
In section 10, can you guide me to that $1,000 penalty? It is in subsection 8.

Yvonne Schuman:
It is on page 11, subsection 8, paragraphs (a) and (b). It is $1,000 plus the Division's investigative cost, which is some unknown number, and that could be a very large amount.

Chairman Ohrenschall:
The last point you brought up that stuck in my mind was that when the mediation is unsuccessful, you would like to see an option for someone to be able to file a claim in state court.

Yvonne Schuman:
In small claims court.

Chairman Ohrenschall:
Are there any questions? [There were none.]

James Reeve, President, Canyon Crest Homeowners Association:
I am against this bill entirely. I think it takes away more homeowners' rights, including due process. It is greatly biased in one direction. With respect to the arbitration process, let me give you a quick example. I have heard the arbitration process is fair, quick, and inexpensive compared to court. Our experience has been just the opposite. We have had such a minor dispute, and I will give you a quick rundown on what our dispute was. Summerlin North is our master association, and the dispute was us putting up new gates. We wanted to put a little bit of scroll work in the new gates. The old gates went to the junkyard because they were damaged. Summerlin North started fighting us saying we did not meet the architectural review guidelines. The guidelines are two sentences that state, "The architectural concept must conform to the desert elegance theme. The theme includes a wide-range of architectural styles, and these styles include, but are not limited to, contemporary, Santa Fe, southern European, southwest, and Spanish."

We thought for sure that our gates fit one of those definitions. We sat down with Summerlin North and tried to work out a solution without an ombudsman. Summerlin North's position was that it decided what the definition is, and it decided that the gates must consist only of vertical and horizontal bars. Nothing else was acceptable. At tremendous expense, we would have to take the gates down, which totaled around $20,000 because there are four gates. We said there was a misunderstanding between us, and we cannot work it out.

The only way to stop the fines, which were $700 at that point, was to go to arbitration and get a fair hearing. The purpose of arbitration should be an inexpensive process so you do not clog the courts. This is what happened. The arbitrator strung out the decision. All he had to do was look at two sentences for the description and look at the picture of our gate. If anyone spent an hour studying it, he could make a decision on it. However, the arbitrator strung this out for six months and sent both us and Summerlin North a bill every month for approximately $1,000. He also sent a note that said, "If you do not pay these arbitration fees within ten days, I will rule against you." If that is not extortion, I do not know what is. We paid the fees, but it went on and on. Finally, he called a meeting, and he strung this meeting out for eight hours straight with no break for lunch. He asked the same questions over and over again. His total fees came to $10,915, and he ruled against us, and Summerlin North's lawyer fees, which we had to pay, totaled $17,369. Besides the cost of replacing our gates, each of our homeowners had to pay around $600. We had to spread the total amount amongst our 64 homeowners. This could have been one homeowner changing the gate to his house. He would have been stuck with $25,000 worth of fees on such a simple thing that anyone could have worked out.

Had we gone to court, our lawyer is an arbitrator in civil court and has been for 12 years. In civil court, the fees would have been capped at $1,000 if the dispute was for less than $50,000. You must cap these arbitrators' fees.

I looked up Mr. Apfelberg's record, and in the last 18 cases he ruled on, he ruled 17 times against homeowners, which means 94 percent of the time he rules against homeowners.

If a homeowner has a minor disagreement with his HOA or with a master association and goes to arbitration, he will be killed with legal fees. There is no due process. Under the Real Estate Division, an arbitrator can charge anything he wants. There is no supervision. Why would there be supervision in this new bill? I have no confidence that the Real Estate Division would control these arbitrators. You must cap the arbitration fees. I think someone mentioned the bill, Assembly Bill 448, which would cap the arbitration fees. Why should

a homeowner not have the same rights in court in this arbitration process because he lives in an HOA than he would have going to a civil court?

Summerlin never loses. After I saw these legal fees, I met with Hal Block, who happens to be a member of the architectural review committee. I tried to work this out with them. I said that these legal fees are ridiculous. Our lawyer has already written to the Real Estate Division complaining about this arbitrator's fees and how he strung out the process. I asked him to also write a letter because he also sat through the meeting as well. Mr. Hal Block is a fair person. He said he would present the situation to the board. When he called back, he said the board was not willing to write a letter to complain about the fees. He said the board has a lot of arbitration cases in front of our master association. We do not want to aggravate the arbitrator community. I told him it seemed he did not mind aggravating the homeowners he represented. I can understand his position because Summerlin never loses. He said the board was not willing to reduce the lawyer's fees. His assistant called back to say that this whole thing would not have happened if you had been smart enough not to take this to arbitration. She told me that our board was stupid because we decided to do what seemed like the common-sense thing to do. I told her that I guess we need to go to court. She said that is one of your options, but if you think our legal fees are high now, wait until you go to court against us.

You must fix this system. Homeowners must have some rights. There are homeowners right now who are losing their homes. I talked to a homeowner yesterday who is facing $20,000 worth of fees for a minor dispute like ours. You must also control these lien companies. The lien company added about $5,000 to this homeowner in fees. He has four children and does not make very much a year. He cannot afford to pay these fees. His house is going to be foreclosed, and he will be thrown out on the streets.

Chairman Ohrenschall:
I am sorry, but we have reached the time limit for each witness. I appreciate your taking the time to testify. I think we do want to see an arbitration cap put in, just like there is at the Nevada Supreme Court.

Are there any questions? [There were none.]

Gary Seitz, Private Citizen, Las Vegas, Nevada:
I oppose the bill. I will say "me too" to cut it short. Getting back to Jonathan Friedrich's question about the charges on page 16 regarding assessments, I was looking at the proposed bill, and it says "charges" means any charge. It is very captive. It is including, but not limited to, assessments. That is a catchall regarding the fees. If you do not pay the arbitration fees,

your home can be foreclosed upon. On page 16, lines 28 through 31 say, "Any penalties, fines, fees and other charges . . . ." Those are all-inclusive, and my definition of assessments in my governing documents also includes all of this because it is very broad. I would like to point that out to the Subcommittee. The "charges" include everything.

Moving on to the prior witness referred to by Ms. Lavelle. She was comparing the 76 percent success rate with neighbor-to-neighbor. If you read the Real Estate Division articles, it is opposite. It is like 85 percent against the homeowner. She was not comparing apples with apples. The art of settlement in arbitration and mediation is a compromise. When it is neighbor-to-neighbor and each party must pay a fee, they are more willing to settle. If you take a large, multi-million dollar HOA versus the little unit owner, the unit owner is not as likely to settle. They are probably getting advice from the attorney not to settle. That will affect the success rate.

One other thing Ms. Lavelle said was that fees are sometimes out of control. You can write to the Real Estate Division and complain to whomever, but arbitrators and mediators need to be licensed and regulated by the Real Estate Division or the Attorney General, so they cannot just run amok. Even if you put a cap on it, there still needs to be some regulation. Background checks should be performed on these arbitrators and mediators.

Chairman Ohrenschall:
Are there any questions? [There were none.]

Doris Vescio, Private Citizen, Henderson, Nevada:
I am speaking against this bill. If this bill passes, many homeowners will lose their homes over trivial reasons. I had a $100 a week fine placed against me last November. I am an elderly lady on a very limited income. I told the president that I could not pay the fines, and he would be owning my home. He told me that if I write a letter of apology, the board of directors might make some concessions. I did so under duress, as I had no other choice. The fines have been dropped temporarily, but they will be reviewed again in January 2013. The people in HOAs are constantly being fined for insignificant reasons. As the fines pile up, the homes are foreclosed on. This bill must not be passed, so we seniors can keep a roof over our heads. Think about this, Nevada foreclosures rate No. 1 in the nation.

I do want to say that I did go to arbitration, and the president refused to attend. We got nowhere on that. I do have a temporary closure on my fees until 2013. Everyday I think about that, and I worry about when that day comes.

Chairman Ohrenschall:
Are there any questions? [There were none.]

Norman McCullough, Private Citizen, Henderson, Nevada:
I am here to speak against S.B. 254 (R1). I want to point out a few things. Earlier, we heard Senator Copening say this bill is designed to improve the law. It is not going to improve the law. We also heard testimony from Rana Goodman earlier that can be borne out by Gail Anderson. It is a known fact that every time there is a complaint against my association board, it never agrees to sit down and try to work things out.

I would also like to point out something that may have gone unnoticed. I touched my neighbor Penny on the shoulder, and my board of directors said that constituted assault and battery. I have been in a fight with them ever since. That is not assault and battery, but it is an insult to anybody to be charged with that. I am fighting today to save my good name.

I filed a complaint involving why my board of directors used the reserve money to repair identified construction defects weeks before an inspection was to be made by the builder. I could not even take you by the hand and show you those defects because they disappeared using my money and the money of more than 100 residents. Why should I be taken to court over my complaint and have to pay arbitration? It did not just involve me. It involved hundreds of homeowners. It is more of a miniclass action. I should not have to pay those fees. This is what is missing from this bill.

Chairman Ohrenschall:
Are there any questions? [There were none.]

Robin Huhn, Private Citizen, Las Vegas, Nevada:
I am against S.B. 254 (R1). I am in agreement with everyone who has spoken against this bill. My HOA sued me. I won in court, but it did not like the ruling, so it appealed to the Nevada Supreme Court. We went through mediation at the Supreme Court level, and we came to an agreement that was signed by everyone. The HOA did not follow through with its end of the agreement. Mediation does not mean there is going to be resolve.

Also, the mediators will then be paid by the Ombudsman's Office. This leads to bias. We can see that with the Real Estate Division. There was an article written in which Senator Copening stated that it was just a few disgruntled homeowners that were complaining. There are not just a few, but thousands of homeowners. This is not just happening in Nevada, but across the United States (U.S.). I am an advocate, so I hear from these people on a daily

basis. Everyone is concerned about what we are dealing with. Please do not support this bill.

Chairman Ohrenschall:
Are there any questions? [There were none.]

Monica Wise, Private Citizen, Las Vegas, Nevada:
I have been listening to all that has been going on. I must tell you that it is lucky we have civil mediation. We can voice our concerns. Outrage by itself is not good. If we are not able to change some things, that is what it will turn into. We are not being heard as homeowners.

You are telling us that we should talk to each other. I think we should start with a draft of the bills concerning homeowners. Right now, Senator Copening has had her working group that helped draft this bill. Mr. Friedrich had asked to participate, and she denied him. There is no homeowner represented other than who is already associated with the Commission. Maybe we should start there. I do not fully agree with a lot of things said by both sides today. We must come to a medium.

To my understanding, the language is pretty nebulous. It says on page 15, line 18, "The Division may provide . . . ." It then goes on to say at line 22, "The Commission approves the payment . . . ." I just heard that the Ombudsman approves the payment. I understand that the Ombudsman is part of the Division and the Commission is part of the Division, but who does the approving? Is it the Commission or the Ombudsman? Here again, we have the bias situation. The mediators are part of the Ombudsman's Office. It has been that the results are biased toward HOAs.

I had an issue about nine years ago. We had a building issue that was cut-and-dried. There were three of us who went to an attorney. We were told $6,000. That $6,000 wound itself through mediation, arbitration, and finally into court. As prevailing parties, we had spent over $65,000, but we were only awarded $18,000 as reasonable fees. We need changes and caps. We need attorneys to get out of mediation. It should be the homeowner speaking with the mediator and the other parties involved. It is not about billing hours but about talking to one another. Unfortunately, we do not do that.

Assemblyman Carrillo:
Have you had any experience with the Ombudsman's Office at all during the time you have lived in an HOA?

Monica Wise:
Yes, I certainly have. The very first one was when I had a building issue. There were several issues actually. The second time was when we were involved with the fraudulent accounting of Irene Iwanylo. We are still waiting for that money to come back. I have preached to my board over 18 months that we had accounting discrepancies. She finally copped a deal with the district attorney or the Attorney General. While she was guilty, she realized that we all need to be made whole. Now she has lost her license, and she was not able to afford it. Her husband has received a minority grant, so they are back in business.

The third time was when I heard about the plea deal. I tried to give the board all of my documentation. In Las Vegas, everything is for sale. I purchased these things for months and months, and I had everything documented. I took it into the Ombudsman's Office because the person I talked to said I need to come with proof rather than just a complaint. I told him that I had proof. He wanted to see the issue license. She was licensed, but she was not licensed anymore at the end of her service to us. In addition to this, I tried to give all of my stuff to Sheryl, who was the investigating person of the Ombudsman's Office in this fraudulent action. I was told that she would not accept any more documents because the case was closed and was completely investigated. Yet, when I went to the CICCH hearing, it was still waiting for additional documentation. I was told it was closed already, and the office would not accept my proof. This whole system is so corrupt. We need to have some changes. Irene Iwanylo had many associations. My guesstimation was that she had $65,000 over the period of time I could prove. We have 112 units, but sometimes only 70 or so were reported as income. When you have an account, you must have all of the units listed, whether they pay or not. They were not listed. It was a different kind of thing every time we had a board meeting. I can still produce the evidence. I have a file on Rancho Santa Fe that is unbelievable. I have over 1,000 emails. We finally settled with Jones Vargas because our law firm joined Jones Vargas. When we retained the law firm, it was not yet with Jones Vargas. It took 2 1/2 years of our lives where we had to be available at their beck and call. Two of us were still working. We had to make arrangements. I was teaching, but they said I had to be there or I would be considered uncooperative.

Assemblyman Carrillo:
I was looking for the feel of the Ombudsman's Office. You stated this in your testimony earlier, so we do not need to revert back to that. I just wanted to know your experience. I appreciate your testimony.

Chairman Ohrenschall:
Thank you for your testimony. We have reached the time limit for witnesses. I am sorry for everything you have had to go through with your HOA. Our goal this session is to try to pass legislation that will make life better in HOAs.

Heather Spaniol, Private Citizen, Las Vegas, Nevada:
First off, my daughter is autistic, and I think you introduced those bills, so I want to thank you for that. It really means a lot to me.

I have been a homeowner in Las Vegas for 11 years. The first eight years were amazing, but the last three years have pretty much been a nightmare. I have received letters about rocks and trees since I moved in. I have received pictures of houses that were not even mine attached to a violation. I called the management company, and they just retaliated against me for making those phone calls. I even went to a lawyer. He told me that I did have a strong case, but the system is biased, and I would lose. If I went to arbitration, there is an 80 percent chance that the homeowner loses. I do not have the money to take that chance, as much as I am being harassed. I cannot take that risk and take food away from my kids to fight my HOA. Any bill introduced by Senator Copening should be looked at extensively. She had a 30-person work group that came up with these bills.

Chairman Ohrenschall:
I appreciate your comments about the bill. I appreciate the struggles you are going through. We have a certain level of decorum here at the Legislature, and we do not make derogatory comments about anyone. Please keep your comments to the bill.

Heather Spaniol:
The bill scares me. It basically ties my hands. I can never fight anything. All the wrongs that have been done to me for three years, I can never fight for. I will lie down in bed. I am losing money by being here today. I am a single mother who is a homeowner. I took the day off work to come down here and beg you to not pass this bill.

Mr. Friedrich handed them a thick binder with hundreds of complaints by homeowners. She was on a television show saying there were only 20 complaints.

Chairman Ohrenschall:
We are not here to make any personal comments against anyone. I do understand what you are saying, and that you are worried about the arbitration fees.

Heather Spaniol:
I am not going to waste any more time. Everyone else already said everything. Just keep in mind that the money is going to go to the people who made this bill.

Robert Robey, Private Citizen, Las Vegas, Nevada:
I am a former board member of one of the largest associations in Las Vegas. For the last ten days, I have tried to write my opinion of this bill. Every time I got to the end, I tore it up and threw it away because I could not understand what this bill was about. One of the first things we must have in NRS Chapter 116 is the ability of the homeowner to have a chance to understand what the law says without the use of a lawyer. I really appreciate Assemblyman McArthur's comments today. I appreciate all of your questions. You dug down and tried to find the answers. I am glad you did that. I now understand why I could not get it. When I file a complaint against a violation of NRS Chapter 116 and what it says, I am now going to go into mediation against my association to get a definition of NRS Chapter 116.

I am sorry Ms. Lavelle left here. This is an anecdotal story. Several years ago, I was sitting at a board meeting, and I said this board meeting is not legal. Ms. Lavelle was sitting on my right. She had been called into this illegal meeting. Everybody on that board was astonished when she agreed with me that it was an illegal meeting. Why cannot people read and understand NRS Chapter 116? It is because of the way it is written, or they do not want to understand it. The problem with this forced mediation, whether it is an NRS Chapter 116 issue or an issue dealing with the governing documents, who says the other side is going to do it in good faith? A lawyer is getting paid by the hour. I know that.

Assemblyman Carrillo asked a question. What is my opinion of how the Real Estate Division operates? I do not have a problem with the Real Estate Division. I have a problem with the fact that the attorneys representing the associations have no obligation to operate in a speedy manner. I have two complaints that have been verified and forwarded up. One is in the Office of the Attorney General, and the other one is waiting for the Commission to hear it. I spent two and one half years on both complaints. Thank you very much for doing nothing. It is not your fault, gentlemen. It is what the system is. Neither one of those complaints will cost me a dime. They will not cost my HOA a dime. It is a simple thing to read and understand NRS Chapter 116.

I am appalled that the former senator who lives in Paradise Spa brought in an 81-year-old lady who is losing her house. The whole thing is going into foreclosure. I am sorry he is not here today. I have talked to the gentleman on the phone.

Chairman Ohrenschall:
I appreciate your testimony and the challenges you have to overcome. I want to keep the testimony to this bill with no derogatory comments towards current legislators, former legislators, witnesses, or lobbyists.

Robert Robey:
I am only saying he testified in front of the Senate Judiciary Committee. It is in the minutes and on record. He was representing people from Paradise Spa where he lives. There is nothing in this bill that will save his home or the lady's home. I hope you all watch the television reports of the people in Las Vegas who have been reported on Channel 13 and Channel 8. The houses burned down, and the insurance was not paid. The people have gate problems and wall problems. It goes on and on. In this bill, where is there a solution to HOAs bullying the homeowners? There is no answer. It goes on and on. After the mediation, they are forced into arbitration and then into bankruptcy. How is a gentleman who is making $30,000 a year, who owns a little condo and has two children, going to afford $1,000 to fight his HOA? He does not have the money. Please think of the little people and not those who are fortunate.

Chairman Ohrenschall:
Thank you for your comments. I think you made an excellent point. Are there any questions? [There were none.]

Sarah Goldstein, representing Golden Crest Property Inc.:
I work for a property management company that manages individual properties inside HOAs. Within the last two to three years, we have seen a troubling trend. Payments of the homeowners monthly assessments of fees are being paid, but they are not being credited. I should say they are being tendered. A check is tendered. We went through a situation where we would personally deliver a check, get a receipt, but it would not show up that the payments were made. That is then on fast-track to collections. The homeowners would be sent to a collection company. You then cannot get a statement from the HOA because it is in collections, and the HOA will not talk to us. It is a fast-track to loss of the individual's property or a very expensive resolution. This could be a payment of $250 that turns into $3,000. In that situation, why not go to small claims court and say, "Here, we have made these payments. Please correct your records and move on." Small claims court does not allow attorney

fees for either side, so it would seem that it is an inexpensive resolution. It is unbelievable.

Right now, we have a situation where the payments were made, and they went to a lockbox. The HOA refused to give us coupons to be attached with the check. It was on the check what the payment was for and what property. Instead, they did not credit those payments. The HOA management companies should have the lockbox or the bank should send that check back to the HOA. If they are confused, the name of our company is on the check, along with our phone number. They could call us, and it could all be resolved. Instead, it becomes a huge endeavor to go through collections. The owner gets mad at us rather than the party that has caused the problem.

This is not just one instance, it has happened over and over again. We submitted, along with a complaint, all supporting documents to the Real Estate Division. After one year and two weeks, the Real Estate Division came back and said nothing was done wrong by the HOA management company. It is a no-win situation. It needs to be stopped. I am not necessarily for or against this particular bill, but it is not covering this type of situation. It seems to be more related to disputes and conflicts between owners and the HOA. This is a financial thing where we made the payment and the payment was not credited. Let us resolve the issue, so we will go to small claims court to do that.

Chairman Ohrenschall:
If I understand you correctly, you would like to see an option, as did Ms. Schuman, that would include small claims court after mediation is unsuccessful?

Sarah Goldstein:
Yes. The one I spoke about, we tried to go to mediation, but the HOA did not go. Is it because it knew it was wrong? We were then told to file a complaint, and that complaint sat there for a year and two weeks with fees and fines continuing to pile up against this owner. Instead of maybe $300 or $400 being owed, it ended up totaling $7,000. Since the Real Estate Division did not find fault with the HOA management company, the next step was that the owner needed to pay it.

I did talk to the Ombudsman directly about this, and she said the homeowner should just pay it. Otherwise, it will just keep adding up. Maybe that is something you should consider putting in this bill too. At the time there is a request for mediation, there should be a period of time in order to resolve

these things rather than the fines continuing to be added to this poor homeowner.

Chairman Ohrenschall:
Are there any questions? [There were none.]

Patricia Gaither, Private Citizen, Las Vegas, Nevada:
As a real estate professional, what would be my responsibility to new buyers? Do I tell them they have five days to read the HOA documents? Is five days going to be enough time for them to review the documents? I need to tell them that they can absolutely adhere to what the documents are saying because it will be a long and expensive process if you want something to be changed. You may not be able to answer that question. It is something we need to keep in mind. If this bill does pass, now I will have to go to my board, on the real estate side, and ask as professionals, what are we going to tell our new buyers?

Chairman Ohrenschall:
I do not see any questions. In the last couple of decades, there has been a move towards alternative dispute resolution. There is a move towards mediation as opposed to going to court. I think that is what the sponsors of the bill are trying to getting at. It is in the hopes of saving people money. It looks like you do not think this will accomplish that.

Patricia Gaither:
I do not know if this bill will. We do have lots of issues, and the majority of our issues that come in front of the Real Estate Division have been HOA issues. I am not sure this bill actually covers it, but change is a necessary thing to be able to work with homeowners as well as the associations.

Michele Mittemiller, Private Citizen, Las Vegas, Nevada:
I just want to say that I am a local real estate agent, and I completely agree. I agree with every comment that has been against this bill. It is not for the homeowners, and it is tough enough to get people to move to Nevada, let alone with all of these unsettling disputes.

Chairman Ohrenschall:
As a real estate agent, does this kind of policy in this bill make it harder for you to sell a home or condominium in a CIC?

Michele Mittemiller:
Absolutely. People are requesting no HOAs when they want to buy property. Instead of saying they want three bedrooms; they are saying they want homes that are not part of an HOA. They do not want to get caught up in that.

Chairman Ohrenschall:
For the audience, we want to maintain our decorum here. There is no applauding or booing.

You had clients requesting properties not in HOAs?

Michele Mittemiller:
Yes. Nothing is ever in favor of the homeowner. The homeowner always loses because we are the little guys. The big guys always win.

Chairman Ohrenschall:
Are there any questions? [There were none.]

Patricia Grimes Davis, Private Citizen, Las Vegas, Nevada:
Having lived in an HOA has been a living hell. When you file a complaint with your HOA, and even when it goes to the Ombudsman's Office, the homeowner never comes out ahead. It is always against the homeowner. With these HOAs, there should be fair representation, and not only that, the management company of the HOA needs to be brought to the table as well. When you file a complaint, there are repercussions. I have had my dog killed, my tires slashed, et cetera. It is like nobody in the gated community knows what is going on. What is the purpose of an HOA when these types of things happen? Now, they want to keep the gate open from 7 a.m. to 7 p.m. There is a problem there. Who is governing what the HOAs do? There are many elderly people and people on fixed incomes living in HOAs who are afraid to speak up against the HOA because of what has happened to others. What happened to me is that the gardener cut the lights. I am retired, disabled, have handicapped license plates, and my vehicle is sitting in front out there. Who would think somebody would slash all four of your tires? Nobody knows who did it. My dog was killed inside of a gated community, but nobody knows who did it. If you are going to go along with this bill, then it should be fair to the homeowners as well.

Chairman Ohrenschall:
It is important to get testimony from the public about these bills. Thank you very much.

Are there any questions? [There were none.] Is there anyone else in opposition to S.B. 254 (R1)? [There was no one.]

This Subcommittee will meet next week, and we will try to iron out what we think is good about this bill and what may need some correction. Senator Copening, if you have any final remarks, please come forward.

Senator Copening:
I know the testimony ran the gamut. Definitely some of the testimony did not have to do with the bill. There is a lot of passion out there. There are things that are not operating correctly in the HOA world, so we heard some of the issues. We know there are other bills out there covering some of those issues as well.

If for some reason it says they are not allowed to use the court system in this bill, we definitely need to change that. Anybody can file a claim in court. This bill may say that if they want to go through the Ombudsman's Office and the Real Estate Division, this is what we are suggesting. You heard testimony from people that said their cases have been delayed for months and years. This is one of the reasons behind the bill. We do not fund the Ombudsman's Office well enough to handle all of the many complaints that come through, whether it is homeowner-to-homeowner or homeowner versus association. There are just too many of them. They are not getting their issues resolved in a timely fashion. That was the reason behind this bill. It was not getting done in a timely fashion so the homeowners could not get back to enjoying their lives, and it was expensive. Going to court is expensive. You heard one person testify that she spent $65,000 in court, and as a prevailing party, she was only awarded $18,000. Most people do not have the money to go to court. I am in agreement about arbitration fees needing to be capped. I am not the expert on it, and that is the reason I said to put it in the hands of somebody who could determine what that is. If there is somebody out there who is an expert and can say that, we should turn to him. The idea is to get issues resolved in a timely and cost-effective fashion. That is what this bill tries to do.

There are a couple of confusing sections that are actually current law. I do not think people realize this is current law. One of the sections is on page 16. This is the one where we had heard some concerns that peoples' homes could be taken away. I think what they are talking about is if you see current law above where it has been stricken and says, "'Assessments' mean . . . ," we took that section and put it down below with the section that says, "'Charges' means . . . ." It was a clean up of the language. Assessments were not all of the things that were below. It is almost similar language, but we replaced the word "assessments" with "charges." Underneath the charges, it talks about assessments. This is current law that has been moved down below. We heard somebody with an issue with the term "irreparable harm." That is also current law. That is on line 36, ". . . where there is an immediate threat of irreparable harm . . . ." We tried to define what "irreparable harm" is because it is not defined. Below it is the definition. That is current law.

The assessments situation is also current law. We just tried to clarify it more than anything.

Chairman Ohrenschall:
As I understand, that definition of "charges" under section 16 would only apply to NRS Chapter 38. It would not apply to NRS Chapter 116. I do not believe it could lead to someone losing his home through foreclosure because of these charges for mediation or arbitration. There would only be the options in NRS Chapter 116.

Senator Copening:
You may be correct. You are the attorney. I was trying to look in here to see why "charges" had to be identified. That is what we want to try. As far as Paradise Spa and Bill O'Donnell, he and I are working very closely. He is afraid that if we take away things that are currently paid in super-priority, they are $1 million in arrears, and he is very concerned that they will have to retain attorneys in order to get this money back. He and I worked very closely together. I am helping them with their situation. I visited them and have tried to put them in touch with attorneys. He is not involved in this particular issue, but when it comes to the collection issues, he is actually trying to get me to back into my language of Senate Bill 174 about attorneys and fees because they cannot recover it without it. We are going to work on that. I thank you for indulging me and allowing me to respond.

Chairman Ohrenschall:
We appreciate your effort to try to promote mediation, try to help HOAs become more whole, and try to resolve disputes between homeowners and their associations so you do not get this fractionalization in the CICs.

Are there any questions? [There were none.]

[Exhibit G was entered into the record.] We will close the hearing on S.B. 254 (R1).

I see Senator McGinness, so we will open Senate Bill 89 (1st Reprint).

Senate Bill 89 (1st Reprint): Revises provisions governing audits and reviews of financial statements of common-interest communities. (BDR 10-595)

Senator Mike McGinness, Central Nevada Senatorial District:
I pulled up the minutes from the hearing in the Senate Judiciary Committee, and I will quote Mr. Hansen. The Carson River Homeowners Association (HOA) consists of 31 homes covered by covenants, conditions, and restrictions

(CC&Rs). They have a small community water system, and it is regulated as any community water system is. They do not have any paid employees. They pay two independent contractors, a water systems operator and an independent bookkeeper. When they started to fill out the reports for the Ombudsman last year, they realized they needed a Certified Public Accountant (CPA) to review the financial statements. They contacted the CPA, and he indicated that the cost of doing this review would be $7,500 because of the requirements of a CPA. The CPA indicated that a review of the books and records to the board should be sufficient. As the bill was amended, we tried to tackle this by saying that if the annual budget of an association is $45,000 but less than $75,000, they would not have to do that.

Chairman Ohrenschall:
Are there any questions? [There were none.] It looks like there is not too much controversy with this bill. We will discuss this bill later at our work session. We will close the hearing on S.B. 89 (R1).

We will open the hearing on Senate Bill 30 (1st Reprint).

Senate Bill 30 (1st Reprint): Makes various changes relating to common-interest communities. (BDR 10-477)

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry:
Senate Bill 30 (R1) is an executive bill that is being brought. It is intended to be a housekeeping bill to amend *Nevada Revised Statutes* (NRS) Chapter 116 on two matters of law. The Real Estate Division and the Commission on Common-Interest Communities and Condominium Hotels (CICCH) identified two things that needed clarifying and that had to be made compatible with other existing law in Nevada.

In this bill, section 1 amends the law, and section 2 consolidates two current sections of the law into one section for purposes of intending to clarify. Section 1 of the bill amends NRS 116.31153, subsection 2. This section concerns protection of the funds of the association and the requirement for two signatures for withdrawals of funds from both the reserve and operating account. In existing law, there are already two circumstances where electronic fund transfer can occur. That is the transfer of money from the operating account to the reserve account of the association at regular intervals and to make automatic payments for utilities. Section 1 amends this to also allow for the electronic transfer to the State Treasurer, which is required to be in compliance with NRS 353.1467. This requires that all payments of money owed to a state agency of $10,000 or greater must be made by electronic

transfer. We do have master associations in the state with more than 3,300 units that are required to electronically transmit that payment to the State Treasurer. This would be a cleanup to make that allowable.

One other section is to allow for the electronic transfer of money to the U.S. government when that is required and allowable. There is also a provision to allow the association to use electronic signatures to withdraw money in the operating account. This is not the reserve but only the operating account. That is to update payment processes but with some protections. That electronic transfer must be made pursuant to a written agreement with the association and the financial institution where the operating account of the association is maintained. Importantly, in section 1, subsection 4, paragraph (b), there is a process in place for an authorization if, "The executive board has expressly authorized the electronic transfer of money and; (c) The association has established internal accounting controls which comply with generally accepted accounting principles to safeguard the assets of the association." I would note that by adding this to the law, it does set forth a requirement that is actionable on the enforcement side of the Real Estate Division. If an association does not have written procedures of how it will authorize payments and ensure electronic signatures are applied, that allows the Division to hold it accountable for that and ensure it has that.

Section 2 of the bill incorporates two sections of the law into one. It repeals NRS 116.31177 and incorporates that into NRS 116.31175. These are two sections that seem to have a lot of misunderstanding. This pulls them together and clarifies what documents make up the books, records, and papers of the association, which must be made available to unit owners for review upon request. The other thing that was done was to incorporate the "not to exceed 25 cents per page" regarding copies of all books, records, and other papers of the association. That was in existing law. Please note that the Real Estate Division does not have an issue with what the Legislature determines to be an appropriate fee, or no fee, per page. The intention is that whatever is decided in this legislative session, that it is consistent and clear throughout the chapter, so we do not have one place saying this fee and another place that fee. That is the intention of the bill.

Again, this was brought by both the Division and the Commission to hopefully clarify and consolidate so it is easier to understand and for us to respond to questions on how to interpret.

Chairman Ohrenschall:
I have a question. Under section 1, about the electronic transfers of money to a state agency or to the federal government, by removing that signature

requirement, is there any greater danger something might go awry and money may go where it is not meant to go? Are there enough safeguards?

Gail Anderson:
I believe the concept in the existing law in subsection 3 without signatures was to allow for electronic transfers. We have put back in this concept of the procedures that must be in place for electronic signatures and authorization for payments to be made. It is certainly intended to provide accountability and to ensure that transfers cannot be inappropriately made to inappropriate places. There must be procedures in place for that.

Chairman Ohrenschall:
There would still be a provision under this proposed addition to the law of an electronic signature?

Gail Anderson:
That is correct.

Assemblyman McArthur:
I want to follow up on that. You must have an electronic transfer if it is over $10,000. Is that already in statute?

Gail Anderson:
Yes, that is.

Assemblyman McArthur:
The only thing this does is allow the amount of money up to $10,000 to now be electronically transferred. Before, you had to do it for over $10,000. Now, any amount can be electronically transferred to the state.

Gail Anderson:
In subsection 3, paragraph (c), it would allow for the $10,000 payment, which had not been specifically allowed in subsection 3 before. I believe that section 4 allows the association to use electronic signatures in other areas when there is a written agreement with the bank or financial institution and the association when the executive board has expressly authorized it. Expressly authorized was intended to be the electronic authorization or signature for a transfer to be made. That does still take a board member involved in approving a payment or transfer electronically.

Assemblyman McArthur:
I understand that. I was just talking about the $10,000 mark. Basically, it had to be electronically transferred before in existing law. Is that correct?

Gail Anderson:
Yes, that was fairly recent. I believe that was made last session.

Assemblyman McArthur:
Really, the only change there with paragraph (c) would be the fact that now it is possible up to that $10,000 also. Since it is already in law above $10,000, paragraph (c) is saying it is now okay for any electronic transfer.

Gail Anderson:
I would need to verify that because NRS 353.1467 just speaks to the electronic transfer. I do not have that in front of me, so I need to verify that. I was intending that we only address the $10,000 and above.

Assemblyman McArthur:
That was my question. The bill does not make that clear for me.

Gail Anderson:
I will verify that citation and make sure that is what it is limited to.

Assemblyman McArthur:
You still meet the recommendation of the board, correct?

Gail Anderson:
Correct, for the policies, procedures, and approval.

[Chairman Ohrenschall left the room. Assemblyman Carrillo assumed the Chair.]

Assemblyman McArthur:
One more follow-up about what you brought up before about the cost. I think we do have something else we just passed through that had to do with charges for pages, so we will double check that. I think it was 25 cents for the first ten pages and then 10 cents after that. We will have to figure out what that is, and that will be fine.

Acting Chairman Carrillo:
We are going to be at ease for a moment and wait for the Chairman to get back.

Is there anyone else who would like to testify in support of S.B. 30 (R1) here or in Las Vegas? [There was no one.] We will move to the neutral position.

[Chairman Ohrenschall reassumed the Chair.]

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
My only concern is on page 3, paragraph (c), which states, "The association has established internal accounting controls which comply with generally accepted accounting principles to safeguard the assets of the association." What are those safeguards? I would like to see that language tightened up to safeguard it. There are very large associations that have huge budgets. We have heard testimony from Monica Wise and her management company that there had been an embezzlement of a large amount of money. It is interesting to note that last week the CICCH held a hearing against a former board president, Raymond Barr, who embezzled between $62,000 and $72,000 within an approximate two-month period.

Chairman Ohrenschall:
I am not sure that is appropriate for this forum. You can talk about policy, but I do not think accusing anyone of any crimes unless he has been convicted is appropriate.

Jonathan Friedrich:
The point is that this generally accepted accounting principles to safeguard money seems very loose. It does not really specify any statute or any actual safeguard. There should be one specific statement that all associations should use rather than having a variety of different safeguards. We have nearly 3,000 HOAs in this state, and if we had 3,000 different safeguards, it would be maddening.

Chairman Ohrenschall:
So, your concerns are primarily about section 1?

Jonathan Friedrich:
Yes, section 1, subsection 4, paragraph (c), lines 1 to 3. It seems very general and loose. Unfortunately, we have very dishonest people.

Chairman Ohrenschall:
Do you have any recommended substitution language?

Jonathan Friedrich:
Unfortunately, I am not a CPA, but if I can get something, I will email it to you.

Chairman Ohrenschall:
Thank you. If you could copy that email for Assemblymen Carrillo and McArthur and the Judiciary Committee Manager, Nichole Bailey, I would appreciate you.

Is there anyone else wishing to speak?

Robert Robey, Private Citizen, Las Vegas, Nevada:
I thank Assemblyman McArthur for asking the question about payments. I missed that. I am for this bill and moving into the twenty-first century. In section 3, at the bottom of page 3, where we talked about the 25 cents per page and 10 cents per page, let us not forget that in electronic format, or email, we have to mean the same thing. People can get that free of charge. It does not take long to send an email.

I would like to commend my HOA, Sun City Summerlin, for having almost everything I want on the website. If I ask for something, I receive it within 20 minutes, as a general rule. I try not to bug them because almost everything is on the website. Of course, we do have a very large association.

Chairman Ohrenschall:
I appreciate your taking the time to be here. I know you have many obstacles to overcome to get to the Sawyer Building. I apologize for earlier. I thought you were going to say something derogatory about the former state senator.

Are there any questions? [There were none.] Is there anyone else wishing to speak on S.B. 30 (R1) in favor, opposition, or neutral? [There was no one.] We will close the hearing on S.B. 30 (R1).

We have a few minutes, so we can open it up for public comment. I want to caution anyone who wants to make a public comment that the hearings on the bills are closed. We will not be talking about those bills anymore today.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
I had a fax sent up that was 21 pages. I want to verify that you received it. There were a couple of typos on page 1, and I submitted a corrected copy. I hope you have seen that.

Chairman Ohrenschall:
We do have that document.

Tim Stebbins, Private Citizen, Henderson, Nevada:
I want to thank the Subcommittee for having S.B. 254 (R1) first and allowing all those who wanted to talk an opportunity to do so. One thing that has come up many times is fairness. I hope the Subcommittee will take a look at that fairness for all parties involved.

Chairman Ohrenschall:
Thank you. Is there anyone else wishing to make a public comment either in Carson City or in Las Vegas? [There was no one.] We will be meeting again next week.

The meeting is adjourned [at 10:51 a.m.].

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 6, 2011 **Time of Meeting: 8:19 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 254 (R1)	C	Senator Allison Copening	Prepared Testimony
S.B. 254 (R1)	D	Tim Stebbins	Prepared Testimony
S.B. 254 (R1)	E	Jonathan Friedrich	Proposed Amendment
S.B. 254 (R1)	F	Yvonne Schuman	Prepared Testimony
S.B. 254 (R1)	G	Senator Copening	ADR Overview

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE

Seventy-Sixth Session
May 10, 2011

The Committee on Judiciary Subcommittee was called to order by Chairman James Ohrenschall at 8:15 a.m. on Tuesday, May 10, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Richard Carrillo
Assemblyman Richard McArthur

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Allison Copening, Clark County Senatorial District No. 6
Assemblyman Tick Segerblom, Clark County Assembly District No. 9

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Karen D. Dennison, Vice Chair, Real Property Section, State Bar of Nevada
Michael Buckley, Private Citizen, Las Vegas, Nevada
Michael Randolph, Private Citizen, Las Vegas, Nevada
Gary Lein, Private Citizen, Las Vegas, Nevada
Trudi Lytle, Private Citizen, Las Vegas, Nevada
Yvonne Schuman, Private Citizen, Las Vegas, Nevada
John Griffin, Nevada Justice Association
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Bob Robey, Private Citizen, Las Vegas, Nevada

Chairman Ohrenschall:
[The roll was called.] Thank you for being here today. We will open today's hearing with Senate Bill 204 (1st Reprint). Senator Copening, please come forward and present your bill.

Senate Bill 204 (1st Reprint): Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

Senator Allison Copening, Clark County Senatorial District No. 6:
I am here today to introduce Senate Bill 204 (1st Reprint) for consideration. The bill addresses changes to the Uniform Common Interest Ownership Act. I am carrying this at the request of the Uniform Law Commission. The Legislature adopted the 1982 version of the Uniform Common Interest Ownership Act. [Continued reading from prepared testimony (Exhibit C).]

With me today is Karen Dennison. She can elaborate more on the changes being proposed, and why they are being proposed. With the Chair's permission, I will turn it over to Karen.

Chairman Ohrenschall:
Yes, thank you very much. Assemblyman Segerblom, Chairman Horne, and I are all members of the Uniform Law Commission.

Karen D. Dennison, Vice Chair, Real Property Section, State Bar of Nevada:
I would like to correct a statement that was made. I am not a member of the Uniform Law Commission. The State Bar members reviewed the Uniform Act changes made in 1994 and 2008 to the Uniform Common Interest Ownership Act, and we have brought forth certain amendments made in those years. As you may recall, *Nevada Revised Statutes* (NRS) Chapter 116 was patterned after the 1982 version of the Uniform Common Interest Ownership

declarant's control terminates. It makes sense that the declarant is not going to bring an action against himself if he is controlling the board. This section also allows the association to authorize an independent committee of the board to enforce and compromise warranty claims involving the common elements. Subsection 3 provides that a judgment lien against the association is governed by NRS 116.3117, which states that a judgment lien is not a lien on the common elements but is a lien on all other property of the association and units. Current law says a judgment lien is a lien on units. The change is that it is also a lien on any other property the association may own.

Section 45 modifies NRS 116.113, which provides for insurance an association must maintain. The addition here is to include crime insurance, which I believe is consistent with S.B. 174.

Assemblyman McArthur:
I am not sure that I completely understand section 45, subsection 1, paragraph (c). Line 10 says, "Such insurance may not contain a conviction requirement." What does that mean?

Karen D. Dennison:
This addition was as an amendment to the bill. It was not our subcommittee's amendment. I believe this language was added to be consistent with Senate Bill 174. I apologize because I am not an insurance expert, and I do not know why such insurance may not contain a conviction requirement. I suppose an example would be if someone were charged with a crime, there would be coverage, even if the person was not convicted. That is my understanding, but I am not sure why that was included. I believe that Senator Copening can address that issue.

Senator Copening:
I am not certain about that particular aspect. What I can tell you is that we had conversations with insurance brokers that are recommending that associations carry crime insurance, rather than the manager or management company carrying their own forms of liability insurance. If there was an alleged crime that took place, such as embezzlement, the association may not be protected. The recommendation is that the associations should carry crime insurance, which would further protect them from crimes by their employees. Based on testimony that I have heard, it is no more expensive than the regular liability. It can be carried as an additional rider. That is the reason why we included it in S.B. 174. It would protect the association should a crime be committed by a community association manager, or some other employee. I am not certain about the conviction requirement included.

authorize an independent committee of the executive board bringing actions to evaluate and enforce any warranty claims which involve the common elements. Only members of the executive board elected by the units' owners, other than declarant and other persons appointed by those independent members may serve on the committee, and the committee's decision must be free of any action of the declarant. The idea is that this committee must be completely independent of the declarant in evaluating and bringing an action on these warranty claims.

Section 59 consists of portions that have been relocated. I believe this language may also be included in Senate Bill 174. There is a new section, which was added in the amendments that we did not bring forward. It is an amendment to the chapter dealing with community managers, which is NRS 116A.410. This removes the requirement for a bond for community managers. I do not know why this section was amended, but that part was added on the Senate side. Finally, section 60 is a repeal of NRS 116.31177, which is now in NRS 116.31175. That concludes my testimony. I would be happy to answer any other questions.

Chairman Ohrenschall:
Thank you very much, Ms. Dennison, for presenting this for the Committee.

Assemblyman McArthur:
Regarding section 59, subsection 3, was that the part that you said was changed on the Senate side?

Karen D. Dennison:
Section 59.5 was added on the Senate side.

Assemblyman McArthur:
I do not see any changes on section 59.5. There are some deletions. Is that what you are referring to?

Karen D. Dennison:
Yes, that is what I am talking about. It is the deletion of the bond requirement for a community manager's certificate.

Assemblyman McArthur:
I have a question about section 59, subsection 3. Has this been a problem, and have the boards been covered previously? Why is this new language included?

Michael Randolph:
That was the only area of discussion I had. I just wanted to answer the Chairman's question on why this section was needed. Perhaps you can excuse me, and I can come back up when he returns.

Acting Chairman Carrillo:
Okay, that will be great. Please do not go too far. Is there anyone else wishing to testify in support of S.B. 204 (R1)?

Gary Lein, Private Citizen, Las Vegas, Nevada:
I would like to address section 45, related to the crime policy. I am a member of the Commission for Common-Interest Communities and Condominium Hotels. The question is related to the conviction requirement as referenced on line 10. As part of the Commission process in dealing with the bond requirement for community managers, we met as a group to address the issue of fraud and embezzlement relating to community associations. We developed the language which was inserted into S.B. 174 (R1), Senator Copening's bill. One of the things we found through our research was that the average policy covering crime contains a conviction requirement. Generally, the Las Vegas Metropolitan Police Department (Metro) will not investigate these types of crimes. If Metro will not investigate, and there is no conviction, the average insurance policy will not pay claims, making the community association whole. It is an important requirement that any crime policy may not contain that conviction requirement. We need to make sure the insurance company meets up to its responsibilities and pays claims on embezzlement or fraud. Subsection 1, paragraph (c) is also important because there are also required endorsements covering the community manager and the management company. There have been cases of fraud, and although there may have been a crime policy, there was not the appropriate coverage to include the community manager and company employees. The central issue is to make sure there is no conviction requirement, and the insurance policy would be paid.

Acting Chairman Carrillo:
Thank you, Mr. Lein. Is there anyone else wishing to testify?

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:
I have a constituent and friend named Trudi Lytle, who is present in Las Vegas. We have worked together to create an amendment which we would like to propose.

Acting Chairman Carrillo:
Yes, we have received your proposed amendment (Exhibit F). Do you have any questions on the amendment, Mr. McArthur?

Acting Chairman Carrillo:
Let us move to the neutral position. Is there anyone wishing to testify? Is there anyone opposing the bill? We will close the hearing on S.B. 222 (R1) and will bring it back to the Committee. Is there any public comment?

Jonathan Friedrich:
Has a date been set for the work session for Senate Bill 254?

Acting Chairman Carrillo:
We have not been provided with a date yet. Keep watching for the agenda.

Yvonne Schuman:
I would like to add a few additional remarks about the bill.

Acting Chairman Carrillo:
We have already closed the hearing on the bills. We are accepting public comment only now. We are now adjourned [at 10:31 a.m.]. [Introduction of S.B. 204, dated March 16, 2011 and presented by Michael Buckley, has been submitted for the record (Exhibit N), but was not discussed during the hearing.]

RESPECTFULLY SUBMITTED:

_____
Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 10, 2011 **Time of Meeting: 8:15 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 204 (R1)	C	Senator Allison Copening	Prepared Testimony
S.B. 204 (R1)	D	Karen D. Dennison/State Bar Real Property Section	Legislative Proposal
S.B. 204 (R1)	E	Michael Buckley/Private Citizen	Analysis of S.B. 204 (1st Reprint)
S.B. 204 (R1)	F	Assemblyman Tick Segerblom	Mock-Up, Proposed Amendment 6818
S.B. 204 (R1)	G	Trudi Lytle/Private Citizen	Prepared Testimony
S.B. 204 (R1)	H	Yvonne Schuman/Private Citizen	Prepared Testimony
S.B. 204 (R1)	I	Jonathan Friedrich/Private Citizen	Prepared Testimony
S.B. 204 (R1)	J	Robert Robey/Private Citizen	Suggested Amendment
S.B. 222 (R1)	K	Senator Allison Copening	Prepared Testimony
S.B. 222 (R1)	L	Senator Allison Copening	Lease Registration Program Brochure
S.B. 222 (R1)	M	Senator Allison Copening	Northshores Owners Association Resolution for Lease Registration Program
S.B. 222 (R1)	N	Michael Buckley/Private Citizen	Introduction of S.B. 204

MINUTES OF THE MEETING
OF THE
ASSEMBLY SUBCOMMITTEE ON JUDICIARY

Seventy-Sixth Session
May 13, 2011

The Committee on Judiciary Subcommittee was called to order by Chairman James Ohrenschall at 8:26 a.m. on Friday, May 13, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Richard Carrillo
Assemblyman Richard McArthur

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Allison Copening, Clark County Senatorial District No. 6
Assemblyman Tick Segerblom, Clark County Assembly District No. 9

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Julie Kellen, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Karen Dennison, Vice Chair, Real Property Section, State Bar of Nevada
Marilyn Brainard, Secretary, Commission for Common-Interest Communities and Condominium Hotels

Chairman Ohrenschall:
[Roll was called.] We are having a work session today. I believe we will start with Senate Bill 30 (1st Reprint).

Senate Bill 30 (1st Reprint): Makes various changes relating to common-interest communities. (BDR 10-477)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 30 (R1) was sponsored by the Senate Committee on Judiciary on behalf of the Real Estate Division, Department of Business and Industry. It was heard in this Subcommittee on May 6. This bill revises procedures for transferring or withdrawing money from the operating accounts of homeowners' associations (HOA).

[Continued to read from work session document (Exhibit C).]

On the day of the hearing, there were no amendments.

Chairman Ohrenschall:
Assemblyman McArthur, I think you had some concerns about this?

Assemblyman McArthur:
I do have some notes here. I remember one of them was on page 1 regarding electronic transfers to the United States government. Apparently, it refers back to a $10,000 amount. That basically does not change when you look back at *Nevada Revised Statutes* (NRS). I think that part was cleared up for me.

Chairman Ohrenschall:
I recall having a concern about the potential for fraud or embezzlement, but I believe one of the witnesses alleviated my concerns.

Assemblyman McArthur:
On page 3, section 2, subsection 3, it had 14 days but did not say whether they were calendar days or business days. I do not know whether we cleared that up or not.

Jonathan Friedrich:
I am not asking for a cap as a cap. The statute, as written, as Mr. Ziegler stated, is three months. I concur with that. The issue is covering the full amount of the reserve funds. When you have a Sun City Summerlin or Anthem, there are many millions of dollars in those accounts. The premium would be predicated upon the amount of potential loss. Most associations do not have anywhere close to $500,000 in their reserve accounts. The cap, if you want to use that word, of $500,000 would be on just the reserve portion.

If I may respectfully disagree with Ms. Brainard, it was difficult to get bond coverage insurance, and that verbiage came out of the 2009 Session because of the embezzlements that took place by managers. I do not feel that an HOA and the homeowners should be saddled with the cost of the crime insurance for the manager. The association does not directly pay the rent or the workman's compensation of the management company. In many cases, managers have been proved to be dishonest. That was the reason for the original language of a bond. Crime insurance is what is actually needed. That was my reason for the amendment. I do not disagree with the three months. In an association like Sun City Summerlin, there are 7,781 homes paying monthly fees of $100 a month. You do the arithmetic there.

Assemblyman McArthur:
It looks like the only problem we may have is with the amount. The way the bill is right now, we are talking about a minimum amount. Would the author of this bill be comfortable with an amount of $500,000 or 50 percent of the reserves? That would be a minimum amount.

Karen Dennison:
This section was not in our original bill. We had a fidelity bond. This section was moved to conform with Senate Bill 174, which is Senator Copening's bill. I would really like to defer to Senator Copening on her desires there.

Assemblyman McArthur:
I am just trying to find some common ground. If we went with the minimum of $500,000 or 50 percent, whichever is less, this would cover some of the really big associations. I am just throwing this out as common ground between these two.

Acting Chairman Carrillo:
We are going to adjourn because of floor session. We will repost for next week.

The meeting is adjourned [at 12:02 p.m.].

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 13, 2011 **Time of Meeting: 8:26 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 30 (R1)	C	Dave Ziegler	Work Session Document
S.B. 89 (R1)	D	Dave Ziegler	Work Session Document
S.B. 222 (R1)	E	Dave Ziegler	Work Session Document
S.B. 204 (R1)	F	Dave Ziegler	Work Session Document
S.B. 204 (R1)	G	Garrett Gordon	Proposed Amendment
S.B. 204 (R1)	H	Karen Dennison	Response to Amendments

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE

Seventy-Sixth Session
May 17, 2011

The Committee on Judiciary Subcommittee was called to order by Chairman James Ohrenschall at 4:58 p.m. on Tuesday, May 17, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Richard Carrillo
Assemblyman Richard McArthur

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Tick Segerblom, Clark County District No. 9
Senator Allison Copening, Clark County Senatorial District No. 6

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Nancy Davis, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Gary Lein, representing the Commission for Common-Interest Communities and Condominium Hotels
Garrett Gordon, representing Southern Highlands Homeowners Association
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels
Michael Randolph, representing Homeowner Association Services Inc., Las Vegas, Nevada
Alisa Nave, representing the Nevada Justice Association
Eleissa Lavelle, Private Citizen, Las Vegas, Nevada
Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry
Michael Joe, representing Legal Aid Center of Southern Nevada

Chairman Ohrenschall:
[Roll taken.] Tonight we will attempt to finish our work session on the two remaining bills. When we adjourned our last meeting, we were working on Senate Bill 204 (1st Reprint). We will begin where we left off.

Senate Bill 204 (1st Reprint): Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

Dave Ziegler, Committee Policy Analyst:
When we adjourned our last work session, we were on S.B. 204 (R1), section 45. Perhaps we should forge through to the end and then, if necessary, review a few sections that were discussed earlier.

Section 45 requires a homeowners' association (HOA) to maintain property, liability, and crime insurance subject to reasonable deductibles.

[Continued to read from work session document (Exhibit C).]

Chairman Ohrenschall:
Were there any other amendments?

Dave Ziegler:
No.

against the new owner for $4,000. This amendment is to ensure that the lien is removed from the property. A lien by definition is an interest against property.

Chairman Ohrenschall:
Do you think this will make HOAs more or less whole in terms of their ability to recover these amounts owed to them?

Michael Buckley:
When a mortgage is foreclosed, it wipes out all junior liens. That is the law. If you are in the title industry, you know that when you foreclose a senior lien it wipes out all the junior liens. Since it does not say that in NRS Chapter 116, you do have a lien of record that says the HOA is owed money, but once the foreclosure occurs, the lien is gone once the super priority lien has been paid. This amendment is not intended to change the law. It is intended to ensure that it is clear that once the super priority lien is paid, the lien the HOA has for the past due assessments against the unit is gone.

Chairman Ohrenschall:
Any questions? [There were none.]

Michael Randolph, representing Homeowner Association Services Inc., Las Vegas, Nevada:
Mr. Buckley was referring to the recording of the priority of liens which is over in NRS Chapter 107. Since NRS 116.311 originally came from NRS Chapter 107, that is where it is. The idea behind removing the leftover amounts due from the property is to give clear title to the succeeding purchaser, whether it be an investor at the auction or a bank who resells it. I have heard of events where the super priority lien portion and collection fees were paid, yet the person attempting to collect was still attempting to collect amounts far greater than leftover amounts due from the prior homeowner, which were not in the super priority lien. They were trying to collect it from the new homeowner, which is a total aberration. When the lien is stripped off the property once the super priority lien portion has been paid, it protects the future homeowners.

Chairman Ohrenschall:
The part of the amendment on page 4, lines 18 through 25, is that in another Senate bill also?

Michael Buckley:
Yes, that is the language that we put in Senate Bill 174. Just to clarify, this is a State Bar Real Property section bill and the language in section 2 of the proposed amendment on page 3 is about Fannie Mae regulations. I would mention that currently the Fannie Mae regulations are referred to for the length

of the super priority lien. When Nevada went from six to nine months, that language was put in because in condominiums, Fannie Mae regulations are limited to six months. This proposal would add not only the time portion of the super priority lien, but the amounts of fees and collection costs would be limited by Fannie Mae guidelines. The other thing I would like to point out is that I have had this debate about what exactly Fannie Mae says about these fees. Some would argue that Fannie Mae prohibits the payment of collection costs and only permits the payment of assessments. I have found language that states that the collection costs can be paid in addition to the assessments. I think that if we adopt this language which now refers back to Fannie Mae regulations for collection costs, we will be injecting much more uncertainty into what must be paid at foreclosure, which I do not think is a good idea. It seems that the idea of a law is to make things more certain than less certain. That is why it was limited in the past to just the time and not the costs.

Chairman Ohrenschall:
So you are seeing that there would be a conflict between the six months that Fannie Mae allows for condominiums and the nine-month super priority lien?

Michael Buckley:
No. The way the law is currently written, there is no conflict because Fannie Mae limits condominiums to six months and our statute says nine months unless Fannie Mae says six months. I think the proposed amendment language would make things uncertain because I am not convinced that Fannie Mae regulations address this. For example, when Fannie Mae approves a project, there are regulations that address whether the project is approved for Fannie Mae financing. The other part of the process that Fannie Mae deals with is when there has actually been a loan that was sold to Fannie Mae because it was an approved project, and now Fannie Mae holds the mortgage. There is a different set of regulations that deal with what Fannie Mae will pay if it is foreclosing. There is also the lender who made the loan and sold the loan to Fannie Mae. There are different regulations that apply there also. I think this language, which would refer to Fannie Mae guidelines on how much collection costs you pay, is creating uncertainty.

Chairman Ohrenschall:
So you have concerns with the first part of the amendment, but you are all right with the section that comes from S.B. 174?

Michael Buckley:
That is correct.

Assemblyman Carrillo:
Assessments are the HOA's lifeblood. If we pass this bill and eliminate all the assessments from the previous owner, are we removing the lifeblood of an HOA? How will this affect the HOAs? If the HOA is dependent on the assessments, it will have to make up the difference by increasing the assessments for the rest of the homeowners.

Michael Buckley:
We are not changing the super priority lien. It will be six to nine months, which is what the law states now. Once an HOA gets paid the super priority lien, it no longer has a lien against the unit. That is existing law. When an investor buys a unit and resells it, it is great for the association who gets new owners because they start paying the dues on the unit that was foreclosed. If there is a problem with title, if the new owner has some question about having to pay the old owner's assessments, that affects the ability of those units to sell. We are not changing the law or the super priority lien. What we are trying to do is to clear up the title once the association has been paid its super priority lien. The association can only get the super priority lien if there is a foreclosure by the first mortgage. If there is no foreclosure by the first mortgage, the HOA could foreclose. Super priority lien deals only with the foreclosure by the first mortgage. When that has been paid, the old lien is gone, and the unit can go on the marketplace with a clean slate.

Assemblyman Carrillo:
You also stated that this will protect investors. Obviously, homeowners are now purchasing homes at the same prices that were paid 15 years ago. If the whole purpose of this bill is to protect investors, then this is missing the point.

Michael Buckley:
I think you make a very good point. Currently homes are very affordable. People can now afford to buy a home, and may want to buy a foreclosed unit from the bank. The association or an unscrupulous collection company could say, "There is a $4,000 lien on your property." The first-time homebuyer does not know whether he has to pay that or not. This is not a question of protecting the investor; it is a question of protecting the new owner.

Chairman Ohrenschall:
Any other questions? [There were none.]

Garrett Gordon:
I would echo Mr. Buckley's testimony. We have no objection to the language from S.B. 174. We do strongly object to the amendment on page 1. This deals with collection costs. There has been a huge debate over the last couple

Chairman Ohrenschall:
Section 49, subsection 1, on page 47 of the bill, is this duplicative language from another bill?

Michael Buckley:
Yes, I believe it is in S.B. 174, dealing with collections. It came on a parallel track because this is the uniform language.

Chairman Ohrenschall:
One concern I have with that section is that we are working on several of these collection issues, and attempting to come to an agreement prior to the end of session, using one or perhaps both of those bills as a vehicle. I believe the proper venue for this is through those negotiations and attempts to compromise. I do not believe we should process section 49, subsection . . .

Michael Buckley:
Just to point out, I think that you are right. This is all about collections and liens. If you are going to deal with that elsewhere, we do not have any objection to putting that in another bill. We would hope that the language on receivers, which came from the Uniform Act, would go in there as well.

Chairman Ohrenschall:
I agree, I think section 49, subsection 11, should stay in there. There was an example of the Paradise Spa in Las Vegas, correct?

Michael Buckley:
That is correct.

Chairman Ohrenschall:
Mr. Friedrich proposed an amendment regarding charges by receivers. I was thinking perhaps we could pass subsection 11, but mandate that the CICCH promulgate regulations establishing a cap for receivers and what they may charge.

Michael Buckley:
For clarification, the bill proposes to allow receivers to be appointed by the court. I do not think that the CICCH could tell a judge what the receiver would be paid. There may be some confusion about this kind of receiver. The example of Paradise Spa is that there were tenants who were paying their rent to the unit owner. The unit owner was not paying his dues and the association was owed money. There was income to pay the receiver's fee, which is more like a property manager, and would be according to market rates. That needs to be distinguished from appointing a receiver for an association that is being

poorly run, which would be very expensive. I think the Commission does have some authority there because the Real Estate Division is the "person" who would seek the receiver, rather than here where it is the association that is trying to collect and get some money to pay the assessments that the owner is not paying. I do not think the Commission could tell a court what do to.

Chairman Ohrenschall:
So the examples that Mr. Friedrich pointed out about receivers charging egregious fees, you do not think that would happen because the judges would try to ensure the fees are reasonable.

Michael Buckley:
A receiver is an officer of the court. The receiver has to report back to the judge. The judge has to approve the receiver's fees and his accounting. It does not have anything to do with common-interest communities per se. This is just allowing the association to have a remedy that most mortgage lenders have.

Chairman Ohrenschall:
I would propose on section 49 that we do not accept any of the amendments and that we do not process section 49, subsections 1 through 10, and process subsection 11.

Assemblyman Carrillo:
I am not sure I feel comfortable with deleting all of those subsections. Earlier, we were looking at a simple amendment.

Chairman Ohrenschall:
I see your point. However, as Mr. Buckley testified, this section is also in S.B. 174. I do not think it would be wise to have this move forward here, when the issue is part of an overall attempt at a compromise.

Assemblyman McArthur:
We are taking out a lot of language if we delete all of those subsections, correct?

Chairman Ohrenschall:
No. I am not proposing we delete any current language in the NRS. I am just proposing that section 49 would now only have subsection 11. The rest of it would just go away. We would not be deleting any existing language from the NRS, but we would be adding subsection 11.

Assemblyman Carrillo:
If you are going on the assumption that another bill will pass or not, or that both will pass or not, I think we should keep this bill whole.

Chairman Ohrenschall:
Remember the amendment Mr. Friedrich proposed dealing with the construction penalties, and he was concerned that even though it was duplicative of A.B. 448, he wanted it in here because he was afraid A.B. 448 would not get out of the Senate Finance Committee. He wanted a second bite at the apple by having it in this bill. We turned that down for substantially the same reason that I do not think this should be approved. This is not only two bites at the same apple, but more importantly, this is part of the negotiations on the collections issue between both houses.

Assemblyman Carrillo:
This is a bill in itself. This is not taking a second bite at the apple because it is already in the bill. For clarification, how is your example the same as having two bills with the same language? How are we looking at amending it when it is already there? We are not talking about putting section 49 in this bill, because we are not adding to it, that is part of the bill as it is proposed.

Michael Buckley:
I am aware that when S.B. 174 was drafted, we did give them the uniform language. I believe the language in S.B. 174 incorporates the changes that we made. I am not sure about the receiver section, but I know that the language on the attorney's fees and the technical changes are the same as in S.B. 174.

Assemblyman McArthur:
Is there room for compromise in this?

Chairman Ohrenschall:
I think there is room for compromise, and that compromise is going to come out of the negotiations between both houses on S.B. 174 and A.B. 448. Hopefully, we can come out with something that will protect homeowners and protect the HOAs. I do not believe this is a proper place for this issue.

Assemblyman McArthur:
I am not concerned with a compromise having to do with a couple of completely different bills. I am not sure that is helping us with this bill. I am wondering whether maybe we should do what we want to do here and not worry so much about what is being done with two other bills. My question was, can we compromise on this bill? I think we are in agreement on subsection 11.

Chairman Ohrenschall:
We are going to take a brief recess.

[The Committee recessed at 8 p.m. and reconvened at 8:43 p.m.]

Before the break, we were discussing S.B. 204 (R1). We are going to delay any further action on this bill until we reconvene. We will now begin the review of Senate Bill 254 (1st Reprint).

Senate Bill 254 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-264)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 254 (R1) is sponsored by Senator Copening and was heard in this Subcommittee on May 6, 2011. It revises the procedures for alternative dispute resolution of civil actions concerning governing documents or the covenants, conditions, or restrictions (CCRs) applicable to residential property. It also revises administrative proceedings concerning a violation of existing law governing common-interest communities and condominium hotels.

[Read from work session document (Exhibit E).]

I would like to point out that Senator Copening's amendment dated May 13, 2011, does include the suggestions of Mr. Stebbins.

Chairman Ohrenschall:
Is the amendment proposed by Mr. Friedrich the arbitration cap that was proposed for Senate Bill 204 (R1)?

Dave Ziegler:
No, the proposed amendment by Mr. Friedrich would replace the bill with new provisions, which are attached to the work session document.

[Read amendment.]

Chairman Ohrenschall:
Regarding the prior amendment that Mr. Friedrich had proposed for S.B. 204 (R1), we will consider that in this bill with the cap on arbitration fees. Are there any concerns with adopting the cap on arbitrator's fees?

Eleissa Lavelle, Private Citizen, Las Vegas, Nevada:
I have been involved as an arbitrator and as an advocate on behalf of both associations and individuals. The concern is to ensure that the arbitrators

We will forward this recommendation to the full Committee. There will be a few decisions that will need to be made on Friday during the work session. I appreciate everyone being here. Meeting is adjourned [at 12:20 p.m.].

RESPECTFULLY SUBMITTED:

_____
Nancy Davis
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 17, 2011 **Time of Meeting: 4:58 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 204 (R1)	C	Dave Ziegler	Work Session Document
S.B. 204 (R1)	D	Senator Copening	Proposed Amendment
S.B. 254 (R1)	E	Dave Ziegler	Work Session Document

MINUTES OF THE
SENATE COMMITTEE ON FINANCE

Seventy-sixth Session
June 4, 2011

The Senate Committee on Finance was called to order by Chair Steven A. Horsford at 8:24 a.m. on Saturday, June 4, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Steven A. Horsford, Chair
Senator Sheila Leslie, Vice Chair
Senator David R. Parks
Senator Moises (Mo) Denis
Senator Dean A. Rhoads
Senator Barbara K. Cegavske
Senator Ben Kieckhefer

GUEST LEGISLATORS PRESENT:

Senator Allison Copening, Clark County Senatorial District No. 6
Senator Michael A. Schneider, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Rex Goodman, Principal Deputy Fiscal Analyst
Eric King, Program Analyst
Mark Krmpotic, Senate Fiscal Analyst
Wade Beavers, Committee Secretary

OTHERS PRESENT:

William Uffelman, Nevada Bankers Association
Garrett Gordon, Southern Highlands Homeowners Association
Bryan Gresh, Community Association Management Executive Officers, Inc.
Renny Ashleman, City of Henderson

Chris Ferrari, Concerned Homeowners Association Members Political Action Committee
Judy Stokey, NV Energy
Steve Wiel, Nevada Representative, Southwest Energy Efficiency Project
Stacey Crowley, Director, Office of Energy, Office of the Governor; Acting Nevada Energy Commissioner
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Mike Draper, General Motors Company
David Goldwater, Google Inc.
Todd R. Campbell, Director of Public Policy, Clean Energy Fuels
Kyle Davis, Nevada Conservation League
Susan Fisher, City of Reno
Lesley Pittman, United Way of Southern Nevada
Dolores Hauck, United Way of Southern Nevada
Mendy Elliott, United Way of Northern Nevada and the Sierra
Dr. Michael Thompson, Child Care Association of Nevada
Carol Levins, Creative Kids Learning Center
David Walton, Regional Director, Challenger Schools
Maureen Avery, Creative Kids Learning Center
Jack Woodcock
James R. Wells, Executive Officer, Public Employees' Benefits Program

CHAIR HORSFORD:
I will open the hearing on Senate Bill (S.B.) 428.

SENATE BILL 428: Makes an appropriation to the State Gaming Control Board to replace computer and technology hardware. (BDR S-1243)

This bill has been discussed several times and the Committee is prepared to make a decision.

MARK KRMPOTIC (Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):
Senate Bill 428 allows for an appropriation from the General Fund to the Gaming Control Board for replacement computer and technology hardware in the amount of $1,256,104. Staff is providing a worksheet (Exhibit C) which outlines these costs.

know, upon entry into prison, what the minimum amount of time for all charges will be before they can receive a parole hearing.

This legislation would become effective after July 1, 2012.

In our previous hearing on this bill, the Department of Corrections indicated that they would have to revamp their NOTIS system for parole hearings. They estimated the cost of this to be approximately $100,000. I do not know whether they have refined that estimate. It was indicated that they would work with a consultant to revise that figure.

There are no further amendments proposed for this bill.

CHAIR HORSFORD:
With the bill explanation, there is no reason for us to hold this bill. I will accept a motion to do pass S.B. 265 as amended.

SENATOR LESLIE MOVED TO DO PASS S.B. 265 AS AMENDED.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CEGAVSKE AND KIECKHEFER VOTED NO.)

* * * * *

CHAIR HORSFORD:
There is no one here from the Attorney General's Office to testify on S.B. 72. I have not been informed of the final outcome of the negotiations on the fiscal impact of that bill. I will not hear that bill today unless someone wishes to testify on that issue.

SENATE BILL 72 (1st Reprint): Revises provisions governing the assignment of certain criminal offenders to residential confinement. (BDR 16-120)

I will open the hearing on S.B. 174.

SENATE BILL 174 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-105)

SENATOR ALLISON COPENING (Clark County Senatorial District No. 6):
I will present S.B. 174. An outline of my testimony has been submitted to Staff (Exhibit E). A copy of proposed Amendment No. 7336 has also been included (Exhibit F). This bill is an omnibus homeowners' association (HOA) bill which has been vetted by two different working groups. The second of these was led by Assemblyman William Horne with participation by Assemblyman James Ohrenschall.

Stakeholder positions considered at the meeting included HOA industry professionals, including those from the Howard Hughes Corporation in the Southern Highlands Golf Club and Community, legal aid centers from northern and southern Nevada, realtors, investors, bankers and homeowners.

The goal of S.B. 174 is primarily to put a collection policy in place whereby hard caps will be enforced on the amount of fees which can be charged to homeowners who stop paying their assessments. Regulations are currently in place, but this collection policy would be more restrictive of collection costs than is provided in current regulations.

The collection policy can be found in section 3.5, page 11 of the proposed amendment. An overview handout has been provided to Staff (Exhibit G) outlining the difference between the proposals and current regulation.

The bill provides a $1,500 cap on collection services. Current regulations allow a cap of $1,950. This legislation would create a $1,000 cap on third-party hard costs charged to a unit owner. The current regulation has no cap. This legislation has a $600 cap on collection services related to a fine. Current law has no cap.

This bill also includes a cap on collection services, not including attorney fees, which might be incurred by an association because a unit owner has filed for bankruptcy or when an action has been filed pertaining to the related enforcement of a past-due obligation when attorney fees are authorized by the governing documents of the association. Current law has no cap in this area.

This bill provides a nine-month super-priority for collection costs and reasonable attorney fees on past-due obligations. Current law provides for an exemption of Fannie Mae and Freddie Mac in this particular situation.

This bill also requires mandatory payment plans for homeowners in default. This is an important issue. This was an important provision for the representatives of the legal aid centers. They wanted to make sure that homeowners in default are offered payment plans before liens are applied to their homes.

This policy is important because some collection companies have been charging substantial fees to collect on the delinquent accounts of HOA unit owners. This negatively affects the person who might buy the foreclosed home. It makes it more difficult for realtors to sell homes. It negatively affects the profits of investors who buy the home to resell.

It also affects those homeowners in default who may be trying to make their accounts current before foreclosure.

The policy also clarifies that an HOA will be the first to be paid back when a foreclosure occurs on a home. This is otherwise known as a "super-priority lien." This includes up to nine months of back-assessments and costs incurred by HOAs for attempting to collect the delinquent assessment. This has been the practice of the banking industry for years, but the current language in statute is not sufficiently specific and it has been challenged. Despite the challenges, judges in three separate district court cases have concluded that collection costs and reasonable attorney fees for unpaid HOA assessments are included in super-priority liens. The language in S.B. 174 clarifies this.

The bill also includes elements of A.B. 448, per an agreement made with the Chair of the Assembly Committee on Judiciary, Assemblyman William Horne. Assembly Bill 448 did not make it to the Senate before the second house passage deadline, but it had some homeowner protections which we believe should be included in S.B. 174.

ASSEMBLY BILL 448 (1st Reprint): Revises provisions relating to real property. (BDR 10-513)

I have received notification from representatives of certain HOAs who have continuing issues with certain sections of the bill. We will work with them to resolve those problems.

The bill includes provisions for a study to be performed by LCB on HOA-related bills to determine whether an interim Legislative committee should be

established to vet HOA issues and bring forward committee bills. Some legislators feel that too much time is spent vetting conflicting HOA bills, requiring an excessive expenditure of staffing hours. One staff member, in particular, has told me that he spends 50 percent of his time in the interim working on nothing but HOA bills. This represents a significant cost to the State. The study will allow us to determine the necessity of a statutory interim committee.

The collection policy in this bill is designed to help homeowners, but it is also designed to help keep HOAs solvent. I am aware of two HOAs which have gone bankrupt resulting from a high number of homeowners who do not pay their assessments. Almost all of the HOAs are suffering from the results of foreclosures, and many of them are in dire financial straits. Some HOAs are borrowing money against the reserve funds in order to continue operation. This may quickly become a serious problem. According to guidelines established by Fannie Mae and the U.S. Department of Housing and Urban Development (HUD), it is a requirement that the reserves of an HOA be adequately funded. To the extent that the HOAs are borrowing against these reserves, they may already be out of compliance with those guidelines. The housing data in Nevada indicates that 49 percent of all homes purchased in the month of March were financed through the Federal Housing Administration. Future loans are at risk if we do not ensure that these HOAs stay solvent.

Currently, other HOAs are raising monthly assessments or levying special assessments in order to pay their bills. We must find a way to keep these HOAs financially sound.

The HOAs are currently made whole when the home is foreclosed upon and lending institutions have paid collection costs and other fees as the first lien holder, otherwise known as super-priority. Recently, there has been some misinformation disseminated by an investor group called the Concerned Homeowner Association Members Political Action Committee (CHAMP). They have stated that S.B. 174 may negatively affect Fannie Mae and Freddie Mac financing for our State if the HOA is paid in the super-priority lien category. This is false. Fannie Mae and Freddie Mac have absolutely nothing to do with this bill and this fact has been confirmed by Mr. Bill Uffelman of the Nevada Bankers Association. Mr. Uffelman has confirmed that Fannie Mae and Freddie Mac have always reimbursed the first security lien holder up to six months of assessments only, per federal regulations, even though current Nevada statute allows for an

association to collect up to nine months of back-assessments. This pay schedule will remain the same under this bill, as Fannie Mae and Freddie Mac have a specific carveout in our current statutes. This carveout language can be found on page 36 of Amendment 7336, lines 37 through 45 and it continues on page 37, lines 1 through 4.

When a bank forecloses, the super-priority letter from an HOA, asking for up to nine months of the assessments and collection costs for the association, goes to the first security lien holder. The lender complies and then pays the association. The lender then turns to Fannie Mae and Freddie Mac and requests reimbursement for the six months of assessments and collection costs. This is allowable per federal regulations. Fannie Mae and Freddie Mac have always paid these claims. The lender pays for the other three months of assessments and collection costs. The association never deals directly with Fannie Mae and Freddie Mac, and, under S.B. 174, nothing about this process will change. Federal law always trumps State and local law. Mr. Uffelman has confirmed that Fannie Mae and Freddie Mac would continue to pay only the six months of assessment and collection costs, and this bill would not affect the process.

It bears repeating, however, that if HOAs are forced to dip into reserves to make up for delinquent accounts and they are not the first to be made whole at foreclosure, we will most certainly see an issue arise from loans being denied by HUD.

Senate Bill 174 helps many different demographics and entities, including homeowners who are delinquent in paying their HOA assessments, realtors who are trying to sell foreclosed homes to clients, investors who are buying foreclosed homes, first-time home buyers, the banking industry, clients of legal aid who are struggling financially, HOAs which are struggling financially and homeowners who must contribute financially to keep the HOAs solvent.

I would like to refer to an article (Exhibit H) by Hubble Smith in the *Las Vegas Review-Journal*. It was published yesterday. It shows the favorability of S.B. 174. It is important to note that the author interviewed real estate agent Rutt Premsrirut, who is a leader in CHAMP. Mr. Premsrirut feels lawmakers should limit the abilities of HOAs to foreclose upon property owners because of unpaid dues and assessments. We have done that with this bill. The legislation would require the offering of mandatory payment plans for homeowners in default.

Mr. Premsrirut went on to say that a measure which was passed in North Carolina would require dues or assessments to remain unpaid for 90 days before an association could begin foreclosure action against a property owner. In this bill, we have actually made that requirement stronger and proposed that the time frame be 120 days.

Mr. Premsrirut declares that the North Carolina statute would require the HOAs' executive board to vote to begin any foreclosure proceedings against an owner. This has also been included in S.B. 174. The HOA executive boards in Nevada would also be required to meet before taking any action on a foreclosure.

We have addressed all of the issues which have been raised by investors. We have also addressed an issue which was raised by the City of Henderson. The members have received an e-mail from Renny Ashleman, a representative of the City of Henderson, expressing concerns about language in section 6 requiring that a government agency which owned a security wall would be responsible for its repair. We have agreed to remove the term "government entity" in section 6 of the bill. This should satisfy the concerns of the representative from Henderson.

CHAIR HORSFORD:
We have received letters from the Federal Housing Finance Agency (Exhibit I) and the Howard Hughes Corporation (Exhibit J) and Robert A. Massi (Exhibit K) which will become part of the public record.

WILLIAM UFFELMAN (Nevada Bankers Association):
I will verify Senator Copening's statements on my behalf. She has truly stated what is, to my understanding, the position of the federal home loan agencies relative to the payment of six months of back-assessment of HOA fees.

The aim of the banks, throughout the drafting of this bill, has been to control costs. During the 2009 Legislative Session, the process we thought to implement was derailed. This bill, with the limitations and caps that it has included, will be an important factor in the banks' calculations relative to foreclosures. The caps on attorney fees, relative to the limitations on the fees on which attorney fees can be claimed and awarded, will also push down some of theses costs.

Banks finance the HOAs. In 2009, I discovered that one of my members was doing this, and they were supportive of a bill that the rest of the industry was opposed to. We have been hurt by the foreclosures because of the problems associated with bad loans. We have been hurt by the costs associated with delinquency. We are hurt when the HOAs who bank with us do not have the ability to do their job. If we could get these problems resolved, it would be a step forward for the State of Nevada.

GARRETT GORDON (Southern Highlands Homeowners Association):
I will speak as a representative of the Southern Highlands Homeowners Association, Southern Highlands Management Company and Olympia Companies LLC in support of this bill.

I would like to stress three important points. The first is that this bill represents a compromise. I have worked on approximately 20 HOA bills during the 2011 Session. In each instance, we have pulled out the collection aspect, as it has proven to be highly controversial. Since February 2011, we have spent a significant amount of time with members of the affected industry in developing a compromise. Last Friday, the Chair of the Assembly Committee on Judiciary, Assemblyman William Horne, and Assemblyman James Ohrenschall met with Jon Sasser from the Legal Aid Center of Southern Nevada, myself and several other industry representatives in order to develop a fair compromise which benefits, not only industry, but homeowners and the State.

Second, this proposal offers benefits over existing law. Current law caps collection fees at $1,950. There is no cap on hard costs or attorney fees. This law would cap collection costs relative to past due assessments at $1,500. It would place a hard cap on costs at $1,000. It would also significantly limit attorney fees.

Third, I would like to stress the importance of the super-priority provision. In the nine month-priority, it will include attorney fees and collection costs. We compromised by agreeing to this so long as the hard caps are in place.

This bill will have an impact on each of the stakeholder groups. Many HOAs are bordering on bankruptcy and are considering raising assessments for all members who are able to pay the assessments on time in response to delinquencies on the part of other unit holders. This bill will provide certainty for

the industry pertaining to what collection costs can be incurred. This will also prevent increases in assessment rates for the dues-paying owners.

Collection companies have sometimes been known to charge egregious fees. This will cap those rates. In current law, only service fees are capped. This bill will cap hard costs and attorney fees.

We work closely with Jon Sasser from the Legal Aid Center of Southern Nevada. His interest was in attempting to delay some of these actions and implement payment plans. We have pushed back the ability of HOAs to file liens. We are trying to work with the homeowners to allow them to get back on their feet. The payment plan provision will be mandatory. The HOA must accept the payment plan in order to work out the problem with the Legal Aid Center.

BRYAN GRESH (Community Association Management Executive Officers, Inc.):
I will speak as a representative of Community Association Management Executive Officers, Inc. We represent approximately 450,000 homes throughout northern and southern Nevada.

This bill is not perfect, but it is a great step from where we have been.

RENNY ASHLEMAN (City of Henderson):
I am speaking as a representative of the City of Henderson. The City of Henderson, contrary to the testimony of Senator Copening, did not agree to be satisfied by the removal of the term “government entity” from section 6 of the bill. It is our position that section 6 should be removed entirely. This provision would change existing law. Under current statute, HOAs are responsible for the exterior walls of a community. These can pose a danger. Sometimes the exteriors crumble and could cause harm. They are a problem in combating urban blight. It is difficult to get these fixed when each homeowner must be assessed for the damages. Nearly 25 percent of the homeowners are in foreclosure. We much prefer keeping existing law and have HOAs be responsible for repairs of the exterior walls.

I have had conversations with representatives of the industry. Representatives of the Southern Highlands Homeowners Association agree to the elimination of section 6. I would respectfully propose that an amendment be made to that effect.

CHAIR HORSFORD:
This issue is over the maintenance of exterior community walls. If an HOA is unable, due to a lack of reserves, to maintain the wall, does the government entity not have responsibility for maintaining it, under other local ordinances?

MR. ASHLEMAN:
We do not have any legal responsibility to that effect. In some instances, we have assisted to ensure that the safety issues were taken care of. This has been done voluntarily. We believe it is far more likely that an HOA will be able to handle the situation than an individual homeowner. Section 6 recommends transferring the responsibility for the maintenance to the individual homeowners.

MR. GORDON:
If this bill is able to move forward, we would be willing to pull more parts out of section 6. We will continue to work to make Mr. Ashleman and his clients more comfortable.

MR. ASHLEMAN:
I would far prefer to have section 6 taken out entirely. I continue to ask that the Committee remove that section.

CHRIS FERRARI (Concerned Homeowners Association Members Political Action Committee):
I am speaking as a representative of CHAMP.

No matter what is allowed through statute, an HOA will never receive more than nine months of past-due assessments. If a lien is $6,000 to $8,000, and the HOA assessment is $50 a month, the most that the HOA will ever receive is $450.

In our view, this bill is not a compromise in any way. On the Assembly side, we were not invited to participate in any meetings on this bill in any capacity. I would also note that several other parties were excluded, including homeowners themselves.

The current practice of collection is under great scrutiny as it pertains to HOAs. This bill would create an approximate $3,600 cap. I will not debate the merit of the cap, but I would like to address the overall policy of the bill.

This bill will charge people $100 to enter into a repayment plan. If they are not able to pay the dues, this will likely present an issue. Additionally, section 15.3 sets a very low standard for initiating foreclosure processes which are either six months or $500 overdue. An executive board, usually consisting of two or three people, can make that ultimate decision on whether or not someone will go into foreclosure.

I would like to reference Exhibit I. There are proponents of this bill here today from the collection and management side. There are also opponents and third-parties. The impact of this bill is much larger than any one stakeholder. There will be a significant impact on our State as it pertains to financing. The letter contained in Exhibit I was sent to the Governor's legal counsel from the Federal Housing Finance Agency which is the overseeing agency for Fannie Mae and Freddie Mac. The letter was composed by the Agency's general legal counsel, Mr. Alfred M. Pollard. He provides assistance in matters relating to the Agency's relations with states, other government agencies and the White House. He is highly credentialed.

In Exhibit I, he states his concerns about S.B. 174. I would ask the Committee to consider those concerns and how S.B. 174 might negatively impact lending in our State. Prior to passing this legislation, I would suggest that approval be sought from the federal government to ensure that the bill does not have a negative impact on the real estate market in Nevada.

CHAIR HORSFORD:
Does anyone have a copy of the federal codes pertaining to these provisions? Federal law always trumps state and local law. The provisions of the bill are meaningless if they will be contradicted by federal law. I would like copies of the federal codes which pertain to this issue.

MR. FERRARI:
I will be happy to get that information for the Committee. Our concern is broader in that we do not want to jeopardize lending in the State.

CHAIR HORSFORD:
If federal law says that it cannot, then it will not.

I will close the hearing on S.B. 174 and hold the bill. I would like to get an answer to my question before we take action.

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 428	C	Mark Krmpotic / LCB Fiscal	Prioritization Schedule for Technology Replacement
S.B. 425	D	Mark Krmpotic / LCB Fiscal	Proposed Amendment to S.B. 425
S.B. 174	E	Senator Allison Copening	Overview of S.B. 174
S.B. 174	F	Senator Allison Copening	Proposed Amendment to S.B. 174
S.B. 174	G	Senator Allison Copening	Policy Comparison for S.B. 174
S.B. 174	H	Senator Allison Copening	Las Vegas Review Journal Article
S.B. 174	I	Chris Ferrari / Concerned Homeowners Association Members Political Action Committee	Federal Housing Finance Agency Letter
S.B. 174	J	Tom Walsh / Howard Hughes Corporation	Letter of Support on S.B. 174
S.B. 174	K	Robert A. Massi	Letter on S.B. 174
S.B. 336	L	Senator Michael A. Schneider	Proposed Amendment to S.B. 336
S.B. 336	M	Senator Michael A. Schneider	Associated Press Article
S.B. 371	N	Legal Division / LCB	Proposed Amendment to S.B. 371
A.B. 511	O	Mike Draper / General Motors Company	Proposed Amendment to A.B. 511
A.B. 511	P	Mike Draper / General Motors Company	Salt Lake City Parking Program Outline
A.B. 511	Q	Mike Draper / General Motors Company	Cincinnati Parking Program Outline

A.B. 511	R	David Goldwater, Google, Inc.	Self-Driving Car Overview
A.B. 511	S	Brent Bell / Whittlesea Blue Cab Company	Letter of Support on A.B. 511
A.B. 511	T	Brent Bell / Henderson Taxi	Letter of Support on A.B. 511
A.B. 546	U	Lesley Pittman / United Way	Letter on A.B. 546
	V	Eric King / LCB Fiscal	BDR S-1316
	W	Mark Krmpotic / LCB Fiscal	BDR S-1317
	X	Rex Goodman / LCB Fiscal	BDR S-1315

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
June 5, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:49 a.m. on Sunday, June 5, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Allison Copening, Clark County Senatorial District No. 6
Senator David R. Parks, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jeffrey Eck, Committee Secretary
Danielle Baraza, Committee Assistant

OTHERS PRESENT:

Garrett Gordon, representing Southern Highlands Homeowners Association; Southern Highlands Management Company; Olympia Group; and Alessi & Koenig, LLC
Pamela Scott, representing the Howard Hughes Corporation, Las Vegas, Nevada
Renny Ashleman, representing the City of Henderson
Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association
Keith Lee, representing Default Services Division, Lawyers Title Insurance Corporation, Las Vegas, Nevada
Jan Porter, General Manager, Peccole Ranch Association, Las Vegas, Nevada
Chris Ferrari, representing Concerned Homeowners Association Members Political Action Committee
Connie Bisbee, Chair, State Board of Parole Commissioners
Florence Jones, Private Citizen, Las Vegas, Nevada
David Smith, Hearing Examiner, State Board of Parole Commissioners

Chairman Horne:
[Roll was called.] Good morning, ladies and gentlemen. Welcome to the Assembly Committee on Judiciary this fine Sunday morning. We have two days left in the regular legislative session. This morning we have two bills on the agenda. If you wish to testify in favor or in opposition of any particular bill, make sure you sign in. If you have a business card, please give one to the secretary so he can get your name right.

We will open the hearing with Senate Bill 174 (1st Reprint). Senator Copening, good morning.

Senate Bill 174 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-105)

Senator Allison Copening, Clark County Senatorial District No. 6:
Good morning, Mr. Chairman and members of the Committee. I apologize that you have to hear yet one more homeowners' association (HOA) bill, but we hope to get through this in a speedy fashion. I have prepared remarks, and I think it will be easiest to refer to them to relay all the information.

[Senator Copening read from a prepared statement (Exhibit C).]

You have a handout (Exhibit D) highlighting the collections policy and you can see the difference between what this bill is proposing and what is in current regulations.

[Senator Copening referred to Exhibit D.]

To highlight a few of the items, our current regulations allow charges up to $1,950 for collections costs. This bill caps it at $1,500. It also puts a cap of $1,000 on third-party hard costs. Current law has no cap. Generally, people do not cap third-party charges, but in this particular case, we wanted to make sure that nothing got slipped in that should not be there.

The bill puts a $600 cap on collection services related to a fine. Current law has no cap. It also caps collection services that do not include attorney's fees that are (1) incurred by an association because a unit owner filed bankruptcy, (2) incurred by an association when an action is filed to enforce, challenge, or related to the enforcement of any past due obligation when attorney's fees are authorized by the governing document of the association, or (3) awarded to the association by a court. Current law has no caps.

There is a nine-month superpriority for collection costs and reasonable attorney's fees on past due obligations. Current law also provides an exemption for the Federal Home Loan Mortgage Corporation (FHLMC), known as Freddie Mac, and the Federal National Mortgage Association (FNMA), colloquially known as Fannie Mae. So, if a federal law says that you can only collect a certain amount, our state laws obviously would not be in effect.

There is also a mandatory payment plan for homeowners who are in default. This is very important to the Legal Aid Center of Southern Nevada to make sure that homeowners who are having difficulty in paying their bills could be put on a payment plan before they are foreclosed upon.

[Senator Copening continued to read from a prepared statement (Exhibit C).]

We will continue to work with the HOAs. I believe our HOA lobby also worked with Mr. Ohrenschall to clear up some of those issues late last night, so there is a new mock-up of the bill (Exhibit E).

[Senator Copening continued to read from Exhibit C.]

The study will allow us to determine the necessity of a statutory interim committee. I thought this was important, as you all have been subjected to a lot of different HOA bills, many of them conflicting, many of them highly charged by different interests. Our staff has been similarly plagued with having to spend many hours on the bills. The Legislative Counsel Bureau staff person for the Senate Committee on Judiciary in the last interim spent over 50 percent of his time on HOA bills. This bill proposes that our interim committees take a look at these bills and get them fully vetted before they come before you and the Senate in the next legislative session.

[Senator Copening continued to read from Exhibit C.]

Because we have a new mock-up, the carve-out language is found on page 37, lines 22 through 37. This is existing law, so this carve-out has already been in law that basically states that if Freddie and Fannie have regulations that state they only pay six months, then they only pay six months.

[Senator Copening continued to read from Exhibit C.]

I want to address an article that appeared in the *Las Vegas Review-Journal* the other day. It spoke of some of the concerns of the investors. Rutt Premsrirut, who is the leader of Concerned Homeowners Association Members Political Action Committee (CHAMP), told the reporter that he would like to see Nevada have a bill similar to one in North Carolina. He said lawmakers in North Carolina unanimously approved a bill that would limit the ability of an HOA to foreclose on property owners because of unpaid dues or assessments. We agree with that, and that is why we put in the mandatory payment provision. So, we have addressed one of the issues they have.

The second issue, he said, was that the measure would require dues or assessments to remain unpaid for 90 days before the association could begin the foreclosure against the property owner. We agree with that, but we made it even stronger. Our bill calls for a 120-day waiting period before the foreclosure process can begin. He said that, among other provisions, the bill in North Carolina also required that an association's executive board vote before

they begin any foreclosure proceedings against an owner. We absolutely agree, and it is in the bill that the executive board must vote before they foreclose upon a home.

Mr. Chairman and Committee members, I am happy to answer any questions. I also have people in Las Vegas and some folks here who would like to testify on the bill.

Chairman Horne:
Thank you, Senator Copening. We have some questions. Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Chairman. Senator, the part of your introduction that jumped out at me was that Freddie and Fannie have always paid the closing costs for the priority lien. Under this legislation, the only variables that represent more money under the priority lien appear to be reasonable attorney's fees and collection costs. Those were excluded from the priority lien before. Are they now included?

Senator Copening:
They have never been excluded. In fact, they have always been paid. They have been challenged in court for several years. Because our current law—*Nevada Revised Statutes* (NRS) Chapter 116—is very vague when it refers to collection costs. It just says that paid in that superpriority category are collection costs and other fees. The courts have determined that collection costs and other fees refers to virtually anything, including attorney's fees. The cases that have gone before the districts courts, where they have challenged it, have lost because the district courts, in three cases, have interpreted the law to mean it. We want to avoid these cases and just make it clear in statute what is included in a superpriority lien.

I have to look at the specific language in it again because we limited attorney's fees that could be collected to specific categories. I know Garrett Gordon can speak to that a little bit more. That was something negotiated in Mr. Horne's working group. The whole collection was worked out in that working group. That was a concern of Legal Aid.

There are only certain situations where attorney's fees can be collected, and if an attorney is the one who does the collection process, you cannot have a collection company and an attorney doing the exact same thing and collecting those fees. The cap is $1,500. It stays there. The only other thing we capped were hard costs. We estimated that those hard costs should never go over $1,000. In many cases, they will be less.

Assemblyman Sherwood:
Under this, the lien would be law, whereas before it has never been law. It has been vague, so now there is a new category of people who get priority liens.

Senator Copening:
It has always been honored as law. The district courts said superpriority is that. We are just making it clearer.

Assemblyman Sherwood:
Thank you.

Chairman Horne:
Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. I have some questions about certain sections of the bill. It might be more appropriate for me to wait until Mr. Gordon speaks, so I can ask those questions as we get to them, as opposed to the overview.

Chairman Horne:
Okay. Are there any other questions for Senator Copening? I see none.

Senator, is someone going to walk us step-by-step through the mock-up, or through the bill?

Senator Copening:
Mr. Chairman, Garret Gordon is here to do it however you would like. Mr. Ohrenschall is also very familiar with sections of the bill, especially Assembly Bill 448, which got wrapped up into it. Senate Bill 174 (1st Reprint) was actually a pretty small bill before we wrapped A.B. 448 into it. I would be happy to have Garrett come up and walk through the bill.

Chairman Horne:
Okay. Mr. Gordon.

Garrett Gordon, representing Southern Highlands Homeowners Association; Southern Highlands Management Company; Olympia Group; and Alessi & Koenig, LLC:
I can say I also speak for the group of lobbyists sitting behind me, and for title companies, management companies, and other HOA groups, such as Howard Hughes Corporation. Pam Scott is in Las Vegas. She can help with the explanation.

I will touch on three points, and then I would be happy to walk through the bill. The first point I want to stress is that this is definitely a compromise. As you all know, through the last four months we have worked on over 20 HOA bills. In each case, we pulled out the collections piece. That has consistently been the controversial issue. We have used S.B. 174 (R1) to put together the collection compromise. It is definitely better than existing law. Many folks are not happy with it. I have received some emails from collection companies that are not happy with it. That is probably a good thing.

To be totally straight, here is the current law: Collection services are capped at $1,950. Hard costs are not capped whatsoever. Attorney's fees are not capped. This bill caps collection activities at $1,500, start to finish. That is worst-case scenario and the house is going into foreclosure. This bill would also cap hard costs at $1,000. We have put together a spreadsheet of exactly what that includes, and $1,000 is a reasonable amount of money for the hard costs required to get from start to finish.

Narrowing the scope of attorney's fees has been a major issue. We have narrowed those to only a claim of bankruptcy or litigations so long as the covenants, conditions, and restrictions (CC&Rs) provide for attorney's fees awarded by the court. We narrowed that significantly. In the spirit of compromise in putting together this mock-up, it also includes the ability for, as Assemblyman Sherwood mentioned, a superpriority. In exchange for significantly capping these collection costs, it was fair to the HOAs that they were able to collect these costs. Otherwise, the costs are spread across all other homeowners in an association, and assessments could go up.

Also wrapped in here are sections of A.B. 448. This Committee and your house have approved A.B. 448 a few times. I am happy to walk through those sections again, but I think we have vetted those issues very well. Mr. Ohrenschall and I have spent 20-plus hours going through section by section what works for associations, Legal Aid, and all the different components of this industry. That is built in here as late as this morning.

I have an update for Mr. Ohrenschall. An issue very important to him was that a house could not be foreclosed upon for delinquent attorney's fees resulting from arbitration or mediation. It is now in this bill. I know that was very important to you, Mr. Vice Chairman, and your colleagues at Legal Aid.

It is a compromise. It is a good bill. I will be very brief and answer questions regarding how this benefits each of the parties involved. Regarding HOAs, a nonprofit must balance its budget. With collection assessments to pay services, if an HOA cannot collect its assessments, all other homeowners' assessments

will go up. This is crippling HOAs and leading some to bankruptcy. So, this is a good bill for HOAs and a good bill for homeowners. Again, A.B. 448 has a lot of homeowner-friendly protections that are now in S.B. 174 (R1). Collections companies are a necessary evil, but they do a lot for HOAs. This, again, significantly caps what can happen with collection companies. The Concerned Homeowners Association Members Political Action Committee and others have passed out literature showing the egregious amounts—thousands upon thousands of dollars—billed to collect assessments. This caps that in statute, not in regulation.

There is a payment plan in here with different options to make sure folks can get back on their feet. There is a notice provision. With each attempt to collect a debt, the collection company or HOA has to inform the unit owner of what may happen next in full transparency about the process.

I think the Senator hit the Fannie and Freddie issue very well. I am happy to answer any questions. We were in the Senate Committee on Finance yesterday. Chairman Horsford asked of the members of CHAMP, "You understand that federal law trumps state law, correct?" I do not believe we are doing anything here to cause an issue with federal law, but at the end of the day, if we did, which we are not, federal law trumps.

I want to thank the Chairman for this hearing. The bill is not over here yet, but I think this represents hours and hours of compromise, and I think it is a good piece of legislation for everyone involved. I am happy to answer any questions. Thank you.

Chairman Horne:
Thank you, Mr. Gordon. I appreciate your working with the Vice Chairman on the many aspects of the bill and making it a better bill for the other stakeholders. I know you put in a lot of hours to do that. Are there any questions for Mr. Gordon? Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. I have several questions. Mr. Gordon, I am still going through some of the sections. On page 5, starting on line 38, the bill talks about filling vacancies on an association's executive board. I am curious as to why they may not appoint someone who has been removed within the immediate six years and where that six years came from, whether it is currently more or less.

Garrett Gordon:
I will try to give my explanation, and then I think it would be worthwhile to have Pam Scott from the Howard Hughes Corporation testify from Las Vegas, if the Chairman is okay with that. I have worked hard on the collections piece. Some of the material in A.B. 448 that deals strictly with associations came from Ms. Scott. I understand that six years was in A.B. 448, which was approved by this Committee. That has not changed. How it got into A.B. 448 in the beginning, I may defer to Ms. Scott, but I think it was probably a compromise to say that if someone has been removed, there is probably a good reason why, and that person should not be able to come back onto that board for a period of time.

Assemblyman Frierson:
Mr. Gordon, on page 8, in section 2.9, subsection 5, it talks about a hearing being postponed if the unit owner cannot attend. It specifically mentions medical documentation as the reason. I wonder if consideration has been given to extraordinary reasons rather than specifically medical reasons. It may not be medical, but there may be an extraordinary reason why someone is unable to attend. I wonder whether or not that has been discussed, because it seems to me there may be some justifiable reasons why someone cannot attend that are not necessarily medical.

Garrett Gordon:
I believe, in a lot of these cases, there were circumstances—usually a narrow set of facts—that triggered some language. So, I believe this came from a narrow set of facts. Someone was ill, or there was another issue and he could not make it to the meeting. I believe that there is some other language in here that gives the executive board the discretion to continue a hearing. I would argue that if someone did not show for good cause, and a hearing went forward, there would be a violation of that person's due process at a higher level. We wanted to make sure that medical documentation and a medical issue was, in fact, a justifiable excuse not to be there.

Assemblyman Frierson:
Thank you. I will look further to find out about the good cause that likely exists for other reasons. I am glad we made a record of it either way.

On page 10, section 3, subsection 2(b), the mock-up changes "adversely affects the use and enjoyment" of nearby units from being one of four factors to being a precondition of the other three factors. So, it has to adversely affect the use and enjoyment of nearby units and meet one of the other three criteria. My concern is, if there is a public nuisance that affects the aesthetics, for example, it might not affect the use and enjoyment. If it affects the aesthetics

but does not affect anyone else's use, then they would not be able to do anything about it. The short and simple of it is, if it is something really ugly that does something to the aesthetics of the community, they would not be able to do anything about it unless it also affected the use. That seems to me to be the effect without the intent.

Garrett Gordon:
I believe you are correct. I think the issue here was trying to define "public nuisance." Obviously, through the length of this statute, a lot of times terms are ambiguous, and it leads to a lot of disputes. I think moving that language up to paragraph (b) qualifies the definition of a public nuisance. I believe that comes from other code or other language in statute that kind of defines it.

I am happy to work with you if you would like to further expand on, or take away from, that section. I think the goal here was—and, again, this was in A.B. 448—to qualify what a public nuisance was and to give some certainty to in fact what would have to be removed or abated.

Assemblyman Frierson:
In case I overlook it, I know there are some notice requirements in here. It has not received a lot of attention, but I personally think it is one of the most important provisions in here for the folks who do not recognize how bad it could get. I appreciate that being added.

On page 12, the caps are mentioned. We have had discussions about this, about whether there had been any effort to make it proportional. As it reads, there is a cap of $1,500 regardless of what the balance is. If somebody owes $200, there is a cap of $1,500. If somebody owes $2,000, there is a cap of $1,500. It seems to me that if, for example, the balance is lower and it is mitigated earlier, maybe there would be an opportunity to have a proportional fine so that it is smaller when the amount is smaller.

Garrett Gordon:
Over the last couple of weeks, that has been on the table through every discussion and through every working group. The difficulty with tying it to the amount of the underlying obligation is that the same work and the same perfection of the lien and process goes into the effort, no matter what the underlying debt is. In this compromise we tried to say, "Okay, if we cannot tie it to the underlying debt, what else can we do?" Here is what we did. You will see the sentence on page 12, line 2, sets forth a cap of $1,500. It says the association ". . . may not charge a unit's owner fees to cover the costs of collection services in connection with the collection of a past due fine which

exceed $600." So, we capped the fine at $600. I know that is the source of a lot of worry for a lot of people and that there should be a cap there.

We also tied this $1,500 to the regulation. I think you have all seen on numerous occasions that the Commission for Common-Interest Communities and Condominium Hotels capped each service at each step in the process. If you read this in conjunction with the regulation now, that if you only get through steps 1, 2, or 3 and pay, then, in fact, there is a subordinate cap on what the Commission has said. In exchange for not tying it to the underlying obligation, we tied it more to timing. We are now saying in here that you cannot file a lien until that past due obligation has been there for four months. If you have blown your assessment after month one, after four months has accrued, I think you are starting to get into a substantial number that harms the association.

Finally, we put in here that a past due amount has to be past due for at least 12 months. Again, I do not think you are going to get the $50 or $100. I think if you are past due for 12 months, then there is the ability to foreclose. In summary, and to answer your question, we could not tie it to it because there were some logistical problems and work and effort problems, but we tried to build in some other protections. We have sat down with Legal Aid to address that point.

While we are on page 12, subsection 4 of section 3.5 is the notice provision, which says that upon "Each written attempt to collect from a unit's owner a past due obligation which is more than 60 days past due . . . ," the association must include a statement of the current amount due and a schedule of what could happen if there is a continual delinquency. I know that was important to you. In the spirit of transparency and making sure everyone understands the law and the process, we made sure that was included.

Chairman Horne:
All right, Mr. Frierson.

Assemblyman Frierson:
I have a couple of questions about this page, and then I will let Mr. Gordon go for a little bit.

On the notice provision, which is section 3.5, subsection 4(b), where the schedule has to be included with the notice, is there anything that requires a deadline be set? That is, if they do not pay by this date, it will be these fees. Or is that not contemplated as really being part of this?

Garrett Gordon:
That was absolutely the intent, where it says the ". . . schedule of the amount of fees, costs, charges or other amounts which may be charged to the unit's owner if the unit's owner fails to pay the total amount due." So, it would absolutely be the intent to say by the next 30 days, per state law, this charge could accrue. That is definitely incorporated into that section.

Assemblyman Frierson:
Thank you. That was very important to me. On the same page, subsection 2 deals with collections fees and caps them at $1,000. I want to make sure the intent is to capture the collection fees. This talks about the association recovering it, and I want to make sure that is including the company that the association employs to cover it, so that the other company does not tack on more charges on top of this.

Garrett Gordon:
Absolutely. The goal and the intent is to provide a cap on the association and on the agents that it hires to move forward with collection activities.

Assemblyman Frierson:
Thank you, Mr. Chairman.

Chairman Horne:
Mr. McArthur.

Assemblyman McArthur:
Thank you, Mr. Chairman. I want to stay on the same topic. Under section 3.5, subsection 5(b), I just want a point of clarification. It says, "For past due obligations in an amount greater than $1,000, a plan for the repayment in 24 equal monthly installments of each past due obligation . . . ." So, with the first part, it looks like we are aggregating all the past due obligations to get the $1,000, and then on the second sentence, it looks like it is for each past due obligation. Are we aggregating the $1,000 to get up to $1,000, or does each fine or each part have to come up to $1,000 on its own?

Garrett Gordon:
That is a great question, Assemblyman. The intent is to provide a unit owner the ability to enter into a payment plan for past due obligations, and that term as defined includes both assessments and fines. Another provision in NRS Chapter 116 is that you must have separate accounts for fines and assessments. They cannot overlap. The intent of this section is that your past due obligation would be included if your assessments exceed $1,000, or if you have some fines that exceed $1,000. In working with Legal Aid, it was

important to them to let these folks dig out of a hole in a period of time that was reasonable, so if either a past due obligation, assessment, or fine exceed $1,000, then they would have a 24-month payment plan. In short, you could have two payment plans. That would be consistent with NRS Chapter 116—keeping those obligations separate—because foreclosure and other provisions treat those two terms separately in NRS Chapter 116.

Assemblyman McArthur:
You could have a whole bunch of fines and fees, each of them less than $1,000, and the owner could not get the payment plan then.

Garrett Gordon:
That is a good point. However, paragraph (a) in subsection 5 provides for a 12-month payment plan for obligations of $1,000 or less. We just tried to pick an amount that was reasonable to the homeowner and clients of Legal Aid to get through this stage in their lives and to get these obligations paid off.

Assemblyman McArthur:
Thank you.

Chairman Horne:
Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Chairman. Mr. Gordon, I have a concern here that if I were a collection agency, I would immediately say, "Okay, there is $1,500, and there is another $1,000." So there is $2,500 that is superpriority. Why would you not just say, "Here is my $2,500, and now that is a cost to sell the home." As a homeowner trying to get out of the house, that is who I am worried about. As a new homeowner trying to buy the house and move in next to me so that it does not get trashed and turned into a blight on the neighborhood, that is who I am worried about.

The HOA will always get its money at closing because it has a 9-month superpriority lien. It will be paid 9 times $45, or 9 times $200, or whatever that number is. We have been seeing accounts that are turned over very early in the process. Part of the reason we pay HOA assessments is to keep track of the paperwork. I do not see anything in here that says the HOA has to, in good faith, try to collect any outstanding debts for a period of time, such as 12 months, before it is turned over to a $2,500 superpriority lien. Help me with that, because that is a real drag on everybody.

Garrett Gordon:
That is a great question. First, like it or dislike it, the regulation was codified this session. Existing law provides for $1,950. Without this, $1,950 would be the cap. There would be no cap on the hard costs or attorney's fees. The intent here, with capping it at $1,500 and reading it in conjunction with the regulation, is that there is a cap at each step of the process. You could not just tack on $1,500 in months 1 through 5.

Assemblyman Sherwood:
But when does it get turned over? I understand existing regulations are fine. We are trying to fix this so that we do not have to form committees and come back here and do this for the next five sessions, right? Where in here does it say an HOA cannot turn it over to a collection agency immediately? That would solve a lot of our problems, if we said month one does not happen until the HOA tries in good faith to collect.

Garrett Gordon:
I think I have a suitable answer for you, Assemblyman. The question of when it would go to a collection company was a concern of Legal Aid as well. Under NRS Chapter 116, a collection agency, as defined in another statute, is responsible for recording the lien. So we said in the amendment that you cannot file a lien, which is the first step of the process, until four months have passed. Now you have a four-month period, which was negotiated with Legal Aid, to allow the homeowner to get back on his feet and to be offered the opportunity of a payment plan. However, if you get to that four-month period, then you are really starting to affect the association's budget and also starting to affect, and eventually impact, the assessments on other homeowners. That is when it would go to collection.

You mentioned 12 months; that number was thrown around. There was also mention of 1 month. The compromise was 4 months to go to collections, and 12 months to go to sale. Nothing can be done until all past due obligation is there for at least 12 months.

Assemblyman Sherwood:
What is the obligation on the HOA to make the homeowner aware that their $45 . . . ? In my constituent's case, it is $45 a month. Let us say it is $50. That times four months is $200. You send it to collections, and suddenly a $200 past due fee turns into $2,700 immediately. Now I have to pay Legal Aid or somebody $100 to get into a payment plan. It seems like we are setting folks up for a superpriority lien that does not help the HOA. So, let us put some teeth into this that makes the HOA try to collect the debt on its own first. Four months before a $2,500 superpriority lien seems way out of line.

Garrett Gordon:
Let me attempt to answer that question. I see Ms. Scott, who works for the Howard Hughes Corporation. She deals with this on a day-to-day basis. Maybe she can put some real-life experience on your question. You asked how would your constituent know what could be coming. That addresses Assemblyman Frierson's point that he has made from day one, which is the subject of notice at each attempt to collect. With the 30-day notice of past due, there would be a schedule and a list of everything that could happen in the event of nonpayment. You cannot foreclose on the unit for at least 12 months, as I have indicated. With that built into the schedule, I do not believe it would be $2,700 immediately. It would take 12, 13, or 14 months to get to that point. Perhaps Pam Scott can address if from a practical standpoint. Thank you.

Chairman Horne:
Ms. Scott, would you like to attempt to answer that question and bring some clarity?

Pamela Scott, representing the Howard Hughes Corporation, Las Vegas, Nevada:
Some associations bill monthly, so you know every month what it is. Others have coupon books and maybe a quarterly statement goes out to let you know where you are at. Mr. Gordon is correct in that you cannot file a lien prior to four months. Before you can file that lien, you must send an intent to lien letter. There is language in the new compromise that says that letter must say what the costs are going to be and what the steps are going to be. It has to be spelled out extremely clearly. Once that notice of delinquent assessment is filed, which is generally 30 to 60 days after the intent letter, then you may go to a notice of default and intent to sell. I believe there are provisions in here where the board has to meet to discuss that and vote on that and have the intent to sell. The notice of default cannot be recorded prior to six months of assessments or an obligation of a minimum of $500. In many of the smaller associations, that would be over a year's worth of assessments.

I think there are multiple opportunities for noticing homeowners in this to that point. And what prevents it from being $2,500 from the beginning is that the regulation allows a set amount to send an intent to lien letter. The regulation allows a set amount—a cap—at each step, so you cannot be four months delinquent and suddenly be sent to collections and have $2,500 worth of collection costs. You probably would have the cost for the intent letter, and at the point the lien is filed you will have the cost for filing the lien, but it would not be anywhere near the caps. Summerlin pays $325, I believe, to have a lien filed. I believe the new cap on releasing a lien is $30. Thank you.

[Ms. Scott submitted a letter of support for S.B. 174 (R1) from the Howard Hughes Corporation (Exhibit F).]

Chairman Horne:
Thank you, Ms. Scott. Ms. Diaz.

Assemblywoman Diaz:
Thank you, Mr. Chairman. To piggyback off that concept, public entities like the City of Las Vegas have a more efficient system, and they only charge $29 to file a lien if someone is delinquent on his sewer fees. Republic Services charges a $36 lien on delinquent garbage bills. The HOA industry gets to charge $350. I am wondering why Republic Services, Clark County Taxation, and the City of Las Vegas Sewer Department all have superpriority liens and do not tack on thousands of dollars of what I feel are junk fees. Can you imagine the public outcry if Clark County and other municipalities were allowed to tack on up to $2,700 to people's properties? I want to get your thoughts on that.

Senator Copening:
I have the experts here, and Pam can speak a little bit more to the processes that HOAs go through. I also saw that in the newspaper today, so I do not know anything about the way they operate. I am not even certain that a municipality forecloses on a home. I am not certain, so maybe I can just turn that over to one of the experts. I agree that this is one of the reasons we capped it. If you look at the regulations, they are more, so we are trying to bring it down to less than the regulations. I do not really have any control over what are in regulations, but I can put some hard caps into law to bring those prices down. I will turn it over to Ms. Scott.

Pamela Scott:
The reason that the city can do that is that the city is not required under Nevada statute to use a licensed collection agency to collect their past due assessments. They simply record a lien.

A few years ago, a number of management companies were recording liens on behalf of the associations, and the Legislature passed legislation mandating that associations use licensed collection agencies. So, this is a service that the associations have to purchase. It is no different from purchasing the service of a landscaper. The collection companies have set their fees, just as the title company charges $300 to $400 for a title sale guarantee document. This all has to be coordinated through a licensed collection agency, and the association is not allowed to do that on its own. It is a cost that we incur.

Chairman Horne:
Does that answer your question, Ms. Diaz? [Ms. Diaz responded off microphone.] Mr. Brooks.

Assemblyman Brooks:
Thank you, Mr. Chairman, and thank you, Senator Copening. You are always very efficient. I appreciate that.

I have a question for Pamela Scott. I think we are all trying to look out for the best interests of our constituents. I live in an HOA, and I received a fine for $400 or $500 for a light that was out in front of my home. We are required to maintain the bulbs in the lights. I think that was a $25 infraction originally. I was a little taken aback, because my HOA did not really provide good service to me by mailing me a notice. They did not alert me that this was a problem.

Three months into this, and not realizing the light was out, I received a bill from a collection agency for more than quadruple the amount of the original fine. This was before I knew about all these HOA issues and before I came up here to the Legislature. This was over a year ago. It bothered me because the people on the HOA executive board are my neighbors. Somebody could have sent me a notice or put a notice on my door.

How can we make HOAs more accountable to receive the fees or the delinquencies for the infractions of individuals before they go to a collection agency? A collection agency is in the business to make money. With all due respect to you, you mentioned that you need to use licensed collection agencies. I would like to know how many of those licensed collection agencies are subsidiaries of HOAs.

Pamela Scott:
I will address your last question first. I have no idea. None of the collection agencies are subsidiaries of HOAs. They are a service that we purchase. There are some management companies that have also started licensed collection agencies. There is a relationship there between some management companies and some collection agencies, but they are, to my knowledge, separate corporations. Howard Hughes and Summerlin do no use those collection agencies, so I really cannot address that.

Assemblyman Brooks:
I am sorry. I meant to ask about property management companies, and not HOAs. They impact the HOA very significantly because they manage the property.

Pamela Scott:
Fining needs to be separate from delinquent assessments. I will go to your question about your fine and where you said you suddenly discovered you had a fine without any notice. Quite frankly, your HOA and your management company broke a law that has been in effect for many years. An HOA must give notice of a violation. It must put the homeowner on notice. It is mailed first class mail, but not all homeowners open their mail. I am not saying that is your case, but that is the case with many HOA issues. A homeowner cannot be fined until the homeowner has been noticed of a specific date and time for a hearing either before the board of directors or the compliance committee. They broke the law; it is as simple as that. My HOA sends a minimum of three notices about the issue before we schedule a hearing. No fine, under existing law, can be assessed until the hearing has been held. That does not mean the homeowner has to show up. If he does not come to the hearing, it is no different from when a person skips his court date. The association prevails in that case.

I believe your third question had to do with making sure homeowners know they owe this money. I think that management companies and associations bend over backwards by sending out statements and intent letters to let people know what is happening. There is some very specific language in this bill, in this compromise, with the collection language that describes everything that has to go out in that intent letter, such as how to have a payment plan and what the additional costs would be if you ignore this letter. So, I think the noticing is well-covered in this.

Assemblyman Brooks:
Yes, but here is where the integrity situation comes into play. All players are not good players. All property management groups are not the same. I would think it would work in the interest of the property management group if it owned a collection agency to not do due diligence so that it can collect on the other hand. Maybe we should look into possibly explaining that there is a conflict that lies there, and we need to alleviate that conflict as well.

Pamela Scott:
I have no relationship or any knowledge of the relationships between any collection companies and management companies. They are separate corporations. I have not heard that they are not obeying the law. That would be a decision of the Legislature if you want to say, “Absolutely not. There can be no relationship.” I believe the reason we were forced into using licensed collection agencies several years ago is because they did not want management companies per se filing liens. Thank you.

Chairman Horne:
Thank you. Mr. Sherwood.

Assemblyman Sherwood:
To dovetail on the remarks of Assemblywoman Diaz and Assemblyman Brooks, the testimony sounds as if right now it is a really bad law in regulations, so we have compromised, and now it is just a bad law and regulations for the consumers. It is really hard to justify what should be a $29 filing fee, which the City of Las Vegas charges. Now it is ten times that because we have to use a collection agency. The comfort level for taking folks who maybe do not want to get out of their house and who fell a little behind in their assessments . . . . Now you send the account to a collection agency, and that is now a lien. After 12 months, if it is not paid, they can foreclose on your house.

I appreciate the Howard Hughes Corporation. It does a great job, and you do not have an issue here, and Southern Highlands does not have an issue. Unfortunately, there are thousands of homeowners who do have issues. You said you have never heard of a particular situation. Assemblyman Brooks just told you of a situation, and that happens every single day. Until we take out the incentive of rewarding collection agencies . . . . The testimony is that they are a necessary evil, but at this point it is just an evil. This is bad legislation. Until we can wrap our arms around how we do not punish homeowners at ten times the regular fee, I am really not comfortable with this.

Chairman Horne:
Are there any other questions? Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman, for the opportunity to follow up. I am making my way through the mock-up.

Mr. Gordon, in section 6, on page 21, it deals with the responsibility to maintain walls. I am envisioning common-interest communities (CICs) where there are external walls and landscaping on the outside of the community or outside the wall that is adjacent to shrubs and the like, even the watermarks from the inside that end up on the outside of the community. For example, say there is an accident on an external wall in someone's backyard that backs up to a street. Does section 6 suggest that it is the responsibility of the homeowner to maintain and repair that external wall, even if it is not a result of neglect or conduct of their own, or would that still be the responsibility of the CIC?

Chairman Horne:
Before you answer, Mr. Gordon, I know Mr. Ashleman is here, and I know this is something we touched on last session. It is very familiar to me. First, you answer, Mr. Gordon, and then we may have some follow-up with Mr. Ashleman wishing us to delete this from the bill. Mr. Gordon.

Garrett Gordon:
Pam Scott wrote this line, and I will let her answer that. If you need a legal analysis, I can provide that afterward.

Chairman Horne:
Okay. Ms. Scott.

Pamela Scott:
For the record, I did not write the language. It came out of a working group. Let me tell you the main reason for the working groups that brought forth S.B. 174 (R1). Last session, things went down to the last minute again, and there were three separate conference committees made up of different persons. Some things that came out of it caused some unintended consequences, confusion, and inconsistencies.

Chairman Horne:
We are bad legislators.

Pamela Scott:
No, I just said there were some inconsistencies and unintended consequences. Maybe there was some lack of communication as well.

The main problem with this was in section 6, subsection 4, which is on page 22, line 13 of the mock-up. It has been red-lined out. But the definition of a security wall does not, and did not, address the fact that there could be a multiple association relationship. You could have a subassociation and a master association. *Nevada Revised Statutes* Chapter 116 does not address subassociations, and in the eyes of NRS Chapter 116, every association is equal. So, it does not address who should be repairing, or which association should repair, that wall. It talks about a final map recorded around a subdivision tract, but in many cases it might not even be the same master association. You could have two individual, small, gated communities, and the wall is really just the backyard of two yards that back up to each other, the same as with any public street. It was very confusing as to who should be reserving for which wall.

I understand that Mr. Ashleman would like the existing language to remain, but I think that the Legislature has some obligation to clear up some of the confusion, so that the association that needs to be reserving for this is clear on who should be doing that. That was the reason for changing the language in section 6 to simply say it is based on the documents and who owns the property. There was never any intent to put any obligation back on the City of Henderson to have to maintain walls that they did not feel were their obligation.

Chairman Horne:
Mr. Ashleman.

Renny Ashleman, representing the City of Henderson:
We are still talking to the folks in the HOA and the sponsor of this bill about rewriting some things. If the definition in subsection 4 is their concern, we can certainly address that. The reasons we want the HOA to be responsible for the security walls are both for safety and from the blight viewpoint of the community as a whole. As you know, the problem we foresaw, which was chasing all the individuals down, has gotten a lot worse since we wrote the act because of the foreclosures, the properties owned by banks, and the other difficulties. It is a considerable problem to figure out who is going to fix that in the case where the resident is insolvent, there is nobody in the house, and that sort of thing. We think it is best to put that on the association.

We have no objection to the part of the bill where it asks for the ability to go after whoever caused the damage. We will be happy to work with them to rewrite section 6, subsection 4, if that is the principal problem.

They have also offered to address the other part of our problem, which talks about a government assuming responsibility in writing, which is really not the situation. We do not own these properties. I would be happy to answer any questions.

Chairman Horne:
At the risk of oversimplifying it, why does it not set the association responsible for the repair and upkeep of the security walls with the exception of damage that occurred not in the ordinary course of living by a tenant, or something like that? Basically, if a tenant backs his car into it, he must pay it. If it is just because it is stained from sprinklers, that is ordinary wear. Why is that difficult?

Renny Ashleman:
Mr. Chairman, I do not know that it is difficult. We will sit down and see if we can fix this with them.

Chairman Horne:
We are on day 119 of the session. Are there any other questions or concerns? Senator Copening, do you have anyone else listed you wish to call up to the table?

Senator Copening:
No. Anyone who wishes to speak may do so. I will give up my seat. Thank you.

Chairman Horne:
Mr. Uffelman.

Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association:
Good morning, Mr. Chairman and members of the Committee. I appreciate the opportunity to be here on this Sunday morning.

In 2009, we worked on this topic, as has been alluded to, and we came up with a regulatory process that was going to do these things. At that time we came up with the extension of the priority lien from six months of regular assessment to nine months, except in the case of a Fannie or Freddie loan and all of that which has been alluded to previously. We then found out that some things we thought were reasonable and were going to be set by regulation kind of took off on us.

To the extent that S.B. 174 (R1) gives us these hard caps, it takes the collection down to $1,500. It puts the $1,000 cap on the hard costs, and the $600 cap on collection services that limits the attorney fees to the three places that they were mentioned, and continues, obviously, because of federal law, the priority that Fannie and Freddie have over how long the superpriority is for. It tells us, yes, this is a $3,100 thing, as opposed to $1,950, plus whatever they come up with. So to that extent, it makes it a more desirable event, if you will. I do not want to use the word "event." It allows us to kind of put a pencil to it and say, "That is what it costs if this goes." We know where we are at with all the other issues that go on in foreclosure. We know where we are and can come up with a reasonable value for an effort to sell that real estate owned by the financial institution and post foreclosure. For all those reasons, we have said that these provisions are okay.

Chairman Horne:
Are there any questions for Mr. Uffelman? I see none. Thank you, sir. Mr. Lee.

Keith Lee, representing Default Services Division, Lawyers Title Insurance Corporation, Las Vegas, Nevada:
I am here to answer any questions you may have on the hard cost cap of $1,000, as reflected on page 12 and beginning on line 5 in section 3.5, subsection 2. Those hard costs do not even begin to accrue until such time as the collection agency decides to file a notice of intent to lien. Under current provisions of NRS Chapter 116—the CIC laws—if the decision is made to file a notice of intent to lien, everyone in the chain of title on that particular piece of property must be given notice. In addition, as we move through the foreclosure proceedings, there have to be recordations with the county recorder. There have to be publications and costs incurred in the local newspaper, I think publishing once a week for three weeks. In addition, what my clients provide are essentially preliminary title reports, which are in the range of $350 to $450, depending upon the amount of the guarantee that is given. In other words, my client gives the title report and guarantees the accuracy of it, so that if there is a problem with ownership in the chain of title somewhere, my client is on the hook for any inaccuracies they may have provided. Mr. Chairman, I will try to stand for any questions you or members of the Committee might have.

Chairman Horne:
Are there any questions for Mr. Lee? Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Chairman. Mr. Lee, let us use the scenario where the house is not for sale, and we have homeowners who want to stay in their house. As Mr. Brooks related, his light was out. A collection agency takes it over. A $25 fine turns into a $500 fine. The only way they got that money was to file an intent to lien. That triggers your client, and now he is on the hook for $400 or $1,000, or do you only get paid if the home is foreclosed on or sold? The unintended consequence would be everything triggers as soon as it goes to the collection agency, so everything downstream triggers, or does that not happen unless it is a sale?

Keith Lee:
The hard costs are not triggered until a notice of intent to lien is recorded. That is when the hard costs are incurred for us or for the provisions of section 3.5, subsection 2. None of those costs are triggered until such time as the HOA directs the collection agency to file a notice of intent to lien.

Assemblyman Sherwood:
So, in this case it would be 12 months; it could not be anywhere between 4 and 12 months.

Keith Lee:
If I understand the law, it could be incurred as early as 4 months, because that may be when they decide to do the notice of intent to lien. As I understand it, it is the foreclosure that has to wait 12 months. If they decide to file a notice of intent to lien, it is possible that the beginning of that $1,000 could be incurred then.

Assemblyman Sherwood:
So, that $25 light bulb fee turns into a bunch of unintended fees, and there is no incentive to stop it. This is probably not very well thought out. I think your client should not be paid unless, and until, the house is being sold or foreclosed. You should be at the 12 months and then there should also be a trigger with the sale. You should not just be able to run some paperwork and then bill another $500 or $1,000, and then another $100 to put Mr. Brooks on a payment plan.

Keith Lee:
We are not involved in any of those processes. We are only involved at such time as we are directed to provide a trustee sale guarantee. I am not sure that they can even foreclose on just a fine or loan. I think it has to be an assessment, but I stand to be corrected.

Chairman Horne:
Mr. Lee, who is your client?

Keith Lee:
The Default Services Division of Lawyers Title.

Chairman Horne:
And what do they do?

Keith Lee:
They provide the trustee sale guarantee at the point in time that the collection agency is directed by the HOA to file a notice of intent to lien.

Chairman Horne:
Okay, so it sounds like your question, Mr. Sherwood, should be directed to a collection agency and not to the one providing the title insurance. Mr. Lee, basically, your client is assuring that when the title comes up for the final sale . . .

Assemblyman Sherwood:
All I am suggesting is that we put a governor in there that makes it so an overambitious collection agency does not trigger that expense. That seems pretty reasonable.

Keith Lee:
If I may, Mr. Chairman, and not to belabor the point, my client gets paid by the collection agency whether the collection agency is able to collect from the homeowner or anyone else. We are retained, if you will, by the collection agency to provide the title report so that the collection agency then can comply with state law.

Assemblyman Sherwood:
Your clients are not the bad guys, but the threat of losing your home is the issue. It is the collection agencies that now have the superpriority lien that can make sure that everyone gets paid, and that is what this legislation says. Nobody is impugning your clients, but let us not make it so they start to.

Chairman Horne:
Is there anyone else? Ms. Scott.

Pamela Scott:
To clarify, the title sale guarantee is triggered at the point where there is a notice of default and intent to sell. Under this bill, that would have had to have gone to the board of directors for a vote on taking the property to a foreclosure sale. I believe it is six months or a certain dollar amount to do that. It is not triggered when the lien is filed. It is much further in the process, and it is by law that we obtain this, as Mr. Lee said. I just wanted to make that point.

Chairman Horne:
Thank you. Also, since we are down south anyway, I see Ms. Porter there and signed in and in favor.

Jan Porter, General Manager, Peccole Ranch Association, Las Vegas, Nevada:
I am a homeowner, a board member, and a former member of the Commission for Common-Interest Communities and Condominium Hotels. I am the manager of Peccole Ranch, a master planned community, and I was involved in the initial working group that was led by Senator Copening on this bill.

I want to answer the question that was posed regarding section 3, subsection 2(b), regarding the aesthetics issue. I had the privilege of working with Assemblyman McArthur on this during the last session, and the question regarding this section, I think, is clarified in the new language. I am very happy

with the way that clarification has come up. The situations we were looking at when we asked Assemblyman McArthur to work on this with us during the last session were issues of trees overgrown in the backyard of a home that was delinquent for about three years. We could not do anything with regards to some of the homes that were vacant and foreclosed upon. We are so grateful to Assemblyman McArthur for working with us on this. I think the integrity and intent of that bill is further clarified in this one.

In regards to section 6, this is a situation that is present in our HOA, Sage Creek. I think the language in S.B. 174 (R1) clarifies that. I stand in support of this bill, and I thank you for your hard work on this.

Chairman Horne:
Thank you, Ms. Porter. Are there any questions for Ms. Porter? I see none. Let us move back to Carson City. Is there anyone else present wishing to testify in favor of S.B. 174 (R1)? Is there anyone in Las Vegas in favor?

We will move to the opposition. Anyone who is opposed to S.B. 174 (R1), please come to the table. Mr. Ferrari.

Chris Ferrari, representing Concerned Homeowners Association Members Political Action Committee:
I am here in opposition to S.B. 174 (R1). As you have noticed today in the roughly 90 minutes we have been here, most of the dialogue has focused around collection practices and the collection aspect of this legislation. We believe S.B. 174 (R1) is a dangerous bill for Nevadans, and it provides significant financial benefits to the HOA collections industry without any commensurate benefit to the HOAs themselves. There has been a compromise among the collectors, and not with the consumers, or those purchasing property, as is the case with my client.

The practices undertaken by HOA collectors, under current law, are under legal scrutiny. There are several mentions of courts ruling in favor of inclusion of attorney's fees in collection costs within the superpriority. There are also an equal number of courts that have ruled that that is not the case and that they should not be included therein. As a matter of fact, Nevada courts are debating that very issue.

The proponents of this bill have been management companies and collectors, and in some regard this is a very significant win for them. While there is a cap, those fees are now included within that superpriority lien. As some of the Committee members have questioned, what that means on an elemental level is this: Say the monthly assessment of an HOA is $30. The only thing the HOA

gets, under current law, is nine months of that past due assessment. The most they can ever get is $270, period. Under the new bill, the most money the HOA can get is also $270. Now you have a fixed cost that is actually up to $3,600 plus attorney's fees included therein. In this example, the collection agency would receive that $3,600, and the HOA would get that $270. We do not believe that is in the best interest of furthering the real estate market or in protecting the homeowner.

In addition to the fees, there was also mention of a payment plan option, which, obviously, we fully support. There is a $100 fee to enter that payment plan. If someone is struggling to pay their back due assessment, to incorporate a $100 fee just to enter into a payment plan seems to be a questionable policy to move forward on behalf of the residents of the state of Nevada.

In section 15.3, there is a very low bar set for the initiation of the foreclosure process. It can be initiated after six months in arrears or $500, and it leaves an executive board, typically consisting of two to three people, to make that decision.

It was stated by one of the proponents of the bill that there has been some misinformation being disseminated by my client. I like to think that I am pretty good at what I do, but if I were able to contact a federal agency—in this case, it was the Federal Housing Finance Agency (FHFA)—and ask them to write a letter, I would be really good at what I did. That is certainly not the case. On Nevada Electronic Legislative Information System (NELIS) is a letter (Exhibit G) to Lucas Foletta, the General Counsel for Governor Sandoval, from Alfred Pollard, General Counsel for the FHFA, which is the oversight regulating agency for Fannie Mae and Freddie Mac out of Washington, D.C. I am going to read a couple of excerpts from that letter, if I may, Mr. Chairman, with concerns pertaining to S.B. 174 (R1).

> "As we discussed, the provisions of the bill which relate to the collection of unpaid homeowners association (HOA) assessments raise significant issues."

[Mr. Ferrari read from the letter (Exhibit G).]

> "Finally, I would note that this measure would represent a significant change to existing law and practice and could have unintended consequences in the current market environment."

For that reason, I believe this matter is bigger than all of us. For the Legislature, and for advocates for one side or another, this concerns the availability of federal loan dollars in our state.

[Chairman Horne left the room, and Vice Chairman Ohrenschall assumed the Chair.]

There was also another point made, saying that the federal law will trump the state law. To refute that allegation, I provided you an email (Exhibit H) from one of the foremost experts on this matter. This gentlemen's name is James Adams, and he is one of the leading HOA attorneys in the state of Nevada. He writes:

> "Fannie Mae has internal underwriting guidelines which precludes it from buying loans in states that permit superpriority liens against Fannie Mae which exceed a six month assessment cap. Fannie Mae does not pass regulations as it is a 'government sponsored entity.' Therefore, the current language in S.B. 174 which is meant to protect Fannie Mae is meaningless."

[Mr. Ferrari continued to read from the email (Exhibit H).]

The concern at this level, in my estimation, is that there will be different sides. Would my folks like to have a lower threshold for collection fees? Of course, but that is not really what we are talking about. You are the policymaking board here, and the broader concern on this matter is, again, the federal involvement and the threat of loan dollars being taken from our state. I would only ask this body to work with this federal agency and to get approval from them to make sure that we do not have to end up in some kind of a special session if something passes and those dollars are cut off.

Mr. Adams concludes in his email to me:

> "The bottom line is that the language of S.B. 174 is legally flawed and the ramifications for the residents of the State of Nevada could be severe. If Fannie Mae stops buying loans originated in Nevada, there will be no housing market left."

I thank you for your time.

Vice Chairman Ohrenschall:
Thank you very much, Mr. Ferrari. I have a question from Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Vice Chairman. Mr. Ferrari, can you point to the provisions in section 15 that you believe are problematic with respect to a federal agency? It seems to me that not all of us are on the same page. I do not know that we, as a state, need to seek any approval from Fannie Mae or Freddie Mac for anything we do, but we can take into consideration how it might impact the state.

Chris Ferrari:
This is kind of outside the realm of most of our expertise. However, my understanding is this: As government sponsored organizations, Fannie and Freddie look at our state, and they determine whether they are going to invest money in purchasing loans in this state. The letter from Mr. Pollard of the FHFA essentially says that if this bill is passed, and there is further inclusion of assessments within the superpriority, it could be problematic for them to continue buying loans in this state.

Assemblyman Frierson:
My question is specific. I understand what you are saying, but we have two days left, and we have an extremely long bill that we are looking at. You provided us with these letters. We need to know which part of section 15 is problematic. And if it is problematic, we can look at how to correct it, but to generally say section 15 is a problem does not help us fix it.

Chris Ferrari:
Absolutely. I believe the superpriority portion is now included in section 3.5 of the bill, so if there were to be a cap and this body were to review that and agree that there should be a cap in place, and if you were to remove the inclusion of those dollars within the superpriority, I believe it would alleviate the concerns of the FHFA.

Assemblyman Frierson:
Are you talking about section 3.5 at the beginning of the bill?

Chris Ferrari:
Yes. Section 3.5 addresses the different levels of collections. If there is still a piece in section 15, I apologize. I will have to take a look. We just saw this mock-up for the first time this morning.

Mr. Vice Chairman, if it is appropriate, perhaps Mr. Gordon would be able to tell us where the current inclusion of collection fees in the superpriority is within the new mock-up.

Vice Chairman Ohrenschall:
Mr. Gordon, will you come forward?

Garrett Gordon:
Thank you, Mr. Ohrenschall. I believe Mr. Ferrari is referring to section 15, page 37, lines 22 and 23, which states, ". . . fees and costs not to exceed the amounts set forth in NRS 116.310313 to cover the cost of collecting the past due obligation . . . ." I would think it is relevant to continue reading that section because of existing law that was put in in 2009. Since then, there has not been, to my or Senator Copening's knowledge, any comment or opposition from Fannie, Freddie, or the Bankers Association. The section continues, ". . . unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) of subsection 2 must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien."

That was the compromise in 2009. To make associations whole, there would be nine months of assessments. Fannie and Freddie said their regulations say six months. That was put into current law. That will not be changed by S.B. 174 (R1). Federal regulations from Fannie and Freddie will remain the same. It will be six months. If Fannie and Freddie have a regulation that says they do not pay collection costs or attorney's fees, I think that letter was clear. It did not say they were going to pull back loans. It did not say there would be an issue. It says they will not reimburse the lender. You heard from Mr. Uffelman. He did not oppose this. It would fall on the lenders. He said that as long as we are getting some certainty in the market, we are fine. I think with that section, read in conjunction with this existing law that has been there since 2009, we are okay, in my humble opinion.

Assemblyman Frierson:
Simplifying that particular section, it seems to me that section says, essentially, to the extent that it does not conflict with Fannie Mae or Freddie Mac . . .

Garrett Gordon:
Correct.

Assemblyman Frierson:
. . . which was already enacted in NRS in 2009.

Garrett Gordon:
Correct.

Assemblyman Frierson:
There was testimony during the introduction of this bill that the superpriority language was more for clarification and not new provisions. Is it your position that, currently, that is the state of the law anyway, and that this superpriority language is clarifying that, or is the superpriority language new provisions?

Garrett Gordon:
That is a great question.

Assemblyman Frierson:
Thank you.

Garrett Gordon:
If I can turn your attention to section 15, subsection 1. It says, "Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged . . . are enforceable as assessments under this section." The argument is—and I think it is a valid interpretation—that the charges the association must incur to hire a third-party collection company, and to hire a title company, and to publish in the newspaper are necessary for the association. If they cannot recoup those charges, they are passed along to all the other unit owners. I would argue that, yes, that is existing law. However, to clarify this issue and to put some hard caps in state law, we have made it absolutely clear that the fees and costs set forth in NRS 116.310313 to cover the cost of collecting past due obligations are included. This was important to homeowners and HOAs. That subject of federal law remains in law, unchanged. We have not heard any negative comment on that existing law since it was enacted in 2009.

Chris Ferrari:
Mr. Vice Chairman, if I may have the opportunity to speak again.

Vice Chairman Ohrenschall:
Please go ahead.

Chris Ferrari:
With all due respect to Mr. Gordon, and understanding the intent of the language in section 15 to exclude the federal loans, the letter from the FHFA (Exhibit F) that I continue to reference is dated April 26, 2011. To imply that there is no current interest in the passage of this bill and the potential ramifications, even with that current statute included, raises concerns.

Therefore, I continue to request that if such a law is passed, we do indeed check off with this group so as not to jeopardize the funding.

Regarding your question as it pertains to inclusion of superpriority, it is absolutely not my understanding that this is a clarification in any manner. There has been an arbitrator's ruling in southern Nevada, indicating that 9 months is 9 months, period, whether it is only three months of back due assessment . . . Say it is $30 per month, or whatever the case may be. It would be up to $270. So, if there is $90 in past due assessments, plus another $180 and attorney's fees or collection costs, that can still be included, but it caps at 9 months. Essentially, that is the crux of this entire issue—the 9-month provision and the superpriority component.

There is pending litigation in district court in the state as to the interpretation thereof. Of the many examples I provided in previous testimony, the most recent from one of the proponents is $1,380 in assessments, and the payoff demand is $84,000. Those are under scrutiny right now, and the legality of that practice is in question; so by passing this law and including these fees in superpriority, that certainly could alter the judicial outcome of those pending cases.

Vice Chairman Ohrenschall:
Thank you. Mr. Brooks, do you have a question?

Assemblyman Brooks:
Thank you, Mr. Vice Chairman. I think he kind of answered it, so I am comfortable with the testimony I have heard.

Vice Chairman Ohrenschall:
I have a couple of questions. On page 37 of the mock-up (Exhibit E), if you look at the existing carve-out for Fannie and Freddie, which I believe starts on line 24 and goes to line 37, that was put in earlier as a time carve-out. We wanted to expand the superpriority from six months to nine months. If the federal agencies are saying they will only pay six months of past due assessments and that they will not pay collection agency fees and attorney's fees, will this carve-out be enough, since this seems to deal with time, as opposed to the substance of what the collection agency's liening is, to not run afoul of Fannie and Freddie?

Bill Uffelman:
I will give you a layman's interpretation of what they do. When Fannie and Freddie say they will buy a loan, they have a whole instruction book that goes out to the lenders that says if it is a condominium with X number of units, you

have to have, say, 60 percent under contract or sold. They literally have checkboxes. They ask if the loan conforms.

I know we had the six-month cap on the fees. It says, ". . . unless federal regulations adopted . . . require a shorter period." So it was, in fact, time limited, I suppose to err on the side of caution. It is said in the Fannie and Freddie rules that they will say to a lender, "Subject to these things, we will buy the loan." If they say, "Subject to . . . " whatever this bill becomes, "we will buy the loan," then it becomes an obligation to the lender to make it a conforming loan to purchase it. If they say they will only pay six months and not the other things, those become a cost that the lender has to price into the loan in terms of risk and the like. It puts a cloud on the loan, but it does not kill it. It just makes it kind of an additional compliance issue in terms of writing a conforming loan that Fannie and Freddie will buy.

It presumes that Fannie and Freddie will survive this U.S. Congressional term. We are dealing with a lot of presumptions on securitizing loans with federal agencies. Presumably there will be one. There may only be one. There are a lot of other things going on in Washington, D.C., that we can sit here and try to figure out. The reality is, whatever their rules are, they are the rules with which the lender will have to comply. They will have to comply with the six-month cap, only because it comes up. They had a very specific rule about the six months.

Vice Chairman Ohrenschall:
Thank you, Mr. Uffelman. Maybe you could walk us through a hypothetical situation. Let us say I am a homeowner in an HOA, and I have fallen on hard times. I have stopped making my mortgage payment; I have stopped making the HOA payments. I am trying to get caught up on my mortgage payment. Maybe I go through our Supreme Court's mediation program. I am trying to work that out. Maybe I have worked out a loan modification, so there is no more fear of foreclosure by the bank.

Say I am $500 or $600 behind on the HOA assessments. The HOA sends it out to a collection agency. If this bill passes, $2,700 would be the maximum that could be tacked onto that unless there is some litigation involved that is provided for in the bill. Let us assume that another $1,000 or $2,000 is tacked on for litigation. So I started with $600 in arrears for assessments. Now let us say for the purpose of argument, I am up to $4,700. The collection agency wants to lien the house. If it is a Fannie or Freddie loan, what is going to happen, since they will only pay the $600, and they will not pay the other $4,100?

Bill Uffelman:
I guess that is why I hate hypotheticals. There is a whole variety of things going on here. You got to mediation because of your mortgage.

Vice Chairman Ohrenschall:
Right.

Bill Uffelman:
We have dealt with those issues, and now you have gotten $600 behind. In this bill, there is a 24-month payment plan. Hopefully, when you went through the mediation you got the Consumer Credit Counseling Service, and they sat down and walked you through a realistic budget so that when we are going through all the exercise that you described, you figured out how you were going to pay your obligation.

As I said, we have been through the mediation. The bank is not your problem anymore; it is your neighbors. To now lose the house over $600, I am appalled, I guess. As an individual who did not figure out how to pay those back HOA fees . . . Philosophically, recall the conversations we had about mediation and foreclosure. The irony is, Colorado law in mediation says you have to keep paying your HOA fees, and you have to keep paying your taxes as a sign of good faith and that going through the mediation is a worthwhile effort.

Now that we have saved your house from the financial institution that was foreclosing on you because you were not paying your mortgage, and we got all these things taken care of, to now turn around and lose the house for $600 instead of $400,000, I guess I do not want to get there. Fannie and Freddie are not going to have anything to do with that until the foreclosure. The mortgage is a priority over . . . Well, if we are going to go to foreclosure, and the HOA is going to try to buy it for $4,500, the bank will be there buying it for its mortgage. Fannie and Freddie are not going to be an issue anymore.

Vice Chairman Ohrenschall:
Say this bill passes as it is, and I lose the house after it goes to foreclosure, and it is a Fannie or Freddie loan. I owed $600 in past due assessments, and the collection costs went up to $2,700. There were some litigation costs. Tack on another $2,000 for the purpose of argument. Fannie and Freddie, pursuant to the letter on NELIS, will reimburse the $600 to the servicer, but they will not reimburse that $4,700. What kind of effect do you think that will have on the servicers and on the real estate market in general?

Bill Uffelman:
It is a great hypothetical for a law school exam. I do not know. I have been sitting here trying to figure out how it got that far over $4,700, given all the effort we have put into it to this point. You are the homeowner, and you are back at consumer credit and say, "I've got this problem again." With the 24-month payment option and all the other things, maybe we expended too much effort in the first place in trying to keep you in the house.

Vice Chairman Ohrenschall:
Will the servicer try to recoup the $4,700 that was tacked onto the superpriority lien?

Bill Uffelman:
The costs are on the table, and you start adding it up. Now it is real estate-owned. Somebody owns it, whether it is the bank that bought it, or a third party or whoever who is going to resell it. I had to pay this much, this much, and this much. You know, it was a $200,000 deal; now it is a $206,000 deal. When I go to sell it and want a reasonable return on my money, or I am getting rid of the toxic asset as a financial institution, I am going to sell it for what I can get for it. If it is $206,000, $220,000, $190,000, or whatever, it is money that is lost in the system. You read all the newspaper stories about how many trillions of dollars were lost in the real estate market. These are the numbers they are talking about. There is $2,600 here, $3,500 there, $10,000 there, and pretty soon it adds up to all the money that has been lost as we try to stabilize this market. These unreimbursed costs—all the money gets reimbursed in the resale activity, or it is just part of the charge-off of . . . Once, we had a $400,000 loan as an asset. We got $190,000 for it; we lost $210,000. That is how the system works.

Vice Chairman Ohrenschall:
Would you envision the servicer who, I guess, might have to eat that $4,700 because Fannie and Freddie will not reimburse them? Do you think they would sue the HOA to try to get reimbursed? What do you think would happen in terms of them trying to recoup that?

Bill Uffelman:
First off, the servicer does not lose it; the lender loses it. The portfolio, if it was in a retirement funds portfolio as a mortgage-backed security, that is what gets lost. We have other bills here that talk about when a debt buyer buys the debt. One of the bills limits the debt buyer to collect only what they paid for the debt. They cannot go after the differential between buying the $400,000 debt for $190,000.

Yes, we are messing with the system. Will the system ultimately stabilize at some reduced value? Yes, it will. The question is how long it will take. Those are all just costs that get added on. I do not envision that they would go after the HOA. How would they? It does not work. I do not see in this bill that the servicer, on behalf of the lender, somehow would come back looking for the $4,600. If you are the HOA, and you have done the foreclosure over $4,600, as I said, the bank is going to be there protecting itself, and you will get your $4,600, and the bank will wind up owning the property again. I presume we would not have to go through another mediation over that one.

Vice Chairman Ohrenschall:
But then a $100,000 house might become a $106,000 house because of the collection agency fees and attorney's fees, in terms of trying to sell it.

Bill Uffelman:
The market is what the market is. Ultimately, if it will not sell for $106,000, it will sell for something less. That dollar value gets eaten by the lender. Remember, all of this ultimately works back to the lender.

Vice Chairman Ohrenschall:
Thank you. Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Vice Chairman. We are now hearing testimony in opposition, right? I just want to get back to that. Mr. Ferrari, it sounds like the bill presented here is admittedly, by the sponsors and those testifying, really bad right now. This will make it really bad, but it is better than it was. If your choices were status quo or this bill, how do you feel about the bill?

Chris Ferrari:
From the perspectives of my client and the state, we appreciate some of the intent—to have some sort of solid cap. My clients are real estate investors. Are they disproportionately affected because they are buying five or six homes per month versus the person who is buying one home? Sure. But at the same time, we also began this endeavor working with the Consumer Credit Counseling Services folks. As the Vice Chairman mentioned, and as Mr. Uffelman indicated, the fees we are talking about just get priced into the new loan. The lender absorbs it, et cetera. That is what happens, but who pays for that? All of us. All of that accumulated debt is spread out into the loan that you are going to get, and that your constituents are going to get, through higher service fees and interest rates. In some cases, that is why the FHFA is looking at this. They do not want to be responsible for paying $74,000 on a $1,300 back due lien.

I think the biggest issue, in response to your question, comes down to superpriority. While we do not love the $1,950 that is in the CIC Commission, I think that is a safer and better route to go, although it is not capped, which we would prefer. It was indicated by Chairman Wiener in the Senate that, if and when at the time they were looking at that $1,950 CICC cap being the resolution on this matter, they would work as a commission to put an actual hard cap into that. I believe that is the best resolution at this juncture.

Assemblyman Sherwood:
So, if we could keep the HOAs whole with their superpriority lien and not codify that there is a superpriority lien for collection agencies, would you be comfortable with all the other compromises and concessions the sponsor has made?

Chris Ferrari:
Yes, Mr. Sherwood.

Assemblyman Sherwood:
Thank you.

Senator Copening:
Mr. Vice Chairman, I have to do a work session in the Senate Committee on Judiciary. I want to give some closing comments for clarification and just get very real with what is going on.

Vice Chairman Ohrenschall:
Go ahead, Senator. We understand how busy you are.

Senator Copening:
Thank you. First, I want to address the letter from Mr. Pollard (Exhibit F). With that, he was working off the original bill that did not have half of what we had. It did not have caps in place. It did not cap attorney's fees. The first thing we need to understand is that he was addressing an original bill that has changed dramatically.

I also want to state in response to the CHAMP lobbyists that we did not have collection companies as part of the negotiations. There was a lobbyist for a collection company, but there were many more, including Legal Aid, who were there to make sure they were representing the people who were having financial hardship. I take exception that we purposely left the collection agencies out of this because, frankly, we do not care. We realize they have taken advantage of the system. We do not want any business to go under. We need to keep

businesses alive, and we need to make sure they have a reasonable profit, but we also have to stop what they have been doing, and these hard caps do that.

The realtors who were originally opposed to the bill are no longer opposed to the bill. They realize the benefits of getting these caps in place and the superpriority.

One thing we are not remembering in this, because it has become very muddied, are all the other homeowners who live in the association. When you use the term "HOA," you are not talking about a management company or a collection company. You are talking about the unit owners who make up that HOA. The budget of that HOA is from the assessments to which the unit owners contribute on a monthly basis. You heard that a group of investors—CHAMP and some others—are suing over 500 HOAs for collection fees. This is the reason they do not want attorney's fees to be included in this.

You members are probably all aware that many HOAs are going bankrupt. Some have. I will use the example of Paradise Spa in Las Vegas. They are $1 million in arrears because of a person who owned 261 units there two years ago decided he was going to stop paying his assessments. They are flat broke. Their infrastructure is literally crumbling. They do not have money. They have let their insurance lapse. They cannot pass these costs onto their members, because their members are elderly and primarily just do not have the money. What will happen if superpriority is not included to make the HOA whole, meaning the costs for collections will all go back to the members? Many of these members—your constituents—are financially fragile. Many of them are barely hanging on and are probably a month away from foreclosure themselves. The members have to defend themselves, so the attorney's fees that all those 500-plus HOAs have to pay are now going to get divided up among those homeowners living in those HOAs. The HOAs do not have money. They are already lost on their assessments, so most of them are in arrears. Special assessments have to be put in place, or the monthly assessments have to be raised.

We have certain groups that we are talking about. We are talking about those who are in foreclosure who are having problems paying it. This bill will help them by capping these fees. You are talking about the investors on the back end who buy the homes, who would like these fees to be as low as possible, and who do not want superpriority. If they get what they want, and it is not superpriority, and they are doing these lawsuits for these reasons, those costs get passed on to all the other members in those HOAs—our constituents. The third group is all the other members in the HOAs. How much are we going to protect them? My district is almost all HOAs, which are all members. I have to

protect them. The reason I brought this bill forward was to make sure that those HOAs are kept solvent.

You did not hear a part that was in the Senate Finance Committee when this bill was heard. We currently have no law in place that says what happens to the infrastructure of an HOA when it dissolves. We need to do that. Unfortunately, we cannot address it. So, with Paradise Spa, even though they are bankrupt, there is nobody to take over the infrastructure. There is no government entity. The more we put pressure on these HOAs and cause them to go bankrupt—and if they have members who do not want to pay their bills—they may choose to dissolve, however, there is nobody to take responsibility for that community if it dissolves. It is a problem we are going to have. We must keep these HOAs solvent and not pass the cost on to the members who are financially fragile as well.

I thank you very much for your attention. I know these folks can handle any other questions that you have. I apologize that I have to leave for the other committee.

Vice Chairman Ohrenschall:
Mr. Segerblom has a question.

Assemblyman Segerblom:
Can you briefly tell us the status of this bill? I am not clear. It has not left the Senate yet, right?

Senator Copening:
That is correct. We are doing these things concurrently. It had a hearing in the Senate Committee on Finance. They will be voting that out today, I think. You probably cannot take any action on it until that happens and it goes to the Senate floor. We are trying to get the hearings done, so that when the process happens, this Committee will be prepared to make a decision.

Vice Chairman Ohrenschall:
Mr. Frierson, do you have a question?

Assemblyman Frierson:
Thank you, Mr. Vice Chairman. I realize that Senator Copening has to leave. This question is more for Mr. Uffelman and Mr. Ferrari. If anyone else has a question for the Senator, I will let them go first.

Vice Chairman Ohrenschall:
Mr. Sherwood, do you have a question?

Assemblyman Sherwood:
Thank you, Mr. Vice Chairman. Senator, the irony in the bankruptcies is it sounds like the HOAs have to pay for collection agency fees that were not part of the superpriority lien to begin with. I find it ironic that the collection agencies with their excessive fees are the ones that are making the HOAs go bankrupt. Would you be comfortable with changing the law as stated to say 12 months for both sending Mr. Brooks to collections for his lightbulb and exercising a bankruptcy? Would that work? A lot of these are quarterly. If we made it 12 months, would that be acceptable to you as the sponsor?

Senator Copening:
I am not an expert. I would have to defer to the people who do this type of work—those who run HOAs and know what the unintended consequences may be. We can certainly consider that. They have heard it, so they can speak about it.

I also want to say that when an HOA utilizes a collection company—bearing in mind that most of these HOAs do not have money—the collection company will work for the HOA because they know that they are made whole on the back end in superpriority. Their fees have always been paid. The banks have never had any problem. Actually Freddie and Fannie, in their guidelines, allow for a certain amount of fees and fines, contrary to what was said today. It has always been paid; we have had no problem whatsoever. If the collection costs are not made whole on the back end, an HOA is not going to be able to get a collection company to work for free. Again, HOAs do not have the money to pay them because they are behind in assessments. That is another reason why it works well for the HOAs. They can essentially get the companies to do the work up front because they know they are made whole on the back end. We want to cap what they are made whole on.

Vice Chairman Ohrenschall:
Thank you. Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Vice Chairman. Mr. Ferrari, in reviewing the emails and the letter that you forwarded to us, at least with respect to the email, the question seemed to be the use of the word “regulation,” when Fannie Mae does not regulate. It seems to me that would be relatively easy to fix. Simply referring to them as “rules” or “provisions” would resolve that. With respect to the letter, it seems to me that that would be resolved if we just clarified a sentence, making it very clear that we are trying to operate within the operations of Fannie and Freddie. That is just food for thought.

Mr. Uffelman, I have to say I was concerned about a comment you made. If you feel the need to respond or not, that is fine. You said maybe we have tried too hard to keep homeowners in their homes. I think that is at the crux of this and a lot of what we are trying to do this legislative session. The frustration I recognize on the part of housing and lenders exists but exacerbates the problem.

Bill Uffelman:
My comment was relative to the potential situation where we have spent all the time and effort to come up with a mortgage payment the person could afford, and did all the mediation, only to find out that the person does not have the wherewithal to pay the $600 of back HOA fees. The Consumer Credit Counseling Service will want to know about all the debts, where a homeowner is at, what he is doing, and how to clean all these things up so that he can pay whatever the new mortgage is. It would be very frustrating, after all this effort, to get to a point of stability and then find out that for $600, the battle was lost. That was what I was expressing.

Vice Chairman Ohrenschall:
Thank you. Are there any further questions for either Mr. Ferrari or Mr. Uffelman? I do not see any. Are there any other witnesses who wish to speak on S.B. 174 (R1) either in Carson City or in Las Vegas?

Chris Ferrari:
Mr. Vice Chairman, with your indulgence, may I make one more comment.

Vice Chairman Ohrenschall:
We are short on time. Go ahead.

Chris Ferrari:
In response to Senator Copening's comments, I understand and I appreciate the work that has gone into this bill. I believe the intent is to try to make HOAs whole. The fact is they are still only going to get nine months out of this bill. You are guaranteeing $3,300 in collection fees, and that HOA is going to receive that nine months when the property transacts, regardless of whether or not a collector is involved. The question related to your earlier question of Mr. Uffelman is, "Are my folks disproportionally impacted because they are buying multiple homes?" Of course, but this is affecting every homeowner who goes to buy a property. That lien is going to be on there whether he is a first-time homebuyer or an investor, and we are ultimately going to be paying for that. Thank you for your indulgence.

Vice Chairman Ohrenschall:
Mr. Ferrari, I thought the maximum allowed under S.B. 174 (R1) would be $2,700. How are you arriving at $3,300?

Chris Ferrari:
Section 3.5 provides $1,500 for delinquent assessments, $600 to collect fines, $1,000 for delinquent assessments, and $200 in management fees. Those total $3,300. That is from my last reading of the bill and is based on the mock-up from yesterday.

Vice Chairman Ohrenschall:
Mr. Gordon, do you agree with those numbers? I thought $2,700 would be the maximum, unless attorney's fees for bankruptcy or litigation were involved.

Garrett Gordon:
I disagree. We have assessments, and we have fines. Collection costs related to fines were a big concern of yours and Assemblyman Frierson and others on this Committee. We have capped those at $600.

Vice Chairman Ohrenschall:
That would be a separate cap for fines.

Garrett Gordon:
And the reason is you cannot foreclose on a fine, except in . . .

Vice Chairman Ohrenschall:
Construction penalties, health, safety, and welfare.

Garrett Gordon:
Yes. So, the effort to perfect your lien for the fine only takes a couple of steps. You cannot foreclose on it. The reason we went to $1,500 for the assessment is there is a lot more work and a lot more requirements under state law to go through to the foreclosure process. I would argue the fines be capped at $600 and assessments, in the worst-case scenario, be capped at $2,700.

Vice Chairman Ohrenschall:
I have a question for either of you. If this does not pass, and collection agencies are not part of the superpriority lien, will they not get paid? Will they not be able to place a lien on the property and get paid? Will they be out the money they expended in trying to collect $500 or $600 in past due assessments?

Garrett Gordon:
I would argue that, if this does not pass, as you have heard the testimony as reflected, you need a licensed collector to do this process. So, if that money cannot be recaptured, as Ms. Scott and the sponsor testified, the cost of that will be spread out to all the other homeowners with a special assessment or with the regular assessments being bumped up. The third party costs are a requirement. They include publishing, title fees, and any collections. Those costs have to be paid. It is just whether or not this body believes that it should be subject to the unit owner who is in default and is tied to that property. Or, do you want to spread it out to everyone else who has been paying their assessments on time?

Vice Chairman Ohrenschall:
Could not the collection agency do what other collection agencies do now—garnish wages, attach property such as a vehicle, and those kinds of things? Do they not have other avenues right now, other than being part of the superpriority lien?

Garrett Gordon:
Nevada Revised Statutes Chapter 116 is set up so that the mechanism to collect on past due assessments is nonjudicial foreclosure. You are bringing up judicial foreclosure, civil action, or something to that effect. I would argue that taking that route would clog the courts. It would have an excess of attorney's fees that would not be capped, which I think is not a preferable option to how NRS Chapter 116 is currently set up with reasonable caps. I can get back to you with some more detailed answers if you like.

Vice Chairman Ohrenschall:
Thank you. Mr. Hammond.

Assemblyman Hammond:
Thank you, Mr. Vice Chairman. Mr. Gordon, in your explanation, you were talking about what can be foreclosed upon and what cannot. I thought I heard you say you can, but then you said you cannot, when you were talking about foreclosing on fees. Can you explain that to me? Because that, with all due respect, sounded like my three-year-old saying he did and he did not do it.

Garrett Gordon:
You cannot foreclose on a fine unless it relates to the health, safety, or welfare of the unit owner or the association. It is a very narrow circumstance of when you can. To my knowledge, there has never been a fine foreclosed upon in this state.

Vice Chairman Ohrenschall:
Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Vice Chairman. The only reason you have to use a collection agency right now is because it says that in regulation. Why would we not simply change the regulation or, better yet, the law, and have the management company, which is being paid to ostensibly do this kind of work, do their job. Then they can do a $29 filing fee instead of a $350 fee, and all the costs go down. Did I oversimplify that?

A final thought on these amendments: Would the help from Legal Aid, for $100 on a $1,000 loan, be subject to the superpriority lien as well? Would Legal Aid basically now get $100 every time somebody falls behind? If that is the case, that would give us cause, I would think.

Garrett Gordon:
Currently, the regulations address payment plans. There is an initial start-up fee of, I think, $30. Certain letters are capped at $25 or $30. They send those letters out, and they let them default. So the goal of that $100 was not to add it on top, but to actually cap even further what is allowed in regulation. I would argue that you could send out five, six, or seven letters, and you are going to get a couple hundred dollar fee for payment plans. This would cap that at $100. That is defined in the regulations as a cost of collections, and that would be put into the superpriority lien with the ultimate cap of $1,500.

Assemblyman Sherwood:
That is a pretty big number when everyone who is behind $1,000 gets put into that pool. One hundred dollars times 20,000 people, or whatever the number is, is a big figure. It is guaranteed money for an agency that was supposed to be "helping out the consumer."

Garrett Gordon:
I disagree. It is better than current law. There is no cap on payment plans in current law. This would cap it at $100. I would argue it is better.

Assemblyman Sherwood:
Except it is not guaranteed. We understand the cost of the transaction gets baked into the sale of the house. We all pay for it because in reality my house was valued at $100,000, but because my neighbor's house sold for $94,000, my property value just went down. We know that we are going to be paying those fees. It is a trade-off.

Vice Chairman Ohrenschall:
Thank you, Mr. Sherwood. I do not see any other questions from the Committee. There are two points I want to clarify.

I appreciate all the hard work by Mr. Gordon and Mr. Munford, who was the original sponsor of A.B. 448, and Senator Copening. There were a lot of other parties. Mr. Sasser worked on it. I want to verify a part of the compromise. Was the agreement that a lien could not be recorded for past due assessments for six months, or is it on notice of default? That is the language I see in the bill now. I am a little confused.

Garrett Gordon:
I understand the terms of the compromise are set forth in this mock-up, but I am happy to go back and review my notes and talk with you off-line to ensure that is correct.

Vice Chairman Ohrenschall:
The other thing I do not see is what came from our discussions last night regarding sections of A.B. 448 having to do with attorney's fees awarded by the arbitrator when a complaint goes to arbitration. I believe we had agreed to take in two sections from A.B. 448, having to do with each side paying its own attorney's fees, unless the declaration otherwise provides, or unless the action is brought to harass or delay. I am not finding that in the mock-up either. That was near the end of A.B. 448.

Garrett Gordon:
As I mentioned a couple hours ago, I thought we strengthened that section. Your concern was someone losing his home on attorney's fees for mediation and arbitration. I think the law says no already, but to make that absolutely clear, the answer is no.

Throughout the hours this morning working with Senator Copening, there were a couple other tweaks. I mentioned that to you this morning. I am happy to go through and make sure all your issues are addressed.

Vice Chairman Ohrenschall:
I appreciate that. Thank you very much. I do not see any further questions. Is there anyone else who wants to speak against S.B. 174 (R1)? Is there anyone who is neutral? I see none. We will bring that back to Committee and close the hearing on S.B. 174 (R1).

Senator Parks has been very patient. We will open the hearing on Senate Bill 265 (1st Reprint). Thank you, Senator Parks, for your patience.

prison. It would absolutely increase the time they are supervised by the appropriate authorities in the community.

David Smith:
Mr. Chairman, may I make one last comment?

Chairman Horne:
No. We are done. I am going to close the hearing on S.B. 265 (R1). We are going to recess to the call of the Chair. We may take action when we come back sometime today.

Assemblyman Hansen:
Chairman Horne, will we be coming back?

Chairman Horne:
We are recessing. I do not know what the floor will entail, but we are recessing to conclude business.

[The meeting was recessed at 12:40 p.m. The meeting was reconvened at 7 p.m. and adjourned at 7:01 p.m.]

RESPECTFULLY SUBMITTED:

_____
Jeffrey Eck
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: June 5, 2011 **Time of Meeting: 9:49 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 174 (R1)	C	Senator Allison Copening	Overview
S.B. 174 (R1)	D	Senator Allison Copening	Amended Collections Policy
S.B. 174 (R1)	E	Senator Allison Copening	Mock-up Amendment 7336
S.B. 174 (R1)	F	Pamela Scott	Letter of Support from the Howard Hughes Corporation
S.B. 174 (R1)	G	Chris Ferrari	Letter to Lucas Foleta from Alfred M. Pollard
S.B. 174 (R1)	H	Chris Ferrari	Email from James Adams
S.B. 265 (R1)	I	Connie Bisbee	Presentation on Aggregated Sentencing
S.B. 265 (R1)	J	Connie Bisbee	Request to Amend
S.B. 265 (R1)	K	Senator David R. Parks	Informal Survey of States' Aggregated Sentencing Practices

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
June 6, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:17 a.m. on Monday, June 6, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits if applicable, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2
Senator David R. Parks, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Karyn Werner, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Carol Sala, Administrator, Aging and Disability Services Division, Department of Health and Human Services
Keith Munro, Assistant Attorney General, Office of the Attorney General
Heather D. Procter, Deputy Attorney General, Special Prosecutions Unit, Bureau of Criminal Justice, Office of the Attorney General
Kristin Erickson, representing Nevada District Attorneys Association
Tammy Riggs, Freeman & Riggs, LLP, Reno, Nevada
Tierra Jones, representing the Clark County Office of the Public Defender
Jeff Mohlenkamp, Deputy Director, Support Services, Nevada Department of Corrections
Mark Woods, Deputy Chief, Headquarters and Northern Command, Division of Parole and Probation, Department of Public Safety

Chairman Horne:
Good morning. This is the final day of the regular legislative session. We have a couple of bills that we are going to hear this morning, Senate Bill 347 (2nd Reprint) and Senate Bill 72 (1st Reprint). We will start with Senator Denis's bill, Senate Bill 347 (2nd Reprint).

Senate Bill 347 (2nd Reprint): Authorizes the Administrator of the Aging and Disability Services Division of the Department of Health and Human Services to administer oaths, take testimony and issue subpoenas under certain circumstances. (BDR15-1075)

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2:
This bill should not take very long. The reason it came about originally was that some of the people who look into elder abuse fraud for Aging and Disability Services Division, Department of Health and Human Services, were trying to investigate to establish probable cause. They were having a hard time getting

Chairman Horne:
Until we gain some comfort on this, I am going to bring it back to Committee. We are going to recess, so we can come back later today to give you time to mull this over. We have a little bit more time. Has everyone had a chance to consider Senate Bill 72 (1st Reprint)? I see we need more time, so we can try this again this afternoon.

Senate Bill 174 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-105)
[This bill was not heard.]

If there is no public comment, we are in recess [at 10:59 a.m.] until the call of the Chair.

[The meeting was reconvened at 9:34 p.m.]

The meeting is now adjourned [at 9:35 p.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: June 6, 2011 **Time of Meeting: 9:17 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster

TAB 6

SENATE BILL NO. 280–SENATOR KIHUEN

MARCH 15, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to common-interest communities. (BDR 10-863)

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 an association's lien on a unit; revising provisions governing the payment of financial obligations to an association; revising provisions governing the foreclosure of an association's lien by sale; requiring an association to provide a statement concerning certain amounts due to the association under certain circumstances; authorizing an association to charge a fee for such a statement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a homeowners' association has a lien on a unit for certain amounts due to the association. Generally, the association's lien is not prior to a first security interest on the unit recorded before the date on which the amount sought to be enforced became delinquent. However, the association's lien is prior to the first security interest on the unit to the extent of certain maintenance and abatement charges and a certain amount of assessments for common expenses. The portion of the association's lien that is prior to the first security interest on the unit is commonly referred to as the "super-priority lien." (NRS 116.3116) Existing law authorizes the association to foreclose its lien by sale and prescribes the procedures for such a foreclosure. (NRS 116.31162-116.31168)

This bill revises provisions governing the association's lien on a unit and the foreclosure of the association's lien. **Section 10** of this bill provides that the association does not have a priority lien over the first security interest when the association forecloses its lien and, thus, the foreclosure of the association's lien does not extinguish the first security interest on the unit. However, under **section 7** of this bill, if the holder of the first security interest forecloses on a unit, the association has a lien on the unit which is prior to the first security interest. This priority lien consists of the amounts included in the "super-priority lien" under

existing law and the costs of collecting the assessments included in the "super-priority lien," unless the federal regulations adopted by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Department of Veterans Affairs require a shorter period of priority or prohibit the inclusion of collection costs in the "super-priority lien." **Section 7** also limits the amount of the costs of collecting included in the lien upon the foreclosure of the first security interest.

Under **section 8** of this bill, the association may not foreclose its lien by sale based on unpaid collection costs. **Section 9** of this bill requires that certain notice of the foreclosure of the association's lien be provided by certified or registered mail, return receipt requested, rather than by first-class mail.

Section 3 of this bill: (1) sets forth the order in which an association must apply a payment made by a unit's owner who is delinquent in the payment of assessments, unless a contract between the association and the unit's owner provides otherwise; and (2) prohibits the association or its agent from refusing to accept a partial payment from a unit's owner or any holder of a first security interest encumbering the interest of the unit's owner because the amount tendered is less than the amount owed.

Section 11 of this bill authorizes a unit's owner or the authorized agent of a unit's owner to request from the association a statement concerning certain amounts owed to the association. Under **section 11**, the association may charge certain fees for such a statement. **Section 11** also revises provisions governing the resale package provided to a prospective purchaser of a unit and authorizes the association to charge a fee for providing in electronic format certain documents related to the resale package.

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. ***As used in this section and NRS 116.3116 to 116.31168, inclusive, and section 3 of this act, unless the context otherwise requires, "first security interest" means a first security interest described in paragraph (b) of subsection 2 of NRS 116.3116.***

Sec. 3. ***1. Unless the parties agree otherwise, the association shall apply any sums paid by a unit's owner who is delinquent in paying assessments in the following order:***

(a) Unpaid assessments;

(b) Charges for late payment of assessments;

(c) Costs of collecting past due assessments charged to the unit's owner pursuant to NRS 116.310313; and

(d) All other unpaid fees, charges, fines, penalties, costs of collecting charged to a unit's owner pursuant to NRS 116.310313, interest and late charges.

2. The association or its agent shall not refuse to accept a partial payment from a unit's owner or any holder of a first

security interest encumbering the interest of the unit's owner because the amount tendered is less than the amount owed.

Sec. 4. NRS 116.1203 is hereby amended to read as follows:

116.1203 1. Except as otherwise provided in subsections 2 and 3, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.

2. The provisions of NRS 116.12065 and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that the definitions are necessary to construe any of those provisions, apply to a residential planned community containing more than 6 units.

3. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, the provisions of NRS 116.3101 to 116.350, inclusive, ***and sections 2 and 3 of this act*** and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that such definitions are necessary in construing any of those provisions, apply to a residential planned community containing more than 6 units.

Sec. 5. NRS 116.12075 is hereby amended to read as follows:

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

(a) This entire chapter applies to the condominium;

(b) Only the provisions of NRS 116.001 to 116.2122, inclusive, and 116.3116 to 116.31168, inclusive, ***and sections 2 and 3 of this act*** apply to the condominium; or

(c) Only the provisions of NRS 116.3116 to 116.31168, inclusive, ***and sections 2 and 3 of this act*** apply to the condominium.

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

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

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

Sec. 6. NRS 116.31068 is hereby amended to read as follows:

116.31068 1. Except as otherwise provided in subsection 3, an association shall deliver any notice required to be given by the

association under this chapter to any mailing or electronic mail address a unit's owner designates. Except as otherwise provided in subsection 3, if a unit's owner has not designated a mailing or electronic mail address to which a notice must be delivered, the association may deliver notices by:

(a) Hand delivery to each unit's owner;

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

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

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

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

3. The provisions of this section do not apply:

(a) To a notice required to be given pursuant to NRS 116.3116 to 116.31168, inclusive ~~[,]~~ ***, and sections 2 and 3 of this act;*** or

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

Sec. 7. NRS 116.3116 is hereby amended to read as follows:

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

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

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

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

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

~~[~~

3. The ***association has a*** lien ***which*** is ~~[also]~~ prior to ~~[all security interests described in paragraph (b)]~~ ***the first security interest*** to the extent of ~~[any]~~ ***:***

(a) Any charges incurred by the association on a unit pursuant to NRS 116.310312 ***;*** and ~~[to the extent of]~~

(b) Except as otherwise provided in this paragraph, the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding ~~[institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien.]~~ ***a trustee's sale or foreclosure sale of the unit to enforce the first security interest and the costs of collecting those assessments which are charged to a unit's owner pursuant to NRS 116.310313.*** If federal regulations adopted by the Federal Home Loan Mortgage Corporation ***,*** ~~[or]~~ the Federal National Mortgage Association ***or the Department of Veterans Affairs*** require a shorter period of priority for the lien ~~[,]~~ ***or prohibit the inclusion of costs of collecting in the lien,*** the ~~[period during which]~~ ***amount of*** the lien ***which*** is prior to ~~[all security interests described in paragraph (b)]~~ ***the first security interest pursuant to this paragraph*** must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding ~~[institution of an action to enforce the lien. ~~]~~ ***a trustee's sale or foreclosure sale of the unit to enforce the first security interest. The amount of the costs of collecting included in the lien pursuant to this paragraph must not exceed the amounts set forth in the regulations adopted by the Commission pursuant to NRS 116.310313, except that the amount included in the lien to recover the actual costs charged to the association or a person acting on behalf of the association to collect a past due obligation by a person who is not an officer, director, agent or affiliate of the community manager of the association or of an agent of the association, including, without limitation, the cost of a trustee's sale guarantee and other title costs, recording costs, posting and publishing costs, sale costs, mailing costs, express delivery costs and skip trace fees, must not exceed $500.***

4. The provisions of subsections 2 and 3 do not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

~~[3.]~~ ***5. The holder of the first security interest or the holder's authorized agent may establish an escrow account, loan trust account or other impound account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of the first security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.***

6. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

~~[4.]~~ ***7.*** Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

~~[5.]~~ ***8.*** A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

~~[6.]~~ ***9.*** This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

~~[7.]~~ ***10.*** A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

~~[8.]~~ ***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 or 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.

~~[9.]~~ ***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.

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

(1) 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.

~~[10.]~~ ***13.*** In an action by an association to collect assessments or to foreclose 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. 8. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in subsection 4, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the name and address of the person authorized by the association to enforce the lien by sale.

(3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association.

3. The period of 90 days begins on the first day following:

(a) The date on which the notice of default is recorded; or

(b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit,

➥ whichever date occurs later.

4. The association may not foreclose a lien by sale based on ~~[a]~~ ***:***

(a) The costs of collecting charged to a unit's owner pursuant to NRS 116.310313.

(b) A fine or penalty for a violation of the governing documents of the association unless:

~~[(a)]~~ ***(1)*** The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

~~[(b)]~~ ***(2)*** The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

Sec. 9. NRS 116.311635 is hereby amended to read as follows:

116.311635 1. The association or other person conducting the sale shall also, after the expiration of the 90 days and before selling the unit:

(a) Give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS 21.130, service must be made on the unit's owner as follows:

(1) A copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and to the address of the unit; and

(2) A copy of the notice of sale must be served, on or before the date of first publication or posting, in the manner set forth in subsection 2; and

(b) Mail, on or before the date of first publication or posting, a copy of the notice by ~~[first-class mail]~~ ***certified or registered mail, return receipt requested,*** to:

(1) Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116.31163;

(2) The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable; and

(3) The Ombudsman.

2. In addition to the requirements set forth in subsection 1, a copy of the notice of sale must be served:

(a) By a person who is 18 years of age or older and who is not a party to or interested in the sale by personally delivering a copy of the notice of sale to an occupant of the unit who is of suitable age; or

(b) By posting a copy of the notice of sale in a conspicuous place on the unit.

3. Any copy of the notice of sale required to be served pursuant to this section must include:

(a) The amount necessary to satisfy the lien as of the date of the proposed sale; and

(b) The following warning in 14-point bold type:

> WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL (name and telephone number of the contact person for the association). IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (toll-free telephone number designated by the Division) IMMEDIATELY.

4. Proof of service of any copy of the notice of sale required to be served pursuant to this section must consist of:

(a) A certificate of mailing which evidences that the notice was mailed through the United States Postal Service; or

(b) An affidavit of service signed by the person who served the notice stating:

(1) The time of service, manner of service and location of service; and

(2) The name of the person served or, if the notice was not served on a person, a description of the location where the notice was posted on the unit.

Sec. 10. NRS 116.31164 is hereby amended to read as follows:

116.31164 1. The sale must be conducted in the county in which the common-interest community or part of it is situated, and may be conducted by the association, its agent or attorney, or a title insurance company or escrow agent licensed to do business in this State, except that the sale may be made at the office of the association if the notice of the sale so provided, whether the unit is located within the same county as the office of the association or not. The association or other person conducting the sale may from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale.

2. On the day of sale originally advertised or to which the sale is postponed, at the time and place specified in the notice or postponement, the person conducting the sale may sell the unit at public auction to the highest cash bidder. Unless otherwise provided in the declaration or by agreement, the association may purchase the unit and hold, lease, mortgage or convey it. The association may purchase by a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien.

3. After the sale, the person conducting the sale shall:

(a) Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit;

(b) Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the purchaser, or his or her successor or assign; and

(c) Apply the proceeds of the sale for the following purposes in the following order:

(1) The reasonable expenses of sale;

(2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;

(3) Satisfaction of the association's lien;

(4) Satisfaction in the order of priority of any subordinate claim of record; and

(5) Remittance of any excess to the unit's owner.

4. The foreclosure by sale of the association's lien does not extinguish the rights of the holder of the first security interest.

Sec. 11. NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his or her authorized agent shall, at the expense of the unit's owner, furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095.

(b) A statement from the association setting forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner. ~~[The statement remains effective for the period specified in the statement, which must not be less than 15 working days from the date of delivery by the association to the unit's owner or his or her agent. If the association becomes aware of an error in the statement during the period in which the statement is effective but before the consummation of the resale, the association must deliver a replacement statement to the unit's owner or his or her agent and obtain an acknowledgment in writing by the unit's owner or his or her agent before that consummation. Unless the unit's owner or his or her agent receives a replacement statement, the unit's owner or his or her agent may rely upon the accuracy of the information set forth in a statement provided by the association for the resale.]~~

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152.

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge.

(e) A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.

(f) In addition to any other document, a statement describing all current and expected fees or charges for each unit, including, without limitation, association fees, fines, assessments, late charges

or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each unit.

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, the purchaser must hand deliver the notice of cancellation to the unit's owner or his or her authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his or her authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his or her authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his or her authorized agent, the association shall furnish all of the following to the unit's owner or his or her authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b), (d), (e) and (f) of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his or her authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his or her authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The other documents furnished pursuant to subsection 3 must be provided in electronic format ~~[at no charge]~~ to the unit's owner ***.*** ~~[or, if]~~ ***The association may charge the unit's owner a fee, not to exceed $20, to provide such documents in electronic format. If*** the association is unable to provide such documents in electronic format, the association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter, to cover the cost of copying.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by this section, the purchaser is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his or her authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his or her authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

7. A unit's owner or the authorized agent of the unit's owner may request a statement of demand from the association. Not later than 10 days after receipt of a written request from a unit's owner or the authorized agent of the unit's owner for a statement of demand, the association shall furnish a statement of demand to the unit's owner or the authorized agent. The association may charge a fee of not more than $150 to prepare and furnish a statement of demand pursuant to this subsection and an additional fee of not more than $100 to furnish a statement of demand within 3 days after receipt of a written request for a statement of demand. The statement of demand:

(a) Must set forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner; and

(b) Remains effective for the period specified in the statement of demand, which must not be less than 15 business days after the date of delivery by the association to the unit's owner or authorized agent of the unit's owner.

8. If the association becomes aware of an error in a statement of demand furnished pursuant to subsection 7 during the period in which the statement of demand is effective but before the consummation of a resale for which a resale package was furnished pursuant to subsection 1, the association must deliver a replacement statement of demand to the unit's owner or the authorized agent of the unit's owner who requested the statement of demand. Unless the unit's owner or the authorized agent of the unit's owner who requested the statement of demand receives a replacement statement of demand, the unit's owner or authorized agent may rely upon the accuracy of the information set forth in the statement of demand provided by the association for the resale. Payment of the amount set forth in the statement of demand constitutes full payment of the amount due from the selling unit's owner.

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Senate Bill No. 280–Senator Kihuen

CHAPTER.....

AN ACT relating to common-interest communities; authorizing the establishment of an impound account for the payment of assessments under certain circumstances; revising provisions governing the collection of past due financial obligations owed to an association; revising provisions governing the foreclosure of an association's lien by sale; requiring an association to provide a statement concerning certain amounts due to the association under certain circumstances; authorizing an association to charge a fee for such a statement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a homeowners' association has a lien on a unit for certain amounts due to the association. (NRS 116.3116) Existing law authorizes the association to foreclose its lien by sale and prescribes the procedures for such a foreclosure. (NRS 116.31162-116.31168)

Section 7 of this bill authorizes the establishment of an impound account for advance contributions for the payment of assessments. Under **section 8** of this bill, not earlier than 60 days after a unit's owner becomes delinquent on a payment owed to the association and before the association mails a notice of delinquent assessment or takes any other action to collect a past due obligation, the association must mail a notice to the unit's owner setting forth the fees that may be charged if the unit's owner fails to pay the past due obligation, a proposed repayment plan and certain information concerning the procedure for requesting a hearing before the executive board.

Section 11 of this bill authorizes a unit's owner, the authorized agent of a unit's owner or the holder of a security interest on the unit to request from the association a statement concerning certain amounts owed to the association. Under **section 11**, the association may charge certain fees for such a statement. **Section 11** also revises provisions governing the resale package provided to a prospective purchaser of a unit and authorizes the association to charge a fee for providing in electronic format certain documents related to the resale package.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

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

Sections 1-6. (Deleted by amendment.)

Sec. 7. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the

construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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

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

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

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

➥ The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. ***The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound account***

for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.

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

~~[4.]~~ ***5.*** Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

~~[5.]~~ ***6.*** A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

~~[6.]~~ ***7.*** This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

~~[7.]~~ ***8.*** A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

~~[8.]~~ ***9.*** 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 or 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.

~~[9.]~~ ***10.*** 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.

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

(1) 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.

~~[10.]~~ ***11.*** In an action by an association to collect assessments or to foreclose 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. 8. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in subsection ~~[4,]~~ ***5,*** in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the name and address of the person authorized by the association to enforce the lien by sale.

(3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association.

3. The period of 90 days begins on the first day following:

(a) The date on which the notice of default is recorded; or

(b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit,

➥ whichever date occurs later.

4. ***An association may not mail to a unit's owner or his or her successor in interest a letter of its intent to mail a notice of delinquent assessment pursuant to paragraph (a) of subsection 1, mail the notice of delinquent assessment or take any other action to collect a past due obligation from a unit's owner or his or her successor in interest unless, not earlier than 60 days after the obligation becomes past due, the association mails to the address on file for the unit's owner:***

(a) A schedule of the fees that may be charged if the unit's owner fails to pay the past due obligation;

(b) A proposed repayment plan; and

(c) A notice of the right to contest the past due obligation at a hearing before the executive board and the procedures for requesting such a hearing.

5. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

Sec. 9. NRS 116.311635 is hereby amended to read as follows:

116.311635 1. The association or other person conducting the sale shall also, after the expiration of the 90 days and before selling the unit:

(a) Give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS 21.130, service must be made on the unit's owner as follows:

(1) A copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and to the address of the unit; and

(2) A copy of the notice of sale must be served, on or before the date of first publication or posting, in the manner set forth in subsection 2; and

(b) Mail, on or before the date of first publication or posting, a copy of the notice by ~~[first-class mail]~~ ***certified or registered mail, return receipt requested,*** to:

(1) Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116.31163;

(2) The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable; and

(3) The Ombudsman.

2. In addition to the requirements set forth in subsection 1, a copy of the notice of sale must be served:

(a) By a person who is 18 years of age or older and who is not a party to or interested in the sale by personally delivering a copy of the notice of sale to an occupant of the unit who is of suitable age; or

(b) By posting a copy of the notice of sale in a conspicuous place on the unit.

3. Any copy of the notice of sale required to be served pursuant to this section must include:

(a) The amount necessary to satisfy the lien as of the date of the proposed sale; and

(b) The following warning in 14-point bold type:

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL (name and telephone number of the contact person for the association). IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (toll-free telephone number designated by the Division) IMMEDIATELY.

4. Proof of service of any copy of the notice of sale required to be served pursuant to this section must consist of:

(a) A certificate of mailing which evidences that the notice was mailed through the United States Postal Service; or

(b) An affidavit of service signed by the person who served the notice stating:

(1) The time of service, manner of service and location of service; and

(2) The name of the person served or, if the notice was not served on a person, a description of the location where the notice was posted on the unit.

Sec. 10. (Deleted by amendment.)

Sec. 11. NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his or her authorized agent shall, at the expense of the unit's owner, furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095.

(b) A statement from the association setting forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner. ~~[The statement remains effective for the period specified in the statement, which must not be less than 15 working days from the date of delivery by the association to the unit's owner or his or her agent. If the association becomes aware of an error in~~

~~the statement during the period in which the statement is effective but before the consummation of the resale, the association must deliver a replacement statement to the unit's owner or his or her agent and obtain an acknowledgment in writing by the unit's owner or his or her agent before that consummation. Unless the unit's owner or his or her agent receives a replacement statement, the unit's owner or his or her agent may rely upon the accuracy of the information set forth in a statement provided by the association for the resale.]~~

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152.

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge.

(e) A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.

(f) In addition to any other document, a statement describing all current and expected fees or charges for each unit, including, without limitation, association fees, fines, assessments, late charges or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each unit.

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, the purchaser must hand deliver the notice of cancellation to the unit's owner or his or her authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his or her authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his or her authorized agent failed to

furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his or her authorized agent, the association shall furnish all of the following to the unit's owner or his or her authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b), (d), (e) and (f) of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his or her authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his or her authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The other documents furnished pursuant to subsection 3 must be provided in electronic format ~~[at no charge]~~ to the unit's owner ***.*** ~~[or, if]*** ***The association may charge the unit's owner a fee, not to exceed $20, to provide such documents in electronic format. If*** the association is unable to provide such documents in electronic format, the association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter, to cover the cost of copying.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within

the 10 days allowed by this section, the purchaser is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his or her authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his or her authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

7. A unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit may request a statement of demand from the association. Not later than 10 days after receipt of a written request from the unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit for a statement of demand, the association shall furnish a statement of demand to the person who requested the statement. The association may charge a fee of not more than $150 to prepare and furnish a statement of demand pursuant to this subsection and an additional fee of not more than $100 to furnish a statement of demand within 3 days after receipt of a written request for a statement of demand. The statement of demand:

(a) Must set forth the amount of the monthly assessment for common expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling unit's owner; and

(b) Remains effective for the period specified in the statement of demand, which must not be less than 15 business days after the date of delivery by the association to the unit's owner, the authorized agent of the unit's owner or the holder of a security interest on the unit, whichever is applicable.

8. If the association becomes aware of an error in a statement of demand furnished pursuant to subsection 7 during the period in which the statement of demand is effective but before the consummation of a resale for which a resale package was furnished pursuant to subsection 1, the association must deliver a replacement statement of demand to the person who requested the statement of demand. Unless the person who requested the

statement of demand receives a replacement statement of demand, the person may rely upon the accuracy of the information set forth in the statement of demand provided by the association for the resale. Payment of the amount set forth in the statement of demand constitutes full payment of the amount due from the selling unit's owner.

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Case No. 63614

In the Supreme Court of Nevada

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Appellant,

vs.

U.S. BANK, N.A., a national banking association as Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4,

Respondent.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable DAVID BARKER, District Judge
District Court Case No. A-13-678814-C

APPELLANT'S SUPPLEMENTAL STATUTORY ADDENDUM

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TAB 1

West's Nevada Revised Statutes Annotated
Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)
Chapter 40. Actions and Proceedings in Particular Cases Concerning Property (Refs & Annos)
Foreclosure Sales and Deficiency Judgments

N.R.S. 40.462

40.462. Distribution of proceeds of foreclosure sale

Currentness

1. Except as otherwise provided by specific statute, this section governs the distribution of the proceeds of a foreclosure sale. The provisions of NRS 40.455, 40.457 and 40.459 do not affect the right to receive those proceeds, which vests at the time of the foreclosure sale. The purchase of any interest in the property at the foreclosure sale, and the subsequent disposition of the property, does not affect the right of the purchaser to the distribution of proceeds pursuant to paragraph (c) of subsection 2 of this section, or to obtain a deficiency judgment pursuant to NRS 40.455, 40.457 and 40.459.

2. The proceeds of a foreclosure sale must be distributed in the following order of priority:

(a) Payment of the reasonable expenses of taking possession, maintaining, protecting and leasing the property, the costs and fees of the foreclosure sale, including reasonable trustee's fees, applicable taxes and the cost of title insurance and, to the extent provided in the legally enforceable terms of the mortgage or lien, any advances, reasonable attorney's fees and other legal expenses incurred by the foreclosing creditor and the person conducting the foreclosure sale.

(b) Satisfaction of the obligation being enforced by the foreclosure sale.

(c) Satisfaction of obligations secured by any junior mortgages or liens on the property, in their order of priority.

(d) Payment of the balance of the proceeds, if any, to the debtor or the debtor's successor in interest.

If there are conflicting claims to any portion of the proceeds, the person conducting the foreclosure sale is not required to distribute that portion of the proceeds until the validity of the conflicting claims is determined through interpleader or otherwise to the person's satisfaction.

3. A person who claims a right to receive the proceeds of a foreclosure sale pursuant to paragraph (c) of subsection 2 must, upon the written demand of the person conducting the foreclosure sale, provide:

(a) Proof of the obligation upon which the claimant claims a right to the proceeds; and

(b) Proof of the claimant's interest in the mortgage or lien, unless that proof appears in the official records of a county in which the property is located.

Such a demand is effective upon personal delivery or upon mailing by registered or certified mail, return receipt requested, to

the last known address of the claimant. Failure of a claimant to provide the required proof within 15 days after the effective date of the demand waives the claimant's right to receive those proceeds.

4. As used in this section, "foreclosure sale" means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee's power of sale pursuant to NRS 107.080.

Credits
Added by Laws 1989, p. 887.

N. R. S. 40.462, NV ST 40.462
Current through the 2011 76th Regular Session of the Nevada Legislature, and technical corrections received from the Legislative Counsel Bureau (2012).

End of Document

TAB 2

West's Colorado Revised Statutes Annotated
Title 38. Property--Real and Personal (Refs & Annos)
Real Property
Mortgages and Trust Deeds
Article 39. Mortgages, Deeds of Trust, and Other Liens (Refs & Annos)
Part 1. General Provisions (Refs & Annos)

C.R.S.A. § 38-39-101

§ 38-39-101. Effect of deed of trust to private trustee--nature of obligation secured

Currentness

Any deed of trust that names any person other than a public trustee as trustee therein or that secures an obligation other than an evidence of debt shall be deemed and taken to be a mortgage for all purposes and foreclosed only as mortgages are foreclosed in and through the courts; except that any deed of trust that names a public trustee as trustee therein and secures an obligation other than an instrument evidencing a debt shall be released as provided in section 38-39-102(5).

Credits
Repealed and reenacted by Laws 1990, S.B.90-109, § 3, eff. Oct. 1, 1990.

C. R. S. A. § 38-39-101, CO ST § 38-39-101
Current through the First Regular Session of the Sixty-Ninth General Assembly (2013)

End of Document

West's Colorado Revised Statutes Annotated
Title 38. Property--Real and Personal (Refs & Annos)
Real Property
Interests in Land
Article 33.3. Colorado Common Interest Ownership Act (Refs & Annos)
Part 3. Management of the Common Interest Community (Refs & Annos)

C.R.S.A. § 38-33.3-316

§ 38-33.3-316. Lien for assessments

Currentness

(1) The association, if such association is incorporated or organized as a limited liability company, has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, attorney fees, fines, and interest charged pursuant to section 38-33.3-302(1)(j), (1)(k), and (1)(l), section 38-33.3-313(6), and section 38-33.3-315(2) are enforceable as assessments under this article. The amount of the lien shall include all those items set forth in this section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid association's acceleration of installment obligations.

(2)(a) A lien under this section is prior to all other liens and encumbrances on a unit except:

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

(II) A security interest on the unit which has priority over all other security interests on the unit and which was recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a security interest encumbering only the unit owner's interest which has priority over all other security interests on the unit and which was perfected before the date on which the assessment sought to be enforced became delinquent; and

(III) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(b) Subject to paragraph (d) of this subsection (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of:

(I) An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315(1) which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(II) Deleted by Laws 1993, H.B.93-1070, § 21, eff. April 30, 1993.

(c) This subsection (2) does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of part 2 of article 41 of this title or to the provisions of section 15-11-201, C.R.S.

(d) The association shall have the statutory lien described in subsection (1) of this section for any assessment levied or fine imposed after June 30, 1992. Such lien shall have the priority described in this subsection (2) if the other lien or encumbrance is created after June 30, 1992.

(3) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(4) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required.

(5) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of assessments become due.

(6) This section does not prohibit actions or suits to recover sums for which subsection (1) of this section creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(7) The association shall be entitled to costs and reasonable attorney fees incurred by the association in a judgment or decree in any action or suit brought by the association under this section.

(8) The association shall furnish to a unit owner or such unit owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such owner's unit. The statement shall be furnished within fourteen calendar days after receipt of the request and is binding on the association, the executive board, and every unit owner. If no statement is furnished to the unit owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the association shall have no right to assert a lien upon the unit for unpaid assessments which were due as of the date of the request.

(9) In any action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner to collect all sums alleged to be due from the unit owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the association during the pending of the action to the extent of the association's common expense assessments.

(10) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section.

(11) The association's lien may be foreclosed by any of the following means:

<Text of par. (11)(a) effective until Jan. 1, 2014>

(a) In a condominium or planned community, the association's lien may be foreclosed in like manner as a mortgage on real estate.

<Text of par. (11)(a) effective Jan. 1, 2014>

(a) In a condominium or planned community, the association's lien may be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

<Text of par. (11)(b) effective until Jan. 1, 2014>

(b) In a cooperative whose unit owners' interests in the units are real estate as determined in accordance with the provisions of section 38-33.3-105, the association's lien must be foreclosed in like manner as a mortgage on real estate.

<Text of par. (11)(b) effective Jan. 1, 2014>

(b) In a cooperative whose unit owners' interests in the units are real estate as determined in accordance with the provisions of section 38-33.3-105, the association's lien must be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

(c) In a cooperative whose unit owners' interests in the units are personal property, as determined in accordance with the provisions of section 38-33.3-105, the association's lien must be foreclosed as a security interest under the "Uniform Commercial Code", title 4, C.R.S.

Credits

Added by Laws 1991, H.B.91-1292, § 1, eff. July 1, 1992. Amended by Laws 1993, H.B.93-1070, § 21, eff. April 30, 1993; Laws 1998, Ch. 164, § 19, eff. July 1, 1998; Laws 2013, Ch. 351, § 2, eff. Jan. 1, 2014.

Notes of Decisions (10)

C. R. S. A. § 38-33.3-316, CO ST § 38-33.3-316
Current through the First Regular Session of the Sixty-Ninth General Assembly (2013)

End of Document

TAB 3

Minnesota Statutes Annotated
Property Interests and Liens (Ch. 500-515B)
Chapter 515A. Uniform Condominium Act (Refs & Annos)
Article 3. Management of the Condominium

M.S.A. § 515A.3-115

515A.3-115. Lien for assessments

Currentness

(a) The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes payable. The association's lien may be foreclosed as provided by the laws of this state as if it were a lien under a mortgage containing a power of sale but the association shall give reasonable notice of its action to all lienholders of the unit whose interest would be affected. The rights of the parties shall be the same as those provided by law except that the period of redemption for unit owners shall be six months from the date of sale. Unless the declaration otherwise provides, fees, charges, late charges, and interest charges pursuant to section 515A.3-102(a), (9), and (11) are enforceable as assessments under this section.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the declaration, (2) any recorded mortgage on the unit securing a first mortgage holder, and (3) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or material suppliers' liens.

(c) Recording of the declaration constitutes record notice and perfection of the lien, and no further recordation of any claim of lien for assessment under this section is required.

(d) Proceedings to enforce an assessment must be instituted within three years after the last installment of the assessment becomes payable.

(e) Unit owners at the time an assessment is payable are personally liable to the association for payment of the assessments.

(f) A foreclosure sale, judgment, or decree in any action, proceeding, or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(g) The association shall furnish to a unit owner or the owner's authorized agent upon written request of the unit owner or the authorized agent a recordable statement setting forth the amount of unpaid assessments currently levied against the owner's unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association and every unit owner.

Credits
Laws 1980, c. 582, art. 3, § 515.3-115. Amended by Laws 1985, c. 251, § 14; Laws 1986, c. 444; Laws 1989, c. 209, art. 1, § 41.

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M. S. A. § 515A.3-115, MN ST § 515A.3-115
Current through the end of the 2013 First Special Session

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Minnesota Statutes Annotated
Property Interests and Liens (Ch. 500-515B)
Chapter 515B. Common Interest Ownership
Article 3. Organization and Operation

M.S.A. § 515B.3-116

515B.3-116. Lien for assessments

Effective: August 1, 2010

Currentness

(a) The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charges pursuant to section 515B.3-102(a)(10), (11) and (12) are liens, and are enforceable as assessments, under this section. Recording of the declaration constitutes record notice and perfection of any assessment lien under this section, and no further recording of any notice of or claim for the lien is required.

(b) Subject to subsection (c), a lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) any first mortgage encumbering the fee simple interest in the unit, or, in a cooperative, any first security interest encumbering only the unit owner's interest in the unit, (iii) liens for real estate taxes and other governmental assessments or charges against the unit, and (iv) a master association lien under section 515B.2-121(h). This subsection shall not affect the priority of mechanic's liens.

(c) If a first mortgage on a unit is foreclosed, the first mortgage was recorded after June 1, 1994, and no owner or person who acquires the owner's interest in the unit redeems pursuant to chapter 580, 581, or 582, the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage or any person who acquires title to the unit by redemption as a junior creditor shall take title to the unit subject to a lien in favor of the association for unpaid assessments for common expenses levied pursuant to section 515B.3-115(a), (e)(1) to (3), (f), and (i) which became due, without acceleration, during the six months immediately preceding the end of the owner's period of redemption. The common expenses shall be based upon the association's then current annual budget, notwithstanding the use of an alternate common expense plan under section 515B.3-115(a)(2). If a first security interest encumbering a unit owner's interest in a cooperative unit which is personal property is foreclosed, the secured party or the purchaser at the sale shall take title to the unit subject to unpaid assessments for common expenses levied pursuant to section 515B.3-115(a), (e)(1) to (3), (f), and (i) which became due, without acceleration, during the six months immediately preceding the first day following either the disposition date pursuant to section 336.9-610 or the date on which the obligation of the unit owner is discharged pursuant to section 336.9-622.

(d) Proceedings to enforce an assessment lien shall be instituted within three years after the last installment of the assessment becomes payable, or shall be barred.

(e) The unit owner of a unit at the time an assessment is due shall be personally liable to the association for payment of the assessment levied against the unit. If there are multiple owners of the unit, they shall be jointly and severally liable.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien nor prohibit an association from taking a deed in lieu of foreclosure.

(g) The association shall furnish to a unit owner or the owner's authorized agent upon written request of the unit owner or the authorized agent a statement setting forth the amount of unpaid assessments currently levied against the owner's unit. If the unit owner's interest is real estate, the statement shall be in recordable form. The statement shall be furnished within ten business days after receipt of the request and is binding on the association and every unit owner.

(h) The association's lien may be foreclosed as provided in this subsection.

(1) In a condominium or planned community, the association's lien may be foreclosed in a like manner as a mortgage containing a power of sale pursuant to chapter 580, or by action pursuant to chapter 581. The association shall have a power of sale to foreclose the lien pursuant to chapter 580.

(2) In a cooperative whose unit owners' interests are real estate, the association's lien shall be foreclosed in a like manner as a mortgage on real estate as provided in paragraph (1).

(3) In a cooperative whose unit owners' interests in the units are personal property, the association's lien shall be foreclosed in a like manner as a security interest under article 9 of chapter 336. In any disposition pursuant to section 336.9-610 or retention pursuant to sections 336.9-620 to 336.9-622, the rights of the parties shall be the same as those provided by law, except (i) notice of sale, disposition, or retention shall be served on the unit owner 90 days prior to sale, disposition, or retention, (ii) the association shall be entitled to its reasonable costs and attorney fees not exceeding the amount provided by section 582.01, subdivision 1a, (iii) the amount of the association's lien shall be deemed to be adequate consideration for the unit subject to disposition or retention, notwithstanding the value of the unit, and (iv) the notice of sale, disposition, or retention shall contain the following statement in capital letters with the name of the association or secured party filled in:

"THIS IS TO INFORM YOU THAT BY THIS NOTICE (fill in name of association or secured party) HAS BEGUN PROCEEDINGS UNDER MINNESOTA STATUTES, CHAPTER 515B, TO FORECLOSE ON YOUR INTEREST IN YOUR UNIT FOR THE REASON SPECIFIED IN THIS NOTICE. YOUR INTEREST IN YOUR UNIT WILL TERMINATE 90 DAYS AFTER SERVICE OF THIS NOTICE ON YOU UNLESS BEFORE THEN:

(a) THE PERSON AUTHORIZED BY (fill in the name of association or secured party) AND DESCRIBED IN THIS NOTICE TO RECEIVE PAYMENTS RECEIVES FROM YOU:

(1) THE AMOUNT THIS NOTICE SAYS YOU OWE; PLUS

(2) THE COSTS INCURRED TO SERVE THIS NOTICE ON YOU; PLUS

(3) $500 TO APPLY TO ATTORNEYS FEES ACTUALLY EXPENDED OR INCURRED; PLUS

(4) ANY ADDITIONAL AMOUNTS FOR YOUR UNIT BECOMING DUE TO (fill in name of association or secured party) AFTER THE DATE OF THIS NOTICE; OR

(b) YOU SECURE FROM A DISTRICT COURT AN ORDER THAT THE FORECLOSURE OF YOUR RIGHTS TO YOUR UNIT BE SUSPENDED UNTIL YOUR CLAIMS OR DEFENSES ARE FINALLY DISPOSED OF BY TRIAL, HEARING, OR SETTLEMENT. YOUR ACTION MUST SPECIFICALLY STATE THOSE FACTS AND GROUNDS THAT DEMONSTRATE YOUR CLAIMS OR DEFENSES.

IF YOU DO NOT DO ONE OR THE OTHER OF THE ABOVE THINGS WITHIN THE TIME PERIOD SPECIFIED IN THIS NOTICE, YOUR OWNERSHIP RIGHTS IN YOUR UNIT WILL TERMINATE AT THE END OF THE PERIOD, YOU WILL LOSE ALL THE MONEY YOU HAVE PAID FOR YOUR UNIT, YOU WILL LOSE YOUR RIGHT TO POSSESSION OF YOUR UNIT, YOU MAY LOSE YOUR RIGHT TO ASSERT ANY CLAIMS OR DEFENSES THAT YOU MIGHT HAVE, AND YOU WILL BE EVICTED. IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, CONTACT AN ATTORNEY IMMEDIATELY."

(4) In any foreclosure pursuant to chapter 580, 581, or 582, the rights of the parties shall be the same as those provided by law, except (i) the period of redemption for unit owners shall be six months from the date of sale or a lesser period authorized by law, (ii) in a foreclosure by advertisement under chapter 580, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees authorized by the declaration or bylaws, notwithstanding the provisions of section 582.01, subdivisions 1 and 1a, (iii) in a foreclosure by action under chapter 581, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees as the court shall determine, and (iv) the amount of the association's lien shall be deemed to be adequate consideration for the unit subject to foreclosure, notwithstanding the value of the unit.

(i) If a holder of a sheriff's certificate of sale, prior to the expiration of the period of redemption, pays any past due or current assessments, or any other charges lienable as assessments, with respect to the unit described in the sheriff's certificate, then the amount paid shall be a part of the sum required to be paid to redeem under section 582.03.

(j) In a cooperative, if the unit owner fails to redeem before the expiration of the redemption period in a foreclosure of the association's assessment lien, the association may bring an action for eviction against the unit owner and any persons in possession of the unit, and in that case section 504B.291 shall not apply.

(k) An association may assign its lien rights in the same manner as any other secured party.

Credits

Laws 1993, c. 222, art. 3, § 16, eff. June 1, 1994. Amended by Laws 1994, c. 388, art. 4, § 11, eff. June 1, 1994; Laws 1999, c. 11, art. 2, § 23; Laws 1999, c. 199, art. 2, § 30, eff. July 1, 1999; Laws 2000, c. 260, § 77; Laws 2001, c. 195, art. 2, § 32, eff. July 1, 2001; Laws 2003, c. 2, art. 2, § 16; Laws 2005, c. 121, § 31; Laws 2010, c. 267, art. 3, § 13, eff. Aug. 1, 2010.

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M. S. A. § 515B.3-116, MN ST § 515B.3-116
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TAB 4

ASSEMBLY BILL NO. 204–ASSEMBLYMEN SPIEGEL, MCCLAIN; AIZLEY, ANDERSON, ARBERRY, BOBZIEN, BUCKLEY, CHRISTENSEN, CLABORN, CONKLIN, DENIS, HARDY, KIRKPATRICK, KOIVISTO, LESLIE, MANENDO, MASTROLUCA, MUNFORD, PARNELL, PIERCE, SEGERBLOM, SMITH, STEWART AND WOODBURY

FEBRUARY 19, 2009

JOINT SPONSORS: SENATORS PARKS; WOODHOUSE

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the priority of certain liens against units in common-interest communities. (BDR 10-920)

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; extending the period of time certain liens have priority over other certain security interests; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a unit-owners' association of a common-interest community has priority over certain other creditors with respect to a lien on a unit for any construction penalty imposed against the unit's owner, any assessment levied against the unit or certain fines imposed against the unit's owner. Such a lien is also prior to a first security interest on the unit recorded before the assessments became delinquent to the extent of the assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration during the 6 months preceding an action to enforce the lien. This bill changes the 6-month threshold for super priority of a lien for an association to 2 years. (NRS 116.3116)

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

Section 1. NRS 116.3116 is hereby amended to read as follows:

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

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

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

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

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

➥ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the ~~[6 months]~~ ***2 years*** immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

8. 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 or 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.

9. 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.

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

(1) 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.

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MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
March 6, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:12 a.m. on Friday, March 6, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman Richard McArthur (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Joseph M. Hogan, Clark County Assembly District No. 10
Assemblywoman Ellen Spiegel, Clark County Assembly District No. 21

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Robert Gonzalez, Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

Pam Borda, President and General Manager, Spring Creek Association, Spring Creek, Nevada
Stephanie Licht, Private Citizen, Spring Creek, Nevada
Warren Russell, Commissioner, Board of Commissioners, Elko County, Nevada
Michael Buckley, Commissioner, Las Vegas, Commission for Common-Interest Communities Commission, Real Estate Division, Department of Business and Industry; Real Property Division, State Bar of Nevada
Robert Robey, Private Citizen, Las Vegas, Nevada
Barbara Holland, Private Citizen, Las Vegas, Nevada
Jon L. Sasser, representing Washoe Legal Services, Reno, Nevada
Rhea Gerkten, Directing Attorney, Nevada Legal Services, Las Vegas, Nevada
James T. Endres, representing McDonald, Carano & Wilson; and the Southern Nevada Chapter of the National Association of Industrial and Office Properties, Reno, Nevada
Paula Berkley, representing the Nevada Network Against Domestic Violence, Reno, Nevada
Jan Gilbert, representing the Progressive Leadership Alliance of Nevada, Carson City, Nevada
David L. Howard, representing the National Association of Industrial and Office Properties, Northern Nevada Chapter, Reno, Nevada
Ernie Nielsen, representing Washoe County Senior Law Project, Reno, Nevada
Shawn Griffin, Director, Community Chest, Virginia City, Nevada
Charles "Tony" Chinnici, representing Corazon Real Estate, Reno, Nevada

Jennifer Chandler, Co-Chair, Northern Nevada Apartment Association, Reno, Nevada
Rhonda L. Cain, Private Citizen, Reno, Nevada
Kellie Fox, Crime Prevention Officer, Community Affairs, Reno Police Department, Reno, Nevada
Bret Holmes, President, Southern Nevada Multi-Housing Association, Las Vegas, Nevada
Zelda Ellis, Director of Operations, City of Las Vegas Housing Authority, Las Vegas, Nevada
Jenny Reese, representing the Nevada Association of Realtors, Reno, Nevada
Roberta A. Ross, Private Citizen, Reno, Nevada
Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association, Las Vegas, Nevada
Alan Crandall, Senior Vice President, Community Association Bank, Bothell, Washington
Bill DiBenedetto, Private Citizen, Las Vegas, Nevada
Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Reno, Nevada
Lisa Kim, representing the Nevada Association of Realtors, Las Vegas, Nevada
John Radocha, Private Citizen, Las Vegas, Nevada
David Stone, President, Nevada Association Services, Las Vegas, Nevada
Wayne M. Pressel, Private Citizen, Minden, Nevada

Chairman Anderson:
[Roll called. Chairman reminded everyone present of the Committee rules.]

We have a rather large number of people who have indicated a desire to speak. We have three bills which must be heard today, so we will try to allocate a fair amount of time to hear from those both in favor and against so that everybody has an opportunity to be heard.

Ms. Chisel, do we have a handout from legislation we saw yesterday?

Jennifer M. Chisel, Committee Policy Analyst:
Yesterday we heard Assembly Bill 182, which was brought to the Committee by Majority Leader Oceguera. During that conversation, Lieutenant Tom Roberts indicated that he would provide to the Committee a list of the explosive materials that is in the Federal Register. That has been provided to the Committee, and that is what is before you (Exhibit C).

60 days following a foreclosure sale. Mr. Sasser made reference to section 6 of A.B. 189, which is the notice to quit after a foreclosure sale. He said that he did not really care about that section, as it was a result of the enthusiasm on the part of the Legislative Counsel Bureau. I would suggest that section 6 needs to fall off of the bill.

Chairman Anderson:
So, the bankers would like us to remove section 6 as being unnecessary. Have you prepared an amendment?

Bill Uffelman:
I could prepare one very quickly, Mr. Anderson (Exhibit S).

Chairman Anderson:
Did you raise these concerns with the primary sponsor of the bill?

Bill Uffelman:
I have spoken with Mr. Sasser, who was acting as a representative of the sponsor of A.B. 189.

Chairman Anderson:
Thank you, sir. Does anybody have any amendments that need to be placed into the record? Ms. Rosalie M. Escobedo has submitted testimony, and that will be entered into the record (Exhibit T). We will close the hearing on A.B. 189.

[A three-minute recess was called.]

I will open the hearing on Assembly Bill 204.

Assembly Bill 204: Revises provisions relating to the priority of certain liens against units in common-interest communities. (BDR 10-920)

Assemblywoman Ellen Spiegel, Clark County Assembly District 21:
Thank you for having me and for hearing this bill. As a disclosure, I serve on the Board of the Green Valley Ranch Community Association. This bill will not affect me or my association any more than it would any other association in this state. My participation on the board gave me firsthand insight into this issue. That is what led me to introduce this legislation. I am here today to present A.B. 204, which can help stabilize Nevada's real estate market, preserve communities, and help protect our largest assets: our homes. Whether you live in a common-interest community or not, whether you like common-interest communities or hate them, whether you live in an urban area or a rural area, the

outcome of this bill will have a direct impact on you and your constituents. Just as a summary, A.B. 204 extends the existing superpriority from six months to two years. There are no fiscal notes on this. In a nutshell, this bill makes it possible for common-interest communities to collect dues that are in arrears for up to two years at the time of foreclosure. This is necessary now because foreclosures are now taking up to two years. At the time the original law was written, they were taking about six months. So, as the time frames moved on, the need has moved up.

Since everyone who buys into a common-interest community clearly understands that there are dues, community budgets have historically been based upon the assumption that nearly all of the regular assessments will be collected. Communities are now facing severe hardships, and many are unable to meet their contractual obligations because of all of the dues that are in arrears. Some other communities are reducing services, and then simultaneously increasing their financial liabilities. They and their homeowners need our help.

I recognize that there are some concerns with this bill, and you will hear about those later this morning directly from those with concerns. I have been having discussions with several of the concerned parties, and I believe that we will be able to work something out to address many of their concerns. In the meantime, I would like to make sure that you have a clear understanding of this bill and what we are trying to achieve.

The objectives are, first and foremost, to help homeowners, banks, and investors maintain their property values; help common-interest communities mitigate the adverse effects of the mortgage/foreclosure crisis; help homeowners avoid special assessments resulting from revenue shortfalls due to fellow community members who did not pay required fees; and, prevent cost-shifting from common-interest communities to local governments.

This bill is vital because our constituents are hurting. Our current economic conditions are bleak, and we must take action to address our state's critical needs. I do not need to tell you that things are not good, but I will. If you look, I have provided you with a map that shows the State of Nevada and, by county, how foreclosures are going (Exhibit U). Clark, Washoe, and Nye Counties are extremely hard hit, with an average of 1 in every 63 housing units in foreclosure. People whose homes are being foreclosed on are not paying their association dues, and all of the rest of the neighbors are facing the effects of that. Clark County is being hit the hardest, and we will look at what is going on in Clark County in a little bit more depth just as an example.

In Clark County, between the second half of 2007 and the second half of 2008, property values declined in all zip codes, except for one really tiny one, which increased by 3 percent. Overall, everywhere else in Clark County, property values declined significantly. The smallest decline was 13 percent, and that was in my zip code. The largest decline was 64 percent. Could you imagine losing 64 percent of the equity of your home in one year? Property values have plummeted, and this sinkhole that we are getting into is being affected because there is increased inventory of housing stock on the market that is due to foreclosures, abandoned homes, and the economic recession. People cannot afford their homes; they are leaving; they are not maintaining them. It is flooding the market, and that is depressing prices. You sometimes have consumers who want to buy homes, but they cannot get mortgages. That keeps homes on the market. There is increased neighborhood blight and there is a decreased ability for communities to provide obligated services. For example, if you have a gated community that has a swimming pool in it (or a nongated community, for that matter), and your association cannot afford to maintain the pool, and someone is coming in and looking at a property in that community, they will say, "Let me get this straight: you want me to buy into this community because it has a pool, except the pool is closed because you cannot afford to maintain the pool; sorry, I am not buying here." That just keeps things on the market and keeps the prices going down, because they are not providing the services; therefore, how do you sell something when you are not delivering?

Unfortunately, we are hearing in the news that help is not on the way for most Nevadans. We have the highest percentage of underwater mortgage holders in the nation. Twenty-eight percent of all Nevadans owe more than 125 percent of their home's value. Nearly 60 percent of the homeowners in the Las Vegas Valley have negative equity in their homes. This is really scary. Unfortunately, President Barack Obama's Homeowner Affordability and Stability Plan restricts financing aid to borrowers whose first mortgage does not exceed 105 percent of the current market values of their homes. There are also provisions that they be covered by Fannie Mae or Freddie Mac. Twenty-eight percent owe more than 125 percent, and cannot get help from the federal government. And for 60 percent of homeowners, the help is just not there. So, we need to be doing something.

What does this mean to the rest of the people who are struggling to hold onto their homes in common-interest communities? Their quality of life is being decreased because there are fewer services provided by the associations. There is increased vandalism and other crime. As I mentioned earlier, there is a potential for increased regular and special assessments to make up for revenue

shortfalls, and then there is the association liability exposure. Let me explain that.

If you have a community that has a pool, and you were selling it as a community with a pool, and all of a sudden you cannot provide the pool, the people who are living there and paying their dues have a legal expectation that they are living in a pool community, and they can sue their community association because the association is not providing the services that the homeowners bought into. That could then cause the communities to further destabilize as they have financial exposure with the possibility of lawsuits because they are not providing services since the dues are not paid.

That all leads to increased instability for communities and further declines in property values. I went to see for myself. What does this really mean? What are we talking about? Through a friend in my association who generously helped send out some surveys, we received responses to this survey from 75 common-interest community managers. Fifty-five of them were in Clark County, 20 of them were in Washoe County. Their answers represented over 77,000 doors in Nevada. That is over 77,000 households, and they all told me the same thing. First of all, not one person was opposed to the bill. They gave me some comments that were very enlightening. They are all having problems collecting money; they all do not want to raise their dues; they do not want to have special assessments; they are cutting back; they are scared.

I want to share some comments with you and enter them into the record. Here is the first one: "Dollars not collected directly impact future assessment rates to compensate for the loss of projected income. Also, there is less operating cash to fund reserves or maintain the common area." That represented 2,001 homes in Las Vegas. Another one: "Our cash reserves are severely underfunded and we have serious landscaping needs." This is 129 homes in Reno that are affected. This one just really scared me: "Increase in bad debt expense over $100,000 per year has frustrated the majority of the owners who are now having to pay for those who are not paying, including the lenders who have foreclosed." That is from the Red Rock Country Club HOA, over 1,100 homes in Las Vegas. This last one: "The impact is that the HOA is cutting all services that are not mandated: water, trash, and other utilities. The impact is that drug dealers are moving into the complex, and homicides are on the rise, and the place looks horrible. Special assessments will not work. Those that are paying will stop paying if they are increased. The current owners are so angry that they are footing the bill for the deadbeat investors that they no longer have any pride or care for their units. I support this bill 100 percent. The assessments are an obligation and should not be reduced." That is from someone who manages several properties in Las Vegas.

I mentioned an additional impact, and that I really believe that this bill will affect everybody in the state, even those who do not live in common-interest communities. Let me explain that. There could be cost shifting to local government. I gave you a couple of examples in the handout: graffiti removal, code enforcement, inspections, use of public pools and parks, and security patrols. Let me use graffiti as an example.

My HOA contracts with a firm to come out and take care of our graffiti problem. We do this, and we pay for this. Clark County also has a graffiti service for homeowners in Clark County. There are about 4,000 homes in our community, and our homeowners are told, "If you see graffiti, here is the number you call. It is the management company. They send out American Graffiti, who is the provider we use, and they have the graffiti cleaned up." If an association like mine all of a sudden says, Well, you know, we do not have the money to pay our bills and do other things. We could cut out the graffiti company and we could just say to our homeowners, 'You know what, the number has changed.' So instead of calling the management company, you now call Clark County. There is a cost shift. There is a limited number of resources available in Clark County, and that will have to be spread even thinner.

It goes on into other things too. You have the pools that are closed. The people are now going to send their kids to the public pools, again, taking up more of the county resources and spreading it out thinner and thinner. There are community associations that are now, because of their cash flow problems, having to pay their vendors late. Many of their vendors are small local businesses. They are being severely impacted because the reduced cash flow is having a ripple effect on their ability to employ people.

Chairman Anderson:
Let us go back to the graffiti removal question. I understand the use of pools and parks. Are you under the impression that the HOA and common-interest community would allow the city to go and do that?

Assemblywoman Spiegel:
It is my opinion, and from what I have heard from property managers, especially that big long quote that I read, that people are cutting back on everything and anything that they deem as nonessential.

Chairman Anderson:
That is not the question. The question deals specifically with graffiti removal and security. Patrols by the police officers are usually not acceptable in gated communities and other common-interest communities. This would be a rather

dramatic change, and it would probably change the city's view of their relationship with, or their tolerance of, some common-interest communities.

Assemblywoman Spiegel:
Mr. Chairman, one thing I can tell you is that my community, Green Valley Ranch, last year had our own private security company who would patrol our several miles of walking trails and paths. We have since externalized our costs and now the city of Henderson is patrolling those at night instead of our private service.

Chairman Anderson:
So, for your common-interest community, you have moved the burden over to the taxpayers and the city as a whole.

Assemblywoman Spiegel:
Yes, but our homeowners are also taxpayers of the city.

Chairman Anderson:
Of course, they choose to live in such a gated complex.

Assemblywoman Spiegel:
It is not gated. Parts of the community are, and some parts are not. Overall, the master association is not a gated area.

Chairman Anderson:
You allow the public to walk on those same paths?

Assemblywoman Spiegel:
Yes. They are open to all city residents, and non-city residents.

Chairman Anderson:
Okay. Are there any questions for Ms. Spiegel on the bill?

Assemblyman Segerblom:
Is it your experience that the lender will pay the association fees when the property is in default, or will they let it go to lien and then the association fees are paid when the property is sold?

Assemblywoman Spiegel:
My experience has been that, in many instances the fees are just not being paid. The lenders are not paying the fees. There may be some exceptions, but as a general rule they are not.

Alan Crandall, Senior Vice President, Community Association Bank, Bothell, Washington:

We have approximately 25,000 communities here in the State of Nevada. I am honored to speak today. I am a resident of Washington state. The area I want to specialize in my discussion is with loans for capital repair. We are the nation's leading provider of financing of community associations to make capital repairs such as roofs, decks, siding, retaining walls, and large items that the communities, for health and safety issues, have to maintain. Today, in Nevada, we are seeing associations with 25 to 35 percent delinquency rate. We are unable to make loans for these communities because we tie these loans to the cash flow of the association. If there is no cash flow coming in to support their operations, we cannot give them a loan. We do loans anywhere from $50,000, and we just approved one today for $17 million, so there are some communities out there with some severe problems that need assistance.

Now you may ask, why do we care about the loan? The loan is important in that it empowers the board to offer an option to the homeowners. Some of you may live in a community, and some of you may have children or parents who live in one. Because of a financial requirement for maintaining the property—the roof, the decks that may be collapsing, or a retaining wall that may be failing—they have to special assess because they do not have the money in their reserves. It was unforeseen, or they have not had the time to accumulate the money for whatever reason. These loans allow the association to provide the option to the homeowner to pay over time because, in effect, the board borrows the money from the bank, which is typically set up as a line of credit; they borrow the portion that they need for those members who do not have the ability to pay lump sum. So, whether that is $5,000, $10,000, $40,000, or $50,000, or my personal record which is $90,000 per unit, due in 60 days, it is a major financial hardship on homeowners. The typical association, based upon my experience of 18 years in this industry, is comprised of one-third of first time home buyers who may have had to borrow money from mom and dad to make the down payment, and who have small children for whom they are paying off their credit cards for next Christmas. Another one-third is comprised of retirees on a fixed income. Neither of those two groups, which typically make up two-thirds of an average community, are in a position to pay a large chunk of money in a very short period of time. The board cannot sign contracts in order to do the work unless they are 100 percent sure they can pay for the work when it is done. That is where the loan assists.

I urge your support of this bill. It will give us the ability to have some cash flow and guarantees that there will be some extended cash flows in these difficult times, and make it easier for those banks, like ours, who provide this special

type of financing that helps people keep their homes, to continue to do so. Thank you.

Bill DiBenedetto, Private Citizen, Las Vegas, Nevada:
I moved to Nevada in 1975 when I was 11 years old. The first time I was here was in 1982 as a delegate to Boys State. If you told me at that time that I would be testifying, I would have said, No way, you have got to know what you are talking about. Well, I was up here at an event honoring the veterans, and I saw this bill. I serve as the secretary-treasurer of my HOA, Tuscany, in Henderson, Nevada. The reason I became a board member was I revolted against the developer's interests in raising our dues. You see, we were founded in 2004, and we are at 700 homes out of 2,000, which means we are under direct control of our declarant, Rhodes Homes. We are at their mercy if they want to give us a special assessment or raise our dues. The reason I am here today is I also serve as secretary-treasurer. I am testifying as a homeowner, not as a member of the board. As of last year, our accounts receivable were over $200,000, which represented 13 percent of our annual revenue. Out of our 600 homeowners, 94 percent went to collections. Out of those, there were eight banks. When a bank takes over a home, they turn off the water; the landscaping dies; our values go down. We need these two years of back dues. Anything less, I believe, would be a bailout for the banks that took a risk, just like the homeowners. When it comes right down to it, out of the 700 homes that we have, we have to fund a $6.2 million reserve. Why? Because the developer continued to build a recreation center, greenways, and other amenities. So, our budget is $1.6 million. We have $200,000 in receivables. We receive 90-day notices from our utility companies. We can barely keep the lights and the water on. Our reserve fund, by law, is supposed to be funded, but we cannot because we have to pay the utility bills. I moved into that community because it was unique: We have rallied the 700 homes. We are not looking for a handout, but we are looking for what is right. When the bank took over the homes, they assumed the contracts that were made: to pay the dues, the $145 a month. I have banks that are 15 months past due, 10 months past due, 12 months past due. Thank you for listening to me.

Assemblyman Segerblom:
In regards to the banks owning these properties, at least under current law, what they owe for six months would be a super lien which you would collect when the property is sold. Have you been able to collect on those super liens?

Bill DiBenedetto:
Yes, we have.

Assemblyman Segerblom:
Is it your experience that the banks never pay without this super lien?

Bill DiBenedetto:
The banks never pay until the home is sold.

Assemblyman Segerblom:
Now, they are just paying for only six months?

Bill DiBenedetto:
They are paying for six months, and we are losing money that should be going into our reserve fund.

Chairman Anderson:
Does the bank not maintain an insurance policy on the property as the holder of the initial deed of trust?

Bill DiBenedetto:
I do not know. I would assume they would have to have some kind of liability insurance with the property.

Assemblyman Cobb:
When the banks foreclose, do they not take the position of the owner in terms of the covenants?

Bill DiBenedetto:
They do.

Assemblyman Cobb:
Do they have to start paying dues?

Bill DiBenedetto:
They have to start paying dues, and they have to abide by the covenants, which includes keeping their landscaping living.

Assemblyman Cobb:
How are they turning off the water and destroying the property?

Bill DiBenedetto:
They just shut off the water at the property.

Assemblyman Cobb:
And you do not do anything to try to force them to abide by the covenants?

Bill DiBenedetto:
There is nothing that we can do, unless we want to absorb legal costs by taking them to court. We cannot afford that. We have called them; we have begged them; there is just no response.

Assemblyman Cobb:
You cannot recover those legal costs if you do take them to court?

Bill DiBenedetto:
I have not pursued that any further with my board or the attorneys. Thank you.

Chairman Anderson:
Thank you, sir.

Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Reno, Nevada:
I have emailed a prepared statement to members of the Committee (Exhibit V). I do not want to belabor the point. There is a statutory obligation of HOAs to maintain their common areas and to maintain the reserve accounts for their HOAs. I also believe that there is a direct impact on homeowners when there is only a six month ability for the HOA to collect because we have to be much more aggressive in our collection process. If that time frame was to be increased, we would be more willing to work with homeowners. Recently, our board at Caughlin Ranch changed our collection policy to be much more aggressive and to start the lien process much more quickly than we had in the past, which eventually leads to a foreclosure process. I think that has a direct impact upon our homeowners.

Chairman Anderson:
Mr. Trudell, you have been associated with this as long as I can recall, and you have been appearing in front of the Judiciary Committee. In dealings with the banks, have there been these kinds of problems in the past with your properties and others that you have been with?

Michael Trudell:
Yes, sir. Mr. Chairman, in the past, banks were much more receptive in working with us to pay the assessments and to get a realtor involved in the property to represent the property for sale.

Chairman Anderson:
Since the HOA traditionally looks out to make sure that everyone is doing the right thing, when there is a vacant property there, you probably become a little bit more mindful of it than you would in a normal community. Do you think that

this is the phenomenon right now because of the current economic situation? By extending this time period, are we going to be establishing an unusual burden, or changing the responsibility of the burden in some unusual way? In other words, should it have originally been this longer period of time? Why should there be any limit to it at all?

Michael Trudell:
From the association's standpoint, no limit would be better for the HOA, because each property is given its pro rata share of the annual budget. When we are unable to collect those assessments, then the burden falls on the other members of the HOA. As far as the current condition, banks in many instances are not taking possession of the property, so the property sits in limbo. There is a foreclosure, and then there is no property owner, at least in the situations that I have dealt with in Caughlin Ranch. We have had much fewer incidences of foreclosure than most HOAs.

Chairman Anderson:
Thank you very much. Let us turn to the folks in the south.

Lisa Kim, representing the Nevada Association of Realtors, Las Vegas, Nevada:
The Nevada Association of Realtors (NVAR) stands in support of A.B. 204. Property owners within common-interest community associations are suffering increases in association dues to cover unpaid assessments that are uncollectable because they are outside of the 6-month superpriority lien period. Many times, these property owners are hanging on by a thread in making their mortgage payment and association dues payment. I talk to people everyday that are nearing default on their obligations. By increasing the more-easily collectable assessments amount, the community associations are going to be able to keep costs down for the remaining residents. Thank you.

Chairman Anderson:
Thank you.

John Radocha, Private Citizen, Las Vegas, Nevada:
I cannot find anywhere in this bill, or in NRS Chapter 116, where a person, who has an assessment against him or her, has the right to go to the management company and obtain documents to prove retaliation and selective enforcement that was used to initiate an assessment. If they come by and accuse me of having four-inch weeds, and my next door neighbor has weeds even taller, and they are dead, that is selective enforcement. I think something should be put into this bill where I, as an individual, have the right to go to the management company and demand documentation. That way, when a case comes up, a person can be prepared. This should be in the bill someplace.

Chairman Anderson:
We will take a look and see if that is in another section of the NRS. It may well be covered in some other spot, sir.

John Radocha:
On section 1, number 5, I was wondering, could not that be changed to "a lien for unpaid assessments or assessments is extinguished unless proceedings to enforce the lien or assessments instituted within 3 years after the full amount of the assessments becomes due"?

Chairman Anderson:
The use of the words "and" and "or" are usually reserved to the staff in the legal division. They make sure the little words do not have any unintended consequences. But, we will take your comments under suggestion.

Michael Buckley, Commissioner, Las Vegas, Commission for Common-Interest Communities Commission, Real Estate Division, Department of Business and Industry; Real Property Division, State Bar of Nevada:
We are neutral on the policy, but we wanted to point out that one of the requirements for Fannie Mae on condominiums is that the superpriority not be more than six months. Just for your education, the six month priority came from the Uniform Common-Interest Ownership Act back in 1982. It was a novel idea at the time. It was met with some resistance by lenders who make loans to homeowners to buy units. It was generally accepted. We are pointing out that we would want to make sure that this bill would not affect the ability of homeowners to be able to buy units because lenders did not think that our statutory scheme complied with Fannie Mae requirements.

My second point is that there was an amendment to the Uniform Common-Interest Ownership Act in 2008. It does add to the priority of the association's cost of collection and attorney's fees. We did think that this would be a good idea. There is some question now whether the association can recover its costs and attorney's fees as part of the six-month priority. We think this amendment would allow that and it would allow additional monies to come to the association.

Chairman Anderson:
Are there any questions for Mr. Buckley who works in this area on a regular basis?

Assemblyman Segerblom:
I was not clear on what you were saying. Are you saying that this law would be helpful for providing attorney's fees to collect the period after six months?

Michael Buckley:
What I am saying is that, with the existing law, there is a difference of opinion whether the six-months priority can include the association's costs. The proposal that we sent to the sponsor and that was adopted by the 2008 uniform commissioners would clarify that the association can recover, as part of the priority, their costs in attorney's fees. Right now, there is a question whether they can or not.

Assemblyman Segerblom:
So, you are saying we should put that amendment in this bill?

Michael Buckley:
Yes, sir. This was part of a written letter provided by Karen Dennison on behalf of our section.

Chairman Anderson:
We will make sure it is entered into the record (Exhibit W).

Assemblywoman Spiegel:
I have received the Holland & Hart materials on March 4, 2009 at 2:05 p.m. They were hand delivered to my office. I am happy to work with Mr. Buckley and Ms. Dennison on amendments, especially writing out the condominium association so that they are not impacted by the Fannie Mae/Freddie Mac provisions.

David Stone, President, Nevada Association Services, Las Vegas, Nevada:
All of my collection work is for community associations throughout the state, so I am extremely familiar with this issue. Last week, I had the pleasure of meeting with Assemblywoman Spiegel in Carson City to discuss her bill and her concerns about the prolonged unpaid assessments (Exhibit X).

Chairman Anderson:
Sir, we have been called to the floor by the Speaker, and I do not want them to send the guards up to get us. I have your writing, which will be submitted for the record. Is there anything you need to quickly get into the record?

David Stone:
The handout is a requirement for a collection policy, which I think would affect and help minimize the problem that Assemblywoman Spiegel is having. I submitted a friendly amendment to cut down on that. I see that associations with collection policies have lower delinquent assessment rates over the prolonged period, and I think that would be an effective way to solve this problem. Thank you.

Chairman Anderson:
Neither Robert's Rules of Order, nor Mason's Manual, which is the document we use, recognizes any kind of amendment as friendly. They are always an impediment. Thank you, sir, for your writing. If there are any other written documents that have not yet been given to the secretary, please do so now.

Wayne M. Pressel, Private Citizen, Minden, Nevada:
Myself and two witnesses would like to speak against A.B. 204. I realize that this may not be the opportunity to do so, I just want to make sure that we are on the record that we do have some opposition, and we would like to articulate that opposition at some later time to the Judiciary Committee.

Chairman Anderson:
There will probably not be another hearing on the bill, given the restraints of the 120-day session. The next time we will see this bill is if it gets to a work session, at which time there is no public testimony. I would suggest that you put your comments in writing, and we will leave the record open so that you can have them submitted as such. With that, we are adjourned.

[Meeting adjourned at 11:20 a.m.]

RESPECTFULLY SUBMITTED:

_____
Robert Gonzalez
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

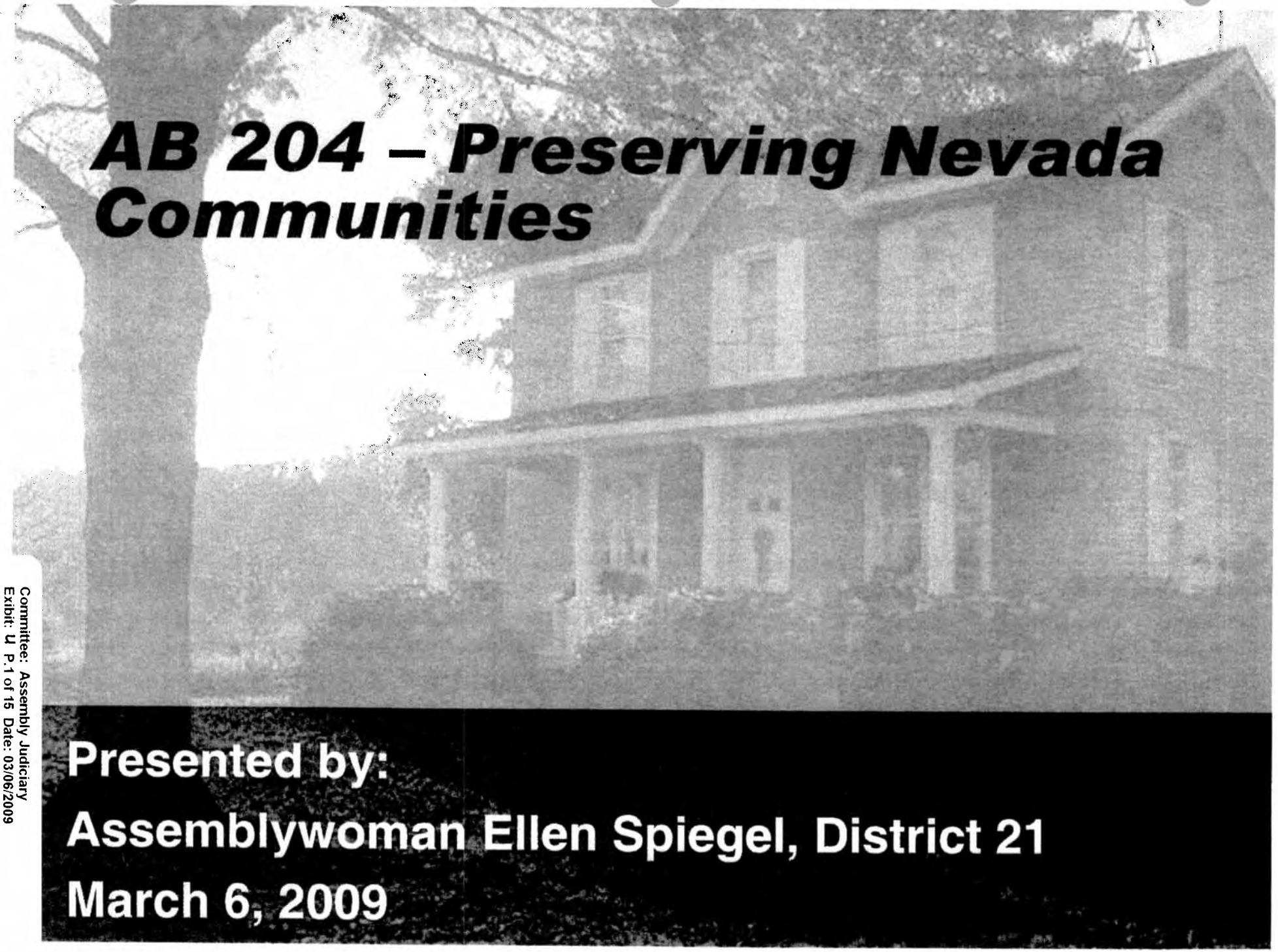
EXHIBITS

Committee Name: Committee on Judiciary

Date: March 6, 2009 **Time of Meeting: 8:12 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 182	C	Jennifer Chisel, Committee Policy Analyst	Federal Register, list of explosive materials
A.B. 207	D	Assemblyman John C. Carpenter	Prepared testimony introducing A.B. 207.
A.B. 207	E	Assemblyman Carpenter	Suggested amendment to A.B. 207.
A.B. 207	F	Robert Robey	Suggested amendment to A.B. 207.
A.B. 189	G	Assemblyman Joseph Hogan	Prepared testimony introducing A.B. 189.
A.B. 189	H	Assemblyman Joseph Hogan	Chart comparing the various eviction processes of various states.
A.B. 189	I	Assemblyman Joseph Hogan	Flow chart of the California eviction process.
A.B. 189	J	Jon L. Sasser	Prepared testimony supporting A.B. 189.
A.B. 189	K	Rhea Gerkten	Prepared testimony supporting A.B. 189.
A.B. 189	L	James T. Endres	Suggested amendment to A.B. 189.
A.B. 189	M	Charles "Tony" Chinnici	Prepared testimony against A.B. 189.
A.B. 189	N	Jennifer Chandler	Prepared testimony against A.B. 189.
A.B. 189	O	Jeffery G. Chandler	Prepared testimony against A.B. 189.
A.B. 189	P	Kellie Fox	Prepared testimony opposing the change in section 2 of A.B. 189.
A.B. 189	Q	Bret Holmes	Prepared testimony against A.B. 189.
A.B. 189	R	Charles Kitchen	Prepared testimony against A.B. 189.

A.B. 189	S	Bill Uffelman	Suggested amendments for A.B. 189.
A.B. 189	T	Rosalie M. Escobedo	Prepared testimony against A.B. 189.
A.B. 204	U	Assemblywoman Ellen Spiegel	Presentation of A.B. 204.
A.B. 204	V	Michael Trudell	Prepared testimony in support of A.B. 204.
A.B. 204	W	Karen D. Dennison	Prepared testimony with suggested amendments for A.B. 204.
A.B. 204	X	David Stone	Suggested amendments for A.B. 204.



AB 204 – Preserving Nevada Communities

Presented by:

Assemblywoman Ellen Spiegel, District 21

March 6, 2009

AB 204 Summary

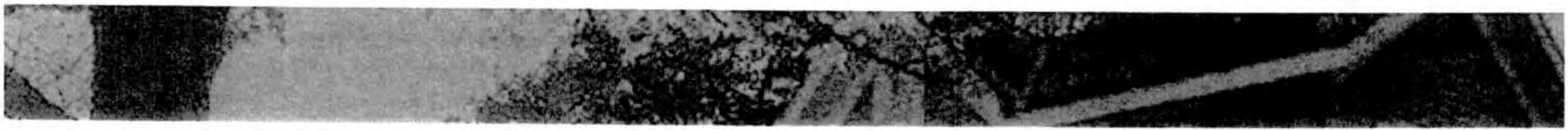
Revises provisions relating to the priority of certain liens against units in common-interest communities (BDR 10-920), increasing the super priority from six months to two years.

Fiscal Notes:

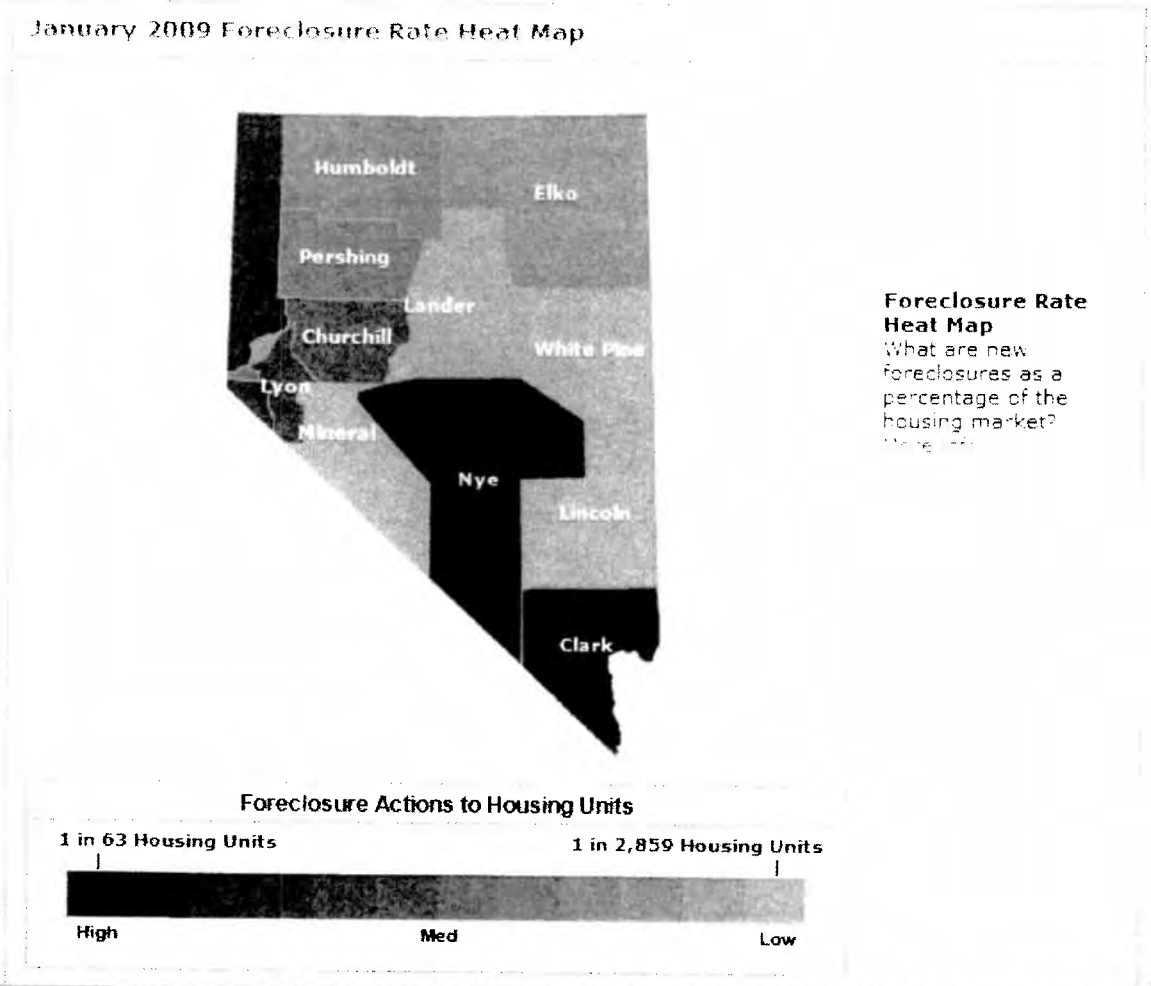
- Effect on Local Government: No
- Effect on the State: No

Legislative Intent/Objectives

- Help homeowners, banks and investors maintain their property values;
- Help common interest communities mitigate the adverse effects of the mortgage/foreclosure crisis;
- Help homeowners avoid special assessments resulting from revenue shortfalls due to fellow community members who did not pay required fees; and,
- Prevent cost-shifting from common-interest communities to local governments

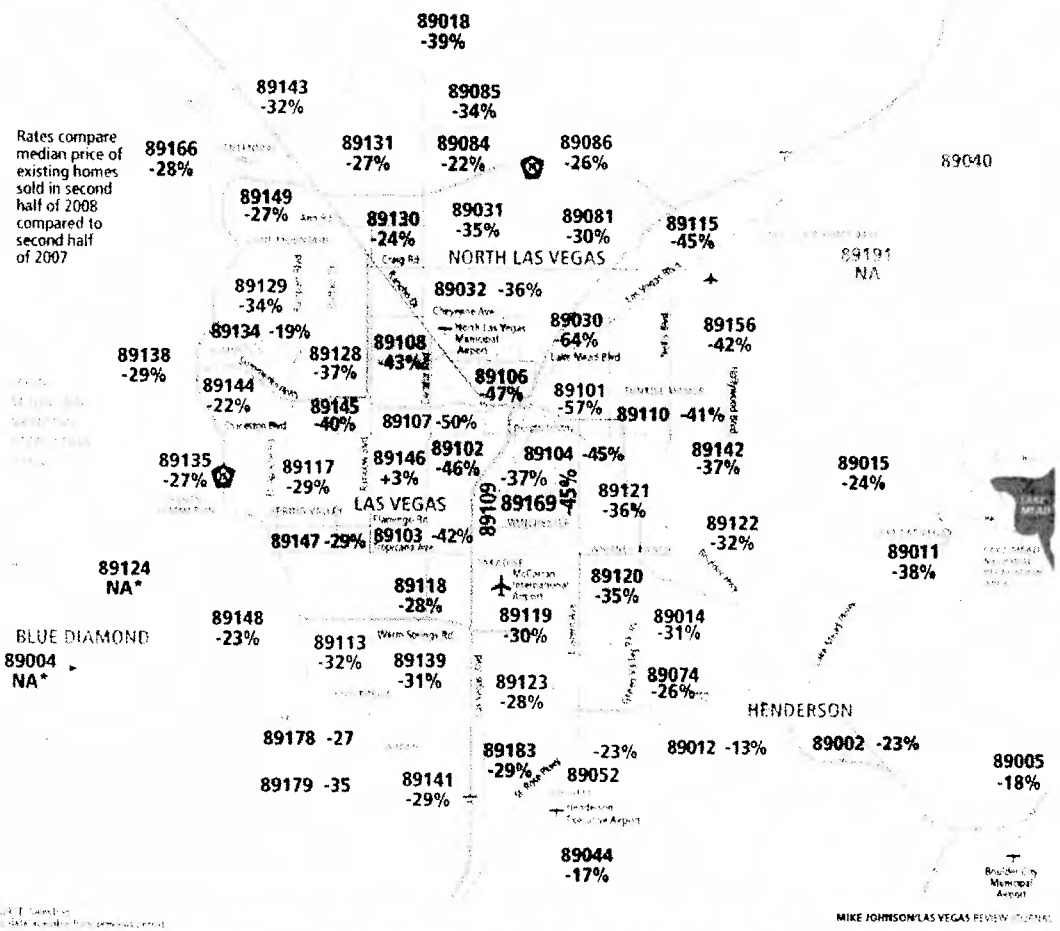


Currently: Individual Property Values Decline



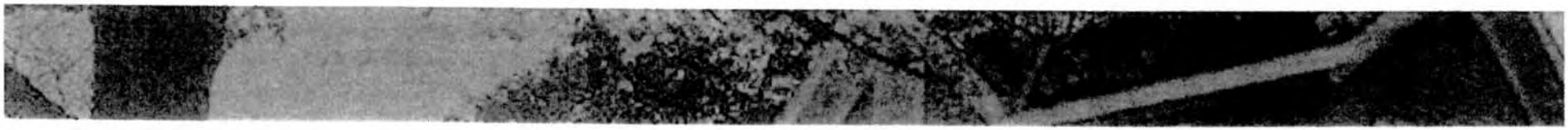
Source: http://www.realtytrac.com/TrendCenter/default.aspx?address=Nevada

Clark County is Hardest Hit



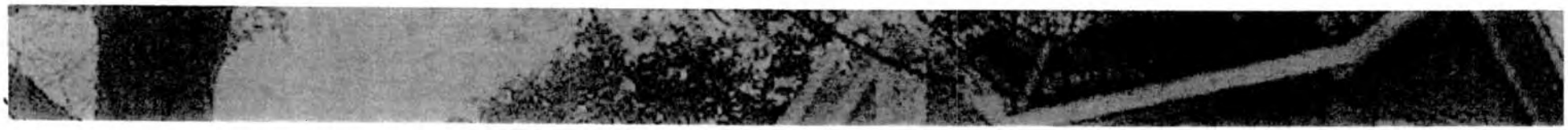
Between the 2nd Half of 2007 and the 2nd Half of 2008, Property Values Declined in All Las Vegas Valley Zip Codes Except One (89146)

- The Smallest Decline was 13% (89012)
- The Largest Decline was 64% (89030)



Property Values Impacted by:

- Increased Inventory of Housing Stock due to Foreclosures, Abandoned Homes, and Economic Recession;
- Consumer Inability to Acquire Mortgages;
- Increased Neighborhood Blight; and,
- Decreased Ability for Communities to Provide Obligated Services

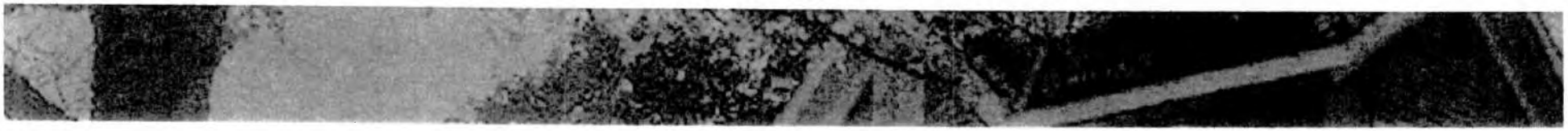


Help is Not on the Way for Most Nevadans

- Nevada has the Highest Percentage of "Underwater" Mortgage Holders in the Nation
  - 28% of Nevadans Owe More than 125% of their Home's Value
  - Nearly 60% of Homeowners in the Las Vegas Valley Have Negative Equity in their Homes

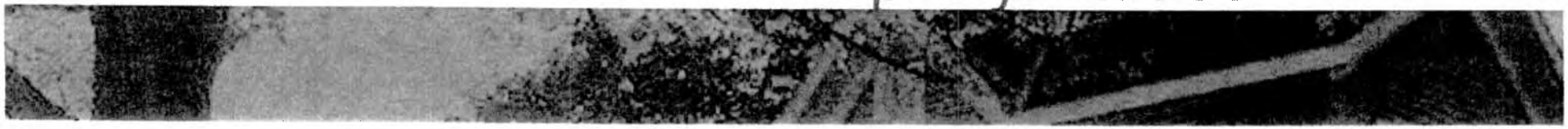
- President Barack Obama's Homeowner Affordability and Stability Plan Restricts Refinancing Aid to Borrowers Whose First Mortgage Does Not Exceed 105% of the Current Market Value of their Homes

Source: Las Vegas Review Journal 3/5/09



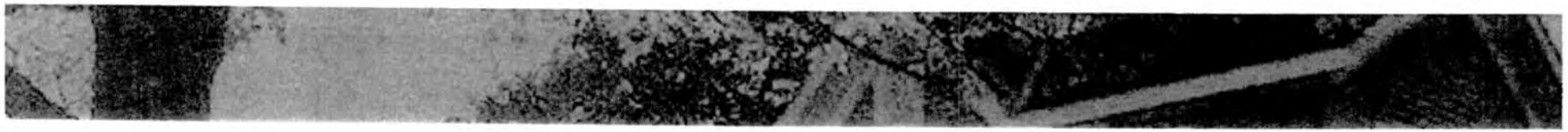
What Does This Mean to Homeowners In Common-Interest Communities?

- Decreased Quality of Life
  - Fewer Services Provided by Association
  - Increased Vandalism and Other Crime
- Potential for Increased Regular and Special Assessments to Make Up for Revenue Shortfalls and Association Liability Exposure; Increased Instability for Communities; and,
- Further Declines in Property Values



Survey of Community Managers

- 77,020 "Doors";
- 75 Common-Interest Community Managers Responded to Survey:
  - 55 in Clark County
  - 20 in Washoe County
- No Respondent Opposition to the Bill
- Comments Enlightening



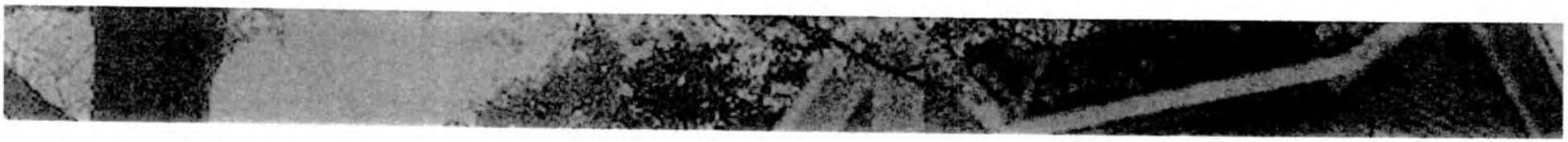
Comments

- *"Dollars not collected directly impact future assessment rates to compensate for the loss of projected income. Also, there is less operating cash to fund reserves or maintain the common area."*

  Dale H. Collins, CMCA
  Siena Community Association (2,001 homes in Las Vegas)

- *"Our cash reserves are severely underfunded...and we have some serious landscaping needs."*

  Cathy Walters, Treasurer
  Skyline View Associations (129 homes in Reno)

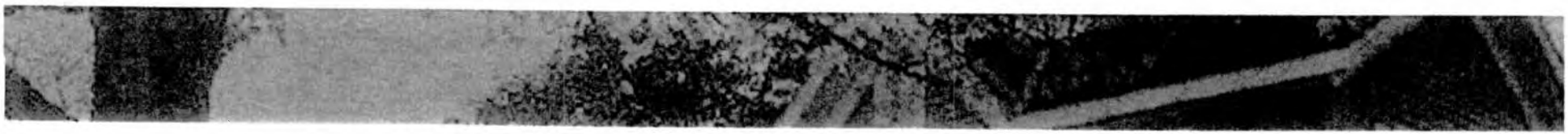


Comments (continued)

- *"Increase in bad debt expense [over $100,000 per year] has frustrated the majority of the owners who are now having to pay for those who are not paying, including the lenders who have foreclosed."*

Donna Erwin, AMS, LSM, PCAM

Red Rock Country Club Homeowners Association (1,117 homes in Las Vegas)



Comments (continued)

"The impact is that the HOA is cutting all services that are not mandated (water, trash and other utilities). The impact is that drug dealers are moving into the complex and homicides are on the rise and the place looks horrible.

"Special Assessments won't work. Those that are paying will stop paying if they are increased.

"The current owners are so angry that they are footing the bill for the dead beat investors that they no longer have any pride or care for their units.

"I support this bill 100%. The assessments are an obligation and should not be reduced."

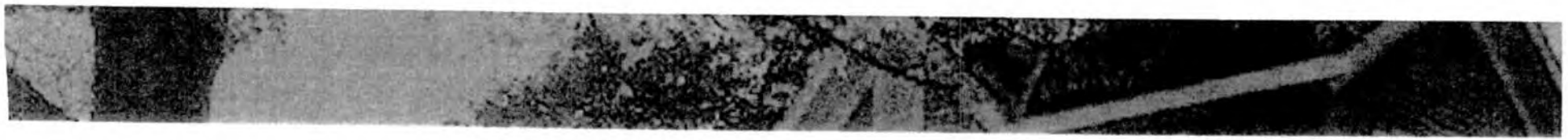
Amy Groves
Nevada's Finest Properties (Managers of Several Associations in Las Vegas)

Additional Potential Impact

- Cost-Shifting to Local Government:
  - Graffiti Removal
  - Code Enforcement/Inspections
  - Use of Public Pools/Parks
  - Security Patrols
- Late Payments to Local Vendors Impedes Business Stability

AB204 Supports Nevada Communities And is Vital for Recovery

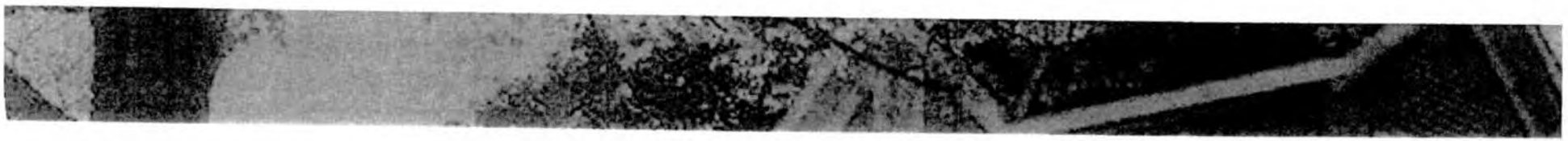
- Stabilize Communities
- Mitigate Further Declines In:
  - Property Values
  - Local Businesses
- Helps Homeowners:
  - Families
  - Banks
  - Other Investors



The Bottom Line

...Home Means Nevada

Let's work together to preserve our equity, our communities and our quality of life



MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE

Seventy-Fifth Session
March 25, 2009

The Committee on Judiciary Subcommittee was called to order by Chair Tick Segerblom at 1:39 p.m. on Wednesday, March 25, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 5100 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

SUBCOMMITTEE MEMBERS PRESENT:

Assemblyman Tick Segerblom, Chair
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen

SUBCOMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Harvey J. Munford, Clark County Assembly District No. 6
Assemblyman James A. Settelmeyer, Assembly District No. 39
Assemblyman Richard McArthur, Clark County Assembly District No. 4
Assemblywoman Ellen B. Spiegel, Clark County Assembly District No. 21
Assemblyman John C. Carpenter, Assembly District No. 33
Assemblyman Mark A. Manendo, Clark County Assembly District No. 18

STAFF MEMBERS PRESENT:

Alison Combs, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Monica Wise, Private Citizen, Las Vegas, Nevada
Robert Robey, Private Citizen, Las Vegas, Nevada
Paula McDonough, President, Park Tower Homeowners Association, Reno, Nevada
Bill Magrath, President, Caughlin Ranch Homeowners Association, Reno, Nevada
Neena Laxalt, Elko, Nevada, representing Nevada Association Services, Inc., Las Vegas, Nevada
Garrett Gordon, Reno, Nevada, representing Olympia Group, Las Vegas, Nevada
Angela Rock, President, Olympia Management Services, Las Vegas, Nevada
Michael Schulman, Las Vegas, Nevada, representing various homeowners associations throughout Nevada
Randolph Watkins, Commissioner, Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry
Michael Forman, Vice President, Green Valley Ranch Community Association, Henderson, Nevada
Michael Dixon, Private Citizen, Henderson, Nevada
Carole MacDonald, Cottonwoods Homeowners Association, Pahrump, Nevada
John Radocha, Private Citizen, Las Vegas, Nevada
Marilyn Brainard, Commissioner, Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry
Frances Copeland, Private Citizen, Las Vegas, Nevada
Robert Allgeier, President, Westwood Park Homeowners Association, Minden, Nevada
Wendell Vining, Vice President, Westwood Park Homeowners Association, Minden, Nevada

Gary Lein, Accountant Representative, Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry
Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada
Michael Trudell, General Manager, Caughlin Ranch Homeowners Association, Reno, Nevada
Erin McMullen, representing Bank of America, Las Vegas, Nevada

[Call to order, roll called.]

Chair Segerblom:
The first bill we are going to hear is Assembly Bill 350.

Assembly Bill 350: Makes various changes relating to common-interest communities. (BDR 10-620)

Assemblyman Harvey J. Munford, Clark County Assembly District No. 6:
I call this bill the Homeowners' Bill of Rights.

In many communities today, especially in southern Nevada, it is nearly impossible to purchase a relatively new home that is not in a homeowners' association (HOA). This Committee has heard plenty of testimony about homeowner boards. Many homeowner boards are run in a roughshod way. They sometimes keep the homeowners in the dark about important decisions. They also threaten homeowners' rights to live safely and at peace in their homes.

Section 1 of the bill would change the votes needed to change the declaration of an HOA from a simple majority to 85 percent of homeowners.

I will cover sections 2 and 9 together. These sections will require board members to perform their duties on an informed basis, in good faith, and in the honest belief that their actions are in the best interest of the HOA.

Section 4 would prohibit the HOA from charging interest on a past due fine.

Section 5 would limit consecutive terms for board members to two terms. The person would have to wait six years before serving on the board again. These term restrictions would only apply to HOAs with more than 50 units.

Sections 6, 7, and 8 require associations to give homeowners copies of the minutes at no charge. Under existing laws, homeowners in some HOAs have

Chair Segerblom:
I understand that. You are saying that you do not need to be audited because you are just an employee and the language, as it reads now, would require you to be audited?

Michael Trudell:
True, and the homeowners' association is already being audited.

Chair Segerblom:
We will close the hearing on A.B. 108 and open the hearing on Assembly Bill 204.

Assembly Bill 204: Revises provisions relating to the priority of certain liens against units in common-interest communities. (BDR 10-920)

Assemblywoman Ellen B. Spiegel, Clark County Assembly District No. 21:
I wanted to give you a brief update on the surveys I was doing, speaking with community groups to find out about the impact this bill would have on them. I have received responses that cover over 78,000 doors statewide, and I have not received a response from anyone who said this bill would not be beneficial to them.

I am also here to present an amendment on behalf of Assembly Speaker Buckley (Exhibit N). This amendment is designed to offer consumers and homeowners some additional protection by limiting the cost of collection associated with the fines. The amendment adds a new section to Chapter 116 of *Nevada Revised Statutes* (NRS), designed to limit the collection fees for fines, penalties, or any past due obligation. It starts at $50, if the outstanding balance is less than $200, and then there is a sliding scale based on the amount of the obligation, which maxes-out at $500.

Chair Segerblom:
Mr. Anthony, does this mirror Assemblyman Munford's bill?

Nick Anthony, Committee Counsel:
No, his impacts an existing section, this adds a new section to NRS Chapter 116.

Chair Segerblom:
His placed limitations on fines or penalties...

Nick Anthony, Committee Counsel:
His bill limited the fees and the amount of interest that could be collected. This bill limits the extra costs that may be incurred in collecting a past-due obligation.

Assemblywoman Spiegel:
For example, if a common-interest community association charges a fine, it is not paid, and there is a collection effort to go after the fine, in addition to seeking to collect the penalty for the violation, there would be interest and a collection fee. This amendment would limit the collection fee. My understanding is that Assemblyman Munford's bill limited what the penalty itself could be and the interest rate.

This bill also encompasses regular assessments, what are called HOA dues. They are the general assessments that are due periodically to maintain the operating accounts and balances of the associations and to fund their reserve accounts.

Chair Segerblom:
After the last hearing on this bill, there were questions about whether your extension of the look-back for homeowners' association (HOA) liens to two years would violate Federal Housing Administration (FHA) or Fannie Mae or Freddie Mac regulations. Did you look into that?

Assemblywoman Spiegel:
I believe the bill said to the extent it was not an issue with federal law. If that is not the case, I will put in another amendment if necessary.

Chair Segerblom:
Mr. Uffelman is here, so he will probably give us some language on that.

Assemblywoman Spiegel:
This is something that will help preserve communities.

Chair Segerblom:
I think the intent is fantastic.

Assemblyman Kihuen:
I want to commend you for bringing this bill. Some of these issues came up on the first bill, so I am glad to see this bill.

Chair Segerblom:
Is there anyone here in support?

Neena Laxalt, Elko, Nevada, representing Nevada Association Services, Inc., Las Vegas, Nevada:
David Stone, the president of Nevada Association Services, and I have worked with Assemblywoman Spiegel, and we came up with a friendly amendment that we proposed in the original hearing (Exhibit O). It puts in place a policy for collections for homeowners' associations. We believe that if homeowners' associations actually have policies in place, then perhaps these collections would not take beyond six months.

Chair Segerblom:
So you are adding a subsection (c)? Would that impact the amendment submitted by Speaker Buckley? It seems like it is a different issue.

Assemblywoman Spiegel:
Ms. Laxalt's amendment requires common-interest communities to develop a collections policy and to provide that disclosure to the homeowners. By doing that, it makes it more fair and transparent for everyone and offers additional consumer protection because the homeowners know what their obligations are and they understand the ramifications of their actions. Conversely, it also helps the associations by clearly delineating in the policy the time frames of what would happen and when, which could accelerate the collection process and not have as large of a fiscal impact on the homeowners or the associations.

Neena Laxalt:
We just had a quick look at Speaker Buckley's amendment, and I am sure that my client would have some concerns. We would be happy to speak with the Speaker about our concerns.

Chair Segerblom:
We will not be taking any action today on this bill.

Michael Schulman, Las Vegas, Nevada, representing various homeowners' associations throughout Nevada:
I support this bill because I think it is a good bill. Also the Assemblywoman sits on one of my boards in Henderson, and this will be very beneficial. I have two comments. The amendment that has been offered by Speaker Buckley may conflict or may need to be resolved with NRS 116.31031, which already limits the collection cost in regard to fines.

Chair Segerblom:
The amendment deletes that section and replaces it.

Michael Schulman:
Okay.

I think Michael Buckley, the Chairman of the Commission, wrote to you to state that the FHA does not have rules against this particular type of statute. They have concerns about it because it will affect them, but I do not think their loans are precluded because of it.

Bill Magrath, President, Caughlin Ranch Homeowners Association, Reno, Nevada:
One of the things that is good about extending the time frame from six months to two years would be that it would allow an association to slow the collections process down. If a homeowner gets behind in his assessments and the association knows it has a two-year comfort level, it will allow the association to not race out and hire a lawyer and start the collection process.

Assemblywoman Spiegel:
I just needed to disclose that I am on the board of the Green Valley Ranch Community Association in Henderson, Nevada. This bill will not affect my association any more or less than any other.

Chair Segerblom:
Is there anyone who would like to speak against the bill?

Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:
When the bill was first heard in Committee, I submitted a document from the Summerlin North Homeowner Association (Exhibit P), which was amended to change the forbearance time from six months to three months. I think that an aggressive collections policy by an association is the answer to the problem the Assemblywoman is trying to solve.

The policy provides that the association can pursue on a contract theory as well as the normal course of foreclosure. The policy also provides that the association can work out with the homeowner their failure to pay in a timely fashion. It is the collections policy that makes these things work.

I am supportive of the amendment offered by Ms. Laxalt. I would point out that while Assemblywoman Buckley's amendment strikes existing law and moves it to a new section, it increases the lowest level of cost to $50 and the second level to $75, whereas existing law provides for $20 and $50 in those two categories. I am not sure where the reduction is, unless it is an overall reduction in cost.

The letter submitted (Exhibit Q) provided the policy of Fannie Mae, which will not buy a mortgage on a condominium with more than six months of past due assessments. We took a small survey. Other lenders, while they do not have established policies, said the bill if passed will have a negative impact on lending in Nevada. Again, on behalf of the bankers, the answer to the problem the Assemblywoman is trying to address is an aggressive collection policy by the homeowners' association.

Chair Segerblom:
Will Assemblywoman Spiegel's two-year provision prevent some federal mortgages or not?

Bill Uffelman:
It would certainly run afoul of Fannie Mae with regard to condominiums or attached dwellings. They have specifically said they will not buy those kinds of mortgages for the secondary market.

Chair Segerblom:
Do you have any proposed language which would carve out Fannie Mae?

Bill Uffelman:
My proposed amendment would be to eliminate that section of the bill and change the two years back to six months. I had understood that the Assemblywoman was going to exclude condominiums and attached dwellings from these provisions, which would be the kind of amendment you would want to include.

Chair Segerblom:
What percentage of mortgages are Fannie Mae? Pretty high? Would it also include Veterans Administration (VA) loans?

Bill Uffelman:
Yes, it is pretty high. I did not ask a VA lender. So you understand, the latter pages of the letter (Exhibit P) are the guidelines that that lender is publishing for the benefit of mortgage brokers and anyone who is making loans.

Chair Segerblom:
What percentage of homeowners' associations are condominiums?

Bill Uffelman:
In Nevada, I do not know.

Assemblyman Hambrick:
Not only do condominiums have their own HOAs, I also live in Summerlin North and there are condominiums within an HOA. They can be members of other groups.

Bill Uffelman:
A condominium by its very nature would have to have a homeowners' association because of the common areas within it. So yes, there are a lot of condominium associations that are sub-associations of Summerlin, for example. There are a lot of properties in Summerlin that would be affected by this provision.

Assemblywoman Spiegel:
Condominiums represent about 20 percent of associations. I am willing to go through any language or any proposed amendment from Mr. Uffelman.

Chair Segerblom:
It sounds like it would be worth it. Would you be willing to do that Mr. Uffelman?

Bill Uffelman:
I would be happy to give her language on that, but we would still be opposed to the bill.

Erin McMullen, representing Bank of America, Las Vegas, Nevada:
We just want to go on record in opposition to this bill because we believe that it penalizes banks for trying to work with individuals and not foreclosing sooner.

Assemblywoman Spiegel:
I think this would be an important bill in terms of what it means for our values and our state's real estate values and what it means to our homeowners and our communities. I would like to see our communities being kept strong. I am willing to work with everyone because I think this bill is important.

Chair Segerblom:
I will close the hearing on A.B. 204. We will take a short recess.

I will open the hearing on Assembly Bill 207.

Assembly Bill 207: Makes various changes concerning common-interest communities. (BDR 10-694)

association, or anything else. It can only be posted on a piece of property you exclusively control, so it cannot be posted in a common area.

John Radocha:
The board has the advantage because they can use the United States Postal Service to put out their message, so how does the homeowner get their message out if they are so restricted?

Chair Segerblom:
You walk door to door. We will look into that. Is there anyone else to speak on A.B. 251? [There were none.]

> CHAIR SEGERBLOM MOVED TO RECOMMEND ASSEMBLY BILL 251 TO THE FULL COMMITTEE WITH THE CHANGES MADE BY NICK ANTHONY, COMMITTEE COUNSEL.
>
> ASSEMBLYMAN HAMBRICK SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

We will have a short second meeting next week to bring a couple of these issues back that we have asked people to work on. Then it will go to full Committee the following week.

We are adjourned [at 4:47 p.m.]

RESPECTFULLY SUBMITTED:

_____
Emilie Reafs
Committee Secretary

APPROVED BY:

_____
Assemblyman Tick Segerblom, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 25, 2009 Time of Meeting: 1:39 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 350	C	Jonathan Friedrich	Prepared Statement and proposed amendments.
A.B. 350	D	Paula McDonough	Prepared Statement.
A.B. 350	E	Bill Magrath	Handout.
A.B. 350	F	Neena Laxalt	Letter from David Stone.
A.B. 108, 204, 207, 251, 311, 350, and 361	G	Michael T. Schulman	Letter addressing concerns in several bills.
A.B. 350	H	Michael Forman	Proposed Amendment.
A.B. 350	I	John Radocha	Letters in support of S.B. 281/ A.B. 350.
A.B. 350	J	Marilyn Brainard	Letter from Michael Buckley, Chairman, Commission for Common-Interest Communities and Condominium Hotels .
A.B. 311	K	Marilyn Brainard	Letter from Michael Buckley, Chairman, Commission for Common-Interest Communities and Condominium Hotels.

A.B. 108	L	Bill Magrath	Handout.
A.B. 108	M	Marilyn Brainard	Letter from Michael Buckley, Chairman, Commission for Common-Interest Communities and Condominium Hotels.
A.B. 204	N	Assemblywoman Spiegel	Mock-up of Amendment 3542.
A.B. 204	O	Neena Laxalt	Proposed Amendment.
A.B. 204	P	Bill Uffelman	Handout.
A.B. 204	Q	Alison Combs	Letter submitted during original hearing, from Holland & Hart re: Fannie Mae regulations.
A.B. 207	R	Assemblyman John Carpenter	Proposed Amendment.
A.B. 251	S	Assemblyman Mark Manendo	Letter from Marion Ainsworth.
A.B. 251	T	Marilyn Brainard	Letter from Michael Buckley, Chairman, Commission for Common-Interest Communities and Condominium Hotels.
A.B. 251	U	Garrett Gordon	Proposed Amendment.

MOCK-UP

PROPOSED AMENDMENT 3542 TO ASSEMBLY BILL NO. 204

PREPARED FOR ASSEMBLYWOMAN BUCKLEY
MARCH 25, 2009

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the governing documents authorize an association to charge a unit's owner the costs of collecting any past due obligation, the rate established by the association for the costs of collecting the past due obligation:

(a) May not exceed $50, if the outstanding balance is less than $200.

(b) May not exceed $75, if the outstanding balance is $200 or more, but is less than $500.

(c) May not exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.

(d) May not exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.

(e) May not exceed $500, if the outstanding balance is $5,000 or more.

2. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the

past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.

3. As used in this section:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association charges a unit's owner for the collection of a past due obligation. The term does not include any costs incurred by an association after the commencement of a civil action to enforce any past due obligation.

(b) "Obligation" means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.

(c) "Outstanding balance" means the amount of a past due obligation that remains unpaid before any interest, charges for late payment or costs of collecting the past due obligation are added.

Sec. 2. NRS 116.31031 is hereby amended to read as follows:

116.31031 1. Except as otherwise provided in this section, if a unit's owner or a tenant or guest of a unit's owner violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or guest of the unit's owner from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or guest of the unit's owner from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or guest of the unit's owner for each violation, except that a fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS 116.310305. If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed $100 for each violation or a total amount of $1,000, whichever is less. The limitations on the amount of the fine do not apply to any interest, charges or costs that

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may be collected by the association pursuant to this section if the fine becomes past due.

2. The executive board may not impose a fine pursuant to subsection 1 unless:

(a) Not less than 30 days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and

(b) Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with:

(1) Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and

(2) A reasonable opportunity to contest the violation at the hearing.

3. The executive board must schedule the date, time and location for the hearing on the violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

4. The executive board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed:

(a) Pays the fine;

(b) Executes a written waiver of the right to the hearing; or

(c) Fails to appear at the hearing after being provided with proper notice of the hearing.

5. If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

6. If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

7. The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.

8. Any past due fine:

(a) Bears interest at the rate established by the association, not to exceed the legal rate per annum.

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PROPOSED AMENDMENT TO AB204

(b) ~~[May include any costs of collecting the past due fine at a rate established by the association. If the past due fine is for a violation that does not threaten the health, safety or welfare of the residents of the common-interest community, the rate established by the association for the costs of collecting the past due fine:~~

~~(1) May not exceed $20, if the outstanding balance is less than $200.~~

~~(2) May not exceed $50, if the outstanding balance is $200 or more, but is less than $500.~~

~~(3) May not exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.~~

~~(4) May not exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.~~

~~(5) May not exceed $500, if the outstanding balance is $5,000 or more.~~

~~(c)]~~ May include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

~~[9. As used in this section:~~

~~(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association may reasonably charge to the unit's owner for the collection of a past due fine. The term does not include any costs incurred by an association during a civil action to enforce the payment of a past due fine.~~

~~(b) "Outstanding balance" means the amount of a past due fine that remains unpaid before any interest, charges for late payment or costs of collecting the past due fine are added.~~

~~Section 1.]~~ ***Sec. 3.*** NRS 116.3116 is hereby amended to read as follows:

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

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

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

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

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

➥ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the ~~[6 months]~~ ***2 years*** immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

8. 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 or 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.

9. 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.

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

N-5

(1) 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.

H

N-6

PROPOSED AMENDMENT TO AB204

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE

Seventy-Fifth Session
April 3, 2009

The Committee on Judiciary Subcommittee was called to order by Chairman Tick Segerblom at 1:14 p.m. on Friday, April 3, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

SUBCOMMITTEE MEMBERS PRESENT:

Assemblyman Tick Segerblom, Chair
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen

SUBCOMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Ellen Spiegel, Clark County Assembly District No. 21
Assemblyman Richard McArthur, Clark County Assembly District No. 4

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Mark Smith, President, Sun City Aliante, North Las Vegas, Nevada
John Radocha, Private Citizen, Las Vegas, Nevada
Bernard Silva, Private Citizen, Las Vegas, Nevada
Michael Randolph, Private Citizen, Las Vegas, Nevada
Shane Scott, Private Citizen, Las Vegas, Nevada
Bob Robey, Private Citizen, Las Vegas, Nevada
Sydney Gordon, Private Citizen, Las Vegas, Nevada
Angela Rock, President, Olympia Management Services, Las Vegas, Nevada

Chair Segerblom:
[Call to order]

We will not hear Assembly Bill 108. We will get to Assembly Bill 204, Assembly Bill 311, and Assembly Bill 361, and then finally we will get to Assembly Bill 350. We have a new draft of A. B. 350 which incorporates parts of A. B. 108.

Assembly Bill 204: Revises provisions relating to the priority of certain liens against units in common-interest communities. (BDR 10-920)

Assemblywoman Ellen Spiegel, Clark County Assembly District No. 21:
I am here to talk to you some more about Assembly Bill 204. I have two amendments that I would like you to adopt.

Chair Segerblom:
You all have had hearings before and there were concerns, so hopefully you are coming back to us with the amendments you want.

Assemblywoman Spiegel:
This has the two amendments that I want. One was at your direction, Chair Segerblom; it was to address Fannie Mae and Freddie Mac concerns. It was submitted by Mr. Uffelman of the Nevada Bankers Association, who still does not support the bill.

Chair Segerblom:
He wants to make clear that he does not support the bill?

Assemblywoman Spiegel:
He does not support the bill, but he graciously created the amendment. The second amendment was submitted by David Stone of Nevada Association Services, Inc., and it requires common-interest communities to adopt a collections policy.

Chair Segerblom:
You did not want to include the previous language from Speaker Buckley?

Assemblywoman Spiegel:
That is correct. There had been a number of issues that were related to it that could not be worked out by today, so we are going forward without it.

Chair Segerblom:
Are there any questions about A.B. 204? [Assemblyman Hambrick noted he wanted a few minutes to review the mock-up.]

The mock-up includes the language from Speaker Buckley, so look at the email (Exhibit C).

We will set that aside and take up Assembly Bill 361.

Assembly Bill 361: Makes changes relating to the destruction or deterioration of foreclosed or vacant units in common-interest communities. (BDR 10-940)

Chair Segerblom:
We have your mock-up (Exhibit D). You received a letter from Michael Buckley, Chairman of the Commission for Common-Interest Communities and Condominium-Hotels, right?

Assemblyman Richard McArthur, Clark County Assembly District No. 4:
I will go over the amendments and Mr. Buckley's comments if you would like.

Chair Segerblom:
The staff has reviewed Mr. Buckley's letter, and it is very similar to the changes you made, so with your approval they will combine the two, and we would adopt that.

Assemblyman McArthur:
I am happy with that. I have spoken with Mr. Buckley, and I presented some of his ideas to Legal, and we are in agreement. I do not have any problems with what Mr. Buckley is trying to do.

Allison Combs, Committee Policy Analyst:
The proposal, in regard to A.B. 350, would be to include the provisions of A.B. 108; to include the provisions in the mock-up of A.B. 350 presented and discussed today; to add in the amendment originally proposed to A.B. 204 by Speaker Buckley; to include a provision that will address the issue of board meetings being held at different times, mornings and afternoons, so there are opportunities for people to attend at different times; and to address the issue of speaking at the meetings to ensure there is a time for open comment, as well as the opportunity to speak for a minimum period of time on each item.

ASSEMBLYMAN KIHUEN MOVED TO RECOMMEND ASSEMBLY BILL 350 AS STATED BY ALLISON COMBS.

ASSEMBLYMAN HAMBRICK SECONDED THE MOTION.

THE MOTION PASSED.

Chair Segerblom:
Thanks to everyone who participated, and stay involved. We are adjourned [at 2:04 p.m.].

RESPECTFULLY SUBMITTED:

_____
Emilie Reafs
Committee Secretary

APPROVED BY:

_____
Assemblyman Tick Segerblom, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary Subcommittee

Date: April 3, 2009 **Time of Meeting: 01:14 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 204	C	Assemblywoman Ellen Spiegel	Email letter from Bill Uffelman, proposed amendment from David Stone
A.B. 361	D	Assemblyman Richard McArthur	Mock-up for A.B. 361
A.B. 361	E	Chair Tick Segerblom	Comments from Michael Buckley
A.B. 311	F	Assemblyman James Settelmeyer	Mock-up for A.B. 311
A.B. 350	G	Assemblyman Tick Segerblom	Mock-up for A.B. 350
A.B. 204	H	Assemblyman Tick Segerblom	Mock-up for A.B. 204
A.B. 350	I	Bernard Silver, Private Citizen	Prepared Statement

Southerland, Cindy

From: Bill Uffelman [wuffelman@nvbankers.org]
Sent: Tuesday, March 31, 2009 8:15 AM
To: Spiegel, Ellen Assemblywoman
Subject: FW: AB 204 Amendment

At last week's Assembly Judiciary subcommittee hearing on AB204 I was directed by the Chair to prepare an amendment that would exempt condominium and attached dwellings from the 24 month lien superiority provisions of the bill to conform with current Fannie Mae lending provisions. I agreed to prepare an amendment with the understanding that the NBA is still opposed the bill.

I have prepared the following to comply with the directive.

Bill Uffelman
702-375-9025

****

AB 204 by Assemblywoman Spiegel et al

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.
_ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses
based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration

Page 5 Lines 11 & 12

,with respect to a single family detached dwelling, during the [6 months] *2 years* immediately preceding institution of an action to enforce the lien or, with respect to all other dwellings, during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

Subcommittee: Assembly Judiciary
Exhibit: C P.1 of 2 Date: 4/3/2009
Submitted by: Assemblywoman Ellen Spiegel

NRS 116.31151 Annual distribution to units' owners of operating and reserve budgets or summaries of such budgets and collection policy; ratification of budget.

1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

(c) The collection policy established by the association. The collection policy shall:

(1) Generally outline the responsibilities and obligation of paying timely assessments assessments; and

(2) Generally describe the options available to the association should the unit's owner fail to pay assessments

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

(Added to NRS by 1999, 2993; A 2003, 2241; 2005, 2605)

David Stone

AB 204

C-2

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
April 9, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 10:09 a.m. on Thursday, April 9, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:

Captain P.K. O'Neill, Chief, Records and Technology Division, Department of Public Safety

[Call to order. Roll call]

Chairman Anderson:
[Opening remarks.]

We looked at Assembly Bill 500 yesterday. The Legal Division has provided a mock-up.

Assembly Bill 500: Revises provisions relating to domestic relations. (BDR 11-1156)

Nicolas Anthony, Committee Counsel:
The mock-up (Exhibit C) is defined as proposed amendment 4141 to A.B. 500 to help the Committee visualize the bill, as there were some questions yesterday.

Starting on page 2 of the mock-up, you will see that sections 4 through 10 of the bill are deleted by amendment. This would keep existing law, which is the third degree of consanguinity.

Page 5 of the mock-up was language requested by the Committee to clarify and remove the double negative in section 11, subsection 3 of the bill. We are not changing the substance; it just is reorganized a little bit.

Assemblyman Segerblom:
Yes, I thought that was a valid point. Since insurance cannot be purchased for punitive damages, and because, for the most part, these are volunteer boards, I think it is inappropriate at this time to have a director subject to punitive damages.

Chairman Anderson:
There were also issues brought forth by Mr. Gordon, representing the Olympia Group. I would suggest that, if he wants, he can raise them again in the Senate. We will probably see this bill again in conference.

I would entertain a motion to amend and do pass Assembly Bill 350 with the amendments suggested in mock-up number 3895, which Legal carefully reviewed yesterday and the deletion of the provision for punitive damages.

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 350 AS STATED.
>
> ASSEMBLYMAN KIHUEN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

We will not have to consider Assembly Bill 108. [The bill was incorporated into Assembly Bill 350.]

Assemblyman Segerblom:
Assembly Bill 204, Assembly Bill 207, Assembly Bill 251, Assembly Bill 311, and Assembly Bill 361 were all unanimously approved as amended by the Subcommittee.

Chairman Anderson:
Do they each have an amendment?

Assemblyman Segerblom:
Yes.

Chairman Anderson:
We will take up Assembly Bill 204. We were briefed on all of these yesterday.

Assembly Bill 204: Revises provisions relating to the priority of certain liens against units in common-interest communities. (BDR 10-920)

Nicolas Anthony, Committee Counsel:
Assembly Bill 204 has two amendments attached. One is to address a potential conflict with Fannie Mae lending provisions and the other is about collection policies [pages 48-49 of Exhibit E].

Chairman Anderson:
I will entertain an amend and do pass motion on the recommendation of the Subcommittee.

> ASSEMBLYMAN MANENDO MOVED TO AMEND AND DO PASS ASSEMBLY BILL 204.
>
> ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Assemblyman Cobb:
I think that two years is an extraordinary amount of time to have a look-back, especially when we are trying to clear these houses out of inventory and drop as many barriers as possible to getting them into the hands of new owners. What concerned me about some of the testimony we heard on this bill was that some homeowners' associations said that they cannot extract any kind of dues, fines, fees, or assessments from banks; they cannot even get them to mow the lawns.

We heard testimony on a separate bill that the bank is in the same position as any other owner. There is a process to move against them to collect, so there does not need to be all the lawyers' fees and everything else that will be piled on. One of my constituents said he was trying to buy homes to reduce the inventory and get the economy going again, and he was handed an invoice for $4,000 from a homeowners' association with $16-a-month dues. So it was not the dues, it was the attorney's fees and everything else that was added on. I think six months should be enough.

Chairman Anderson:
Homeowners' associations have been dealing with the problem for some time, and they would like to abrogate it so that the expenses they have been carrying are passed to the new owner as part of closing.

Assemblyman Segerblom:
Another issue was that this bill was supposed to put a fire under the banks' feet because, right now, they just let the property go knowing that after six months they are no longer obligated for these fees. This will hopefully encourage the banks to get the properties up and running and try to sell them.

Assemblyman McArthur:
I do think 24 months is far too long, but I will vote yes to get this bill out of Committee. I reserve my right to change my vote later.

THE MOTION PASSED. (ASSEMBLYMAN COBB VOTED NO. ASSEMBLYMAN McARTHUR RESERVED THE RIGHT TO CHANGE HIS VOTE ON THE FLOOR.)

Let us turn to Assembly Bill 207, Assemblyman Carpenter's bill. The recommendation from the subcommittee was an amend and do pass.

Assembly Bill 207: Makes various changes concerning common-interest communities. (BDR 10-694)

ASSEMBLYMAN MANENDO MOVED TO AMEND AND DO PASS ASSEMBLY BILL 207.

ASSEMBLYMAN KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Let us turn to Assembly Bill 251. Again, the Subcommittee voted unanimously to recommend an amend and do pass to the full Committee.

Assembly Bill 251: Revises provisions relating to common-interest communities. (BDR 10-555)

Nicolas Anthony, Committee Counsel:
There is a mock-up prepared [page 52 of Exhibit E], which clarifies that if an election is held and there is a member running without opposition, then the board does not have to send out ballots. It can just elect the person.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 251.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Let us turn to Assembly Bill 311, Assemblyman Settelmeyer's bill.

Assembly Bill 311: Revises provisions governing the financial statements of common-interest communities. (BDR 10-389)

Chairman Anderson:
There is a comfort level that has to be reached, so I will hold the bill over until tomorrow.

We are adjourned [at 11:28 a.m.]

RESPECTFULLY SUBMITTED:

_____
Emilie Reafs
Committee Secretary

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Editing Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 9, 2009 **Time of Meeting: 10:09 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 500	C	Nicolas Anthony, Committee Counsel	Mock-up for A.B. 500
A.B. 320	D	Jennifer Chisel, Committee Policy Analyst	Work session document and mock-up
	E	Nicolas Anthony, Committee Counsel	Subcommittee report on HOA bills
A.B. 471	F	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 462	G	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 335	H	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 64	I	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 65	J	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 8	K	Jennifer Chisel, Committee Policy Analyst	Work session document

REPORT OF THE SUBCOMMITTEE ON MEASURES RELATING TO HOMEOWNERS' ASSOCIATIONS TO THE ASSEMBLY COMMITTEE ON JUDICIARY

The following measures were referred to the subcommittee for consideration:

Assembly Bill 108
Assembly Bill 204
Assembly Bill 207
Assembly Bill 251
Assembly Bill 311
Assembly Bill 350
Assembly Bill 361

Members Present:

Assemblyman Tick Segerblom, Chairman
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen

Subcommittee Meetings:

The Subcommittee met on March 25, 2009, to hear testimony on all seven bills and to discuss proposed amendments. Sponsors of the measures and members of the public were present in Carson City and Las Vegas to testify. At that meeting, the Subcommittee voted to recommend to the full Committee to Amend and Do Pass Assembly Bills 207 and 251 with the amendments described below.

The Subcommittee met a second time on April 3, 2009, to consider the five remaining measures a second time. At that meeting, the Subcommittee noted consideration of the lengthy testimony at the prior meeting and of a multitude of amendments submitted after the last meeting by electronic mail. At the Chairman's direction, the members considered amendments recommended by either the sponsors of the bill or the Chairman to address concerns with each bill. The recommendations of the Subcommittee on each measure are presented below.

Subcommittee Recommendations:

Assembly Bill 108 (Sponsored by Assemblyman Oceguera) and Assembly Bill 350 (Sponsored by Assemblyman Munford)

The Subcommittee voted unanimously to recommend to the full Committee to combine these two measures into A.B. 350 and to ***Amend and Do Pass A.B. 350***. The recommendations for amendments are contained in the attached draft amendment to A.B. 350 prepared by the Legal Division of the Legislative Counsel Bureau (Legal Division).

Assembly Bill 204 (Sponsored by Assemblywoman Spiegel)

The Subcommittee voted unanimously to recommend to the full Committee to *Amend and Do Pass* A.B. 204 with two amendments presented by the sponsor of the bill at the second meeting. Attached is a copy of the amendments, as submitted by the sponsor, which propose the following two changes:

1. *Address Potential Conflict with Fannie Mae Lending Provisions* – Amend subsection 2 of Section 1 of the bill on page 2 at lines 29 to 31 as follows:

> The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration, ***with respect to a single family detached dwelling,*** during the [~~6 months~~] ***2 years*** immediately preceding institution of an action to enforce the lien ***or, with respect to all other dwellings, during the 6 months immediately preceding institution of an action to enforce the lien***. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association.

2. *Collection Policies of a Common-Interest Community* – Add a new section to the bill amending *Nevada Revised Statutes* 116.31151 ("Annual distribution to units' owners of operating and reserve budgets or summaries of such budgets; ratification of budget") to require distribution of the collection policy established by the association. The amendment requires that the collection policy:

   - "***Generally outline the responsibilities and obligation of paying timely assessments; and***
   - ***Generally describe the options available to the association should the unit's owner fail to pay assessments.***"

Assembly Bill 207 (Sponsored by Assemblyman Carpenter)

The Subcommittee voted unanimously to recommend to the full Committee to *Amend and Do Pass* A.B. 207 with the amendment presented by the sponsor at the first hearing before the full Committee.

A copy of the amendment is attached and proposes to exclude small associations of 20 or fewer units located in counties with a population of 45,000 or less from the requirement of having a reserve study conducted by a person who holds a permit, and instead allow the executive board to determine the qualifications of the person conducting the study.

Assembly Bill 251 (Sponsored by Assemblyman Manendo)

The Subcommittee voted unanimously to recommend to the full Committee to *Amend and Do Pass* A.B. 251 with the amendments agreed to by the sponsor to address the procedures to follow when a candidate for a board is running with no opposition.

Attached is a draft amendment prepared by the Legal Division.

Assembly Bill 311 (Sponsored by Assemblyman Settelmeyer)

The Subcommittee voted unanimously to recommend to the full Committee to *Amend and Do Pass* A.B. 311 with the amendments proposed by the sponsor.

Attached is a copy of the amendment prepared by the Legal Division to address the timing of the review of the financial statement of associations with an annual budget of less than $75,000.

Assembly Bill 361 (Proposed by Assemblyman McArthur)

The Subcommittee voted unanimously to recommend to the full Committee to *Amend and Do Pass* A.B. 361 with the amendments proposed by the sponsor at the second hearing in combination with similar proposals from Michael Buckley, Commissioner, Nevada's Commission for Common-Interest Communities and Condominium Hotels.

A draft mock-up prepared by the Research Division of the Legislative Counsel Bureau is attached.

AJ05 (2009 HOA Subcommittee)

MOCK-UP

PROPOSED AMENDMENT 3895 TO ASSEMBLY BILL NO. 350

PREPARED FOR ASSEMBLYMAN SEGERBLOM
APRIL 7, 2009

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

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

Section. 1. **Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:**

1. If the governing documents authorize an association to charge a unit's owner the costs of collecting any past due obligation, the association may charge the unit's owner a reasonable fee to cover such costs. The Commission shall adopt regulations establishing the amount of the fee that an association may charge pursuant to this section.

2. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.

3. As used in this section:

(a) "Costs of collecting" includes any fee, charge or cost, by whatever name, including without limitation: any collection fee; filing fee; recording fee; fee related to the preparation, recording or delivery of

PROPOSED AMENDMENT TO AB350

a lien or lien rescission; title search lien fee; bankruptcy search fee; referral fee; fee for postage or delivery; and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.

(b) "Obligation" means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.

~~[Section 1.]~~ *Sec. 2.* ~~[NRS 116.2117 is hereby amended to read as follows:~~

~~116.2117 1. Except [as otherwise provided in NRS 116.21175, and except] in cases of amendments that may be executed by a declarant under subsection 6 of NRS 116.2109 or NRS 116.211, or by the association under NRS 116.1107, subsection 4 of NRS 116.2106, subsection 3 of NRS 116.2108, subsection 1 of NRS 116.2112 or NRS 116.2113, or by certain units' owners under subsection 2 of NRS 116.2108, subsection 1 of NRS 116.2112, subsection 2 of NRS 116.2113 or subsection 2 of NRS 116.2118, and except as otherwise limited by subsection 4, the declaration, including any plats and plans, may be amended only by vote or agreement of units' owners of units to which at least [a majority] *85 percent* of the votes in the association are allocated, or any larger [majority] *percentage* the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.~~

~~2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.~~

~~3. Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to NRS 116.2112, must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of the parties executing the amendment.~~

~~4. Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may change the boundaries of any unit, the allocated interests of a unit or the uses to which any unit is restricted, in the absence of unanimous consent of the units' owners affected and the consent of a majority of the owners of the remaining units.~~

~~5. Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.]~~ **(Deleted by amendment.)**

~~[Sec. 2.]~~ ***Sec. 3.*** NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in subsection 2, and subject to the provisions of the declaration, the association may do any or all of the following:

(a) Adopt and amend bylaws, rules and regulations.

(b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from the units' owners.

(c) Hire and discharge managing agents and other employees, agents and independent contractors.

(d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.

(e) Make contracts and incur liabilities.

(f) Regulate the use, maintenance, repair, replacement and modification of common elements.

(g) Cause additional improvements to be made as a part of the common elements.

(h) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) Grant easements, leases, licenses and concessions through or over the common elements.

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners.

(k) Impose charges for late payment of assessments ~~[.]~~ ***pursuant to NRS 116.3115.***

(l) Impose construction penalties when authorized pursuant to NRS 116.310305.

(m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(p) Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) Exercise any other powers conferred by the declaration or bylaws.

(r) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) Direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) Exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

~~[Sec. 3.]~~ ***Sec. 4.*** NRS 116.3103 is hereby amended to read as follows:

116.3103 1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries ~~[.]~~ ***and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association.*** The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule.

2. The executive board may not act on behalf of the association to amend the declaration, to terminate the common-interest community, or to elect members of the executive board or determine their qualifications,

powers and duties or terms of office, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

~~[Sec. 4.]~~ ***Sec. 5.*** NRS 116.31031 is hereby amended to read as follows:

116.31031 1. Except as otherwise provided in this section, if a unit's owner or a tenant or guest of a unit's owner violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or guest of the unit's owner from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or guest of the unit's owner from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or guest of the unit's owner for each violation, except that a fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS 116.310305. If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed $100 for each violation or a total amount of $1,000, whichever is less. The limitations on the amount of the fine do not apply to any ~~[interest,]~~ charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

2. The executive board may not impose a fine pursuant to subsection 1 unless:

(a) Not less than 30 days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and

(b) Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with:

(1) Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and

(2) A reasonable opportunity to contest the violation at the hearing.

3. The executive board must schedule the date, time and location for the hearing on the violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

4. The executive board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed:

(a) Pays the fine;

(b) Executes a written waiver of the right to the hearing; or

(c) Fails to appear at the hearing after being provided with proper notice of the hearing.

5. If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

6. If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

7. The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.

8. Any past due fine ~~[:]~~ ***must not bear interest, but*** ~~[:]~~

(a) ~~[Bears interest at the rate established by the association, not to exceed the legal rate per annum.~~

~~(b)]~~ ~~[May include any costs of collecting the past due fine at a rate established by the association. If the past due fine is for a violation that does not threaten the health, safety or welfare of the residents of the common interest community, the rate established by the association for the costs of collecting the past due fine:]~~

~~[(1) May not exceed $20, if the outstanding balance is less than $200.]~~

~~[(2) May not exceed $50, if the outstanding balance is $200 or more, but is less than $500.]~~

~~[(3) May not exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.]~~

~~[(4) May not exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.]~~

~~[(5) May not exceed $500, if the outstanding balance is $5,000 or more.]~~

~~[(c)]~~ ~~*[(b) May]*~~ ***may*** include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

~~[9. As used in this section:~~

~~(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association may reasonably charge to the unit's owner for the collection of a past due fine. The term does not include any costs incurred by an association during a civil action to enforce the payment of a past due fine.~~

~~(b) "Outstanding balance" means the amount of a past due fine that remains unpaid before any]~~ ~~[interest,]~~ ~~[charges for late payment or costs of collecting the past due fine are added.]~~

~~[Sec. 5.]~~ ***Sec. 6.*** ~~[NRS 116.31034 is hereby amended to read as follows:]~~

~~116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, at least a majority of whom must be units' owners. Unless the governing documents provide otherwise, the remaining members of the executive board do not have to be units' owners. The executive board shall elect the officers of the association. The members of the executive board and the officers of the association shall take office upon election.~~

~~2. The term of office of a member of the executive board may not exceed 2 years . [, except for members who are appointed by the declarant. Unless the governing documents provide otherwise,]~~ ~~*If the common-interest community consists of 50 or fewer units,*~~ ~~there is no limitation on the number of terms that a person may serve as a member of the executive board.~~ ~~*If the common interest community consists of more than 50 units, no person may serve as a member of the executive board for more than two consecutive terms and a period of at least 6 years must elapse before a person who formerly served as a member of the executive board may serve as a member of the executive board again.*~~

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

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

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

~~4. Not less than 30 days before the preparation of a ballot for the election of members of the executive board, the secretary or other officer specified in the bylaws of the association shall cause notice to be given to each unit's owner of his eligibility to serve as a member of the executive~~

~~board. Each unit's owner who is qualified to serve as a member of the executive board may have his name placed on the ballot along with the names of the nominees selected by the members of the executive board or a nominating committee established by the association.~~

~~5. Each person whose name is placed on the ballot as a candidate for a member of the executive board must:~~

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

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

~~The candidate must make all disclosures required pursuant to this subsection in writing to the association with his candidacy information. The association shall distribute the disclosures to each member of the association with the ballot in the manner established in the bylaws of the association.~~

~~6. Unless a person is appointed by the declarant:~~

~~(a) A person may not be a member of the executive board or an officer of the association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.~~

~~(b) A person may not be a member of the executive board of a master association or an officer of that master association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for:~~

~~(1) That master association; or~~

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

~~7. An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, he shall file proof in the records of the association that:~~

~~(a) He is associated with the corporate owner, trust, partnership, limited liability company or estate as required by this subsection; and~~

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

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~~8. The election of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the election of any member of the executive board is conducted by secret written ballot:~~

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

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

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

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

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

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

~~9. Each member of the executive board shall, within 90 days after his appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that he has read and understands the governing documents of the association and the provisions of this chapter to the best of his ability. The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158.]~~ **(Deleted by amendment.)**

~~[Sec. 6.]~~ ***Sec. 7.*** NRS 116.3108 is hereby amended to read as follows:

116.3108 1. A meeting of the units' owners must be held at least once each year. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

2. Special meetings of the units' owners may be called by the president, by a majority of the executive board or by units' owners

constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. The same number of units' owners may also call a removal election pursuant to NRS 116.31036. To call a special meeting or a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this section and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. If the petition calls for a removal election and:

(a) The voting rights of the units' owners will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 60 days after the date on which the petition is received; or

(b) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to NRS 116.31036, the secret written ballots for the removal election must be sent in the manner required by NRS 116.31036 not less than 15 days or more than 60 days after the date on which the petition is received, and the executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots.

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be hand-delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request ~~[and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.]~~ ***, in electronic ~~[or paper]*** format ~~[.]~~ at no charge to the unit's owner. If the association is unable to provide a copy in electronic format and the unit's owner so requests, the association shall provide a written copy to the unit's owner at a cost not to exceed 10 cents per page.***

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(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

4. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period ***at the beginning of each meeting and on each agenda item*** devoted to comments by units' owners and discussion of those comments. ***A unit's owner must be granted a minimum of ~~[5]~~ 2 minutes to speak on each agenda item.*** Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

6. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request ~~[and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.]~~ ***, in electronic ~~[for paper]~~ format ~~[.]~~ at no charge to the unit's owner. If the association is unable to provide a copy in electronic format and the unit's owner so requests, the association shall provide a written copy to the unit's owner at a cost not to exceed 10 cents per page.***

7. Except as otherwise provided in subsection 8, the minutes of each meeting of the units' owners must include:

(a) The date, time and place of the meeting;

(b) The substance of all matters proposed, discussed or decided at the meeting; and

(c) The substance of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

8. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners ~~[unless a unit's owner has submitted written comments 24 hours before the meeting, which must be included in their entirety and read into the record before any vote or action is taken.]~~

9. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

10. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the other units' owners who are in attendance at the meeting.

11. The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

~~[Sec. 7.]~~ ***Sec. 8.*** NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every 90 days~~[.]~~ ***and must be held at a time other than during standard business hours at least twice annually.***

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

(a) Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;

(b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or

(c) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

4. The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request ~~[and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.]~~ ***, in electronic ~~[or paper]~~ format ~~[,]~~ at no charge to the unit's owner. If the association is unable to provide a copy in electronic format and the unit's owner so requests, the association shall provide a written copy to the unit's owner at a cost not to exceed 10 cents per page.***

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

5. The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. The period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for the beginning of each meeting. ***A unit's owner must be granted a minimum of ~~[5]~~ 2 minutes to speak on each agenda item.*** In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

6. At least once every 90 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

(a) A current year-to-date financial statement of the association;

(b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;

(c) A current reconciliation of the operating account of the association;

(d) A current reconciliation of the reserve account of the association;

(e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and

(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

7. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the executive board. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meetings to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request ~~[and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.]~~ ***, in electronic ~~[or paper format,]~~ at no charge to the unit's owner. If electronic format is not available and if the unit's owner so requests, the association shall provide a copy at a cost to the unit's owner of not more than 10 cents per page.***

8. Except as otherwise provided in subsection 9 and NRS 116.31085, the minutes of each meeting of the executive board must include:

(a) The date, time and place of the meeting;

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting;

(d) A record of each member's vote on any matter decided by vote at the meeting; and

(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings ~~*[unless a unit's owner has submitted written comments 24 hours before the meeting, which must be included in their entirety and read into the record before any vote or action is taken.]*~~

10. The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

11. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

~~[Sec. 8.]~~ ***Sec. 9.*** NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting ~~[.]~~ ***, but must allow a unit's owner a minimum of*** ~~*[5]*~~ ***2 minutes to speak on each agenda item.***

2. An executive board may not meet in executive session to enter into, renew, modify, terminate or take any other action regarding a contract, unless it is a contract between the association and an attorney.

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive, or to enter into, renew, modify, terminate or take any other action regarding a contract between the association and the attorney.

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:

(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses; and

(b) Is not entitled to attend the deliberations of the executive board.

5. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board.

The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to his designated representative.

6. Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

~~[Sec. 9.]~~ ***Sec. 10.*** NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4 to 7, inclusive:

(a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements. The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements are necessary.

3. Any ~~[past due]~~ assessment for common expenses or installment thereof ***that is 60 days or more past due*** bears interest at the rate established by the association ~~[not exceeding 18]~~ ~~*[, which must not exceed 5 percent simple interest per year.]*~~ ***at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date the assessment becomes past due, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the balance is satisfied.***

4. To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(c) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

5. Assessments to pay a judgment against the association may be made only against the units in the common-interest community at the time the judgment was entered, in proportion to their liabilities for common expenses.

6. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.

7. The association of a common-interest community created before January 1, 1992, is not required to make an assessment against a vacant lot located within the community that is owned by the declarant.

8. If liabilities for common expenses are reallocated, assessments for common expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

9. The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting.

~~*[10. Notwithstanding any other provision of law, the association may levy any special assessment:*~~

~~*(a) To repair, replace or restore any major component of the common elements;*~~

~~*(b) To provide adequate funding for the reserves designated to repair, replace or restore any major component of the common elements; or*~~

~~*(c) For any capital improvement,*~~

~~*only by vote or agreement of units' owners of units to which at least two-thirds of the votes in the association are allocated, or any larger majority the declaration specifies.*~~

~~*11. If any special assessment is approved pursuant to subsection 10, payment of the special assessment must be made in accordance with the following schedule:*~~

~~*(a) If the amount of the special assessment is $750 or less, in one payment.*~~

~~*(b) If the amount of the special assessment is more than $750 but less than $1,500, in no fewer than 3 equal installments.*~~

~~*(c) If the amount of the special assessment is $1,500 or more but less than $2,000, in no fewer than 4 equal installments.*~~

~~*(d) If the amount of the special assessment is $2,000 or more but less than $3,000, in no fewer than 6 equal installments.*~~

~~*(c) If the amount of the special assessment is $3,000 or more, in equal installments of no less than $500.*~~

~~*The first payment or installment of any special assessment must be made within 120 days after notice of approval of the special assessment, and there must be an interval of at least 60 days between each installment.*~~

~~*12. Any special assessment or installment thereof that is more than 90 days past due bears interest at the rate established by the association, which must not exceed 3 percent simple interest per year.*~~

~~*13. If any assessment or special assessment pursuant to this section is past due, a statement must be mailed, return receipt requested, to the mailing address of record of the unit's owner within 60 days after the assessment or special assessment becomes past due and every 60 days thereafter if the assessment or special assessment remains past due. If any statement required pursuant to this section is not mailed to the unit's owner within 10 days of the date required pursuant to this section:*~~

~~*(a) The association shall be deemed to have waived any right to interest due pursuant to this section; and*~~

~~*(b) The unit's owner is not required to pay such interest.]*~~

~~[Sec. 10.]~~ ***Sec. 11.*** NRS 116.31151 is hereby amended to read as follows:

116.31151 1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) ~~*[The financial statement for the prior fiscal year.*~~

~~*(b) Any audit prepared pursuant to NRS 116.31144.*~~

~~*(c)]*~~ The budget for the daily operation of the association. The budget must include, without limitation ~~[, the]~~ ***:***

(1) The estimated annual revenue and expenditures of the association ~~[and any]~~ ***;***

(2) Any contributions to be made to the reserve account of the association.

(3) For each month in which expenses in excess of $100 are estimated to be incurred, an itemized list of the expenses expected to be incurred during that month.

(4) A requirement that any money budgeted for nonrecurring expenses in excess of $100, other than expenses necessary for emergency repairs or emergency services, must not be expended without first obtaining the signatures of at least two members of the executive board.

(b) ~~*[(d)]*~~ The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets ~~[financial documents]~~ of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, ~~[documents,]~~ accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; ~~[at a designated common area located within the common-interest community]~~ ***but not to exceed 60 miles from the physical location of the common-interest community;*** and

(b) Copies of the budgets ~~[financial documents]~~ will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. ***The executive board must provide full disclosure concerning the proposed budget and allow comments by units' owners and discussion of those comments.*** Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

~~[Sec. 11.]~~ ***Sec. 12.*** NRS 116.3116 is hereby amended to read as follows:

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

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

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

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

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

➥ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

8. 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 or 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.

9. 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.

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

(1) 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.

~~*[10. The association may not foreclose any lien upon any unit pursuant to this section.*~~

~~Sec. 12.~~ ***Sec. 13.*** NRS 116.31175 is hereby amended to read as follows:

116.31175 1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review ***at the business office of the association or*** ~~*[a designated common area located within the common-interest community]*~~ ***or a designated business location not to exceed 60 miles from the physical location of the common-interest community;*** during the regular working hours of the association, including, without limitation, ~~*[any draft documents, legal opinions or correspondence,]*~~ all contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the number of hours worked and the salaries and benefits of those employees; ~~*[and]*~~

(b) The records of the association relating to another unit's owner, except for those records described in subsection 2 ~~[.]~~ ; and

(c) A contract between the association and an attorney.

2. The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation involving a failure to pay an assessment, for which the executive board has imposed a fine, a construction penalty or any other sanction. The general record:

(a) Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty.

(b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the unit, if any, that is associated with the violation.

(c) Must be maintained in an organized and convenient filing system or data system that allows a unit's owner to search and review the general records concerning violations of the governing documents.

3. If the executive board refuses to allow a unit's owner to review the books, records or other papers of the association, the Ombudsman may:

(a) On behalf of the unit's owner and upon written request, review the books, records or other papers of the association during the regular working hours of the association; and

(b) If he is denied access to the books, records or other papers, request the Commission, or any member thereof acting on behalf of the Commission, to issue a subpoena for their production.

4. The books, records and other papers of an association must be maintained for at least 10 years. The provisions of this subsection do not apply to:

(a) The minutes of a meeting of the units' owners which must be maintained in accordance with NRS 116.3108; or

(b) The minutes of a meeting of the executive board which must be maintained in accordance with NRS 116.31083.

5. The executive board shall not require a unit's owner to pay an ~~[any]~~ amount in excess of $10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section. ***Upon written request of a unit's owner, copies must be provided to the unit's owner, in electronic ~~[or paper]~~ format if available at no charge.***

Sec. 14. **NRS 116.31183 is hereby amended to read as follows:**

116.31183 *1.* An executive board, a member of an executive board or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

~~[1.]~~ *(a)* Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association; or

~~[2.]~~ *(b)* Requested in good faith to review the books, records or other papers of the association.

2. In addition to any other remedy provided by law, upon a violation of this section a unit's owner may bring a separate action to recover:

(a) Compensatory damages;

(b) Punitive damages; and

(c) Attorney's fees and costs of bringing the separate action.

Sec. 15. **NRS 116.31185 is hereby amended to read as follows:**

116.31185 1. Except as otherwise provided in subsection 2, 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:

(a) Would improperly influence or would appear to a reasonable person to improperly influence the decisions made by those persons; or

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

2. Notwithstanding the provisions of subsection 1, a member of an executive board, an officer of an association, a community manager or any person working for a community manager shall not accept, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value from:

(a) An attorney, law firm or vendor, or any person working directly or indirectly for the attorney, law firm or vendor, which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such attorney, law firm or vendor; or

(b) A declarant, an affiliate of a declarant or any person responsible for the construction of the applicable community or association which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such declarant, affiliate or person.

3. An attorney, law firm or vendor, or any person working directly or indirectly for the attorney, law firm or vendor, shall not provide, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value to a member of the executive board, an officer of the association, the community manager or any person working for the community manager which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such member, officer, community manager or person.

4. A declarant, an affiliate of a declarant or any person responsible for the construction of a community or association, shall not provide, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value to a member of the executive board, an officer of the association, the community manager or any person working for the community manager which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such member, officer, community manager or person.

5. 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.

6. 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 ***set forth in sections 31 and 32 of this act and any additional standards of practice*** adopted by the Commission ***by regulation*** pursuant to NRS 116A.400;

(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 5.

~~[Sec. 13.]~~ ***Sec. 16.*** NRS 116.4102 is hereby amended to read as follows:

116.4102 1. Except as otherwise provided in subsection 2, a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of NRS 116.4103 to 116.4106, inclusive.

2. A declarant may transfer responsibility for the preparation of all or a part of the public offering statement to a successor declarant pursuant to NRS 116.3104 and 116.31043, or to a dealer who intends to offer units in the common-interest community. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection 1.

3. Any declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in subsection 1 of NRS 116.4108. The declarant or his transferee under subsection 2 is liable under NRS 116.4108 and 116.4117 for any false or misleading statement set forth therein or for any omission of a material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant or dealer did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

4. If a unit is part of a common-interest community and is part of any other real estate in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single

public offering statement conforming to the requirements of NRS 116.4103 to 116.4106, inclusive, as those requirements relate to the real estate in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing two or more public offering statements. If the requirements of this chapter conflict with those of another law of this State, the requirements of this chapter prevail.

~~*[5. Before offering any interest in a unit to the public, in addition to preparing a public offering statement for a purchaser pursuant to this section, a declarant shall make available to a purchaser a presentation, conducted in person or through the use of multimedia technology, containing a description and summary of the governing documents. As used in this subsection, "multimedia technology" means an audio compact disc, digital video disc, computer file or other similar technology that allows a person to view or listen to recorded material.]*~~

Sec. 17. **NRS 116.4103 is hereby amended to read as follows:**

116.4103 1. Except as otherwise provided in NRS 116.41035, a public offering statement must set forth or fully and accurately disclose each of the following:

(a) The name and principal address of the declarant and of the common-interest community, and a statement that the common-interest community is either a condominium, cooperative or planned community.

(b) A general description of the common-interest community, including to the extent possible, the types, number and declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the common-interest community.

(c) The estimated number of units in the common-interest community.

(d) Copies of the declaration, bylaws, and any rules or regulations of the association, but a plat or plan is not required.

(e) A current year-to-date financial statement, including the most recent audited or reviewed financial statement, and the projected budget for the association, either within or as an exhibit to the public offering statement, for 1 year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association. The budget must include, without limitation:

(1) A statement of the amount included in the budget as reserves for repairs, replacement and restoration pursuant to NRS 116.3115; and

(2) The projected monthly assessment for common expenses for each type of unit, including the amount established as reserves pursuant to NRS 116.3115.

(f) A description of any services or subsidies being provided by the declarant or an affiliate of the declarant, not reflected in the budget.

(g) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(h) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages.

(i) A statement that unless the purchaser or his agent has personally inspected the unit, the purchaser may cancel, by written notice, his contract for purchase until midnight of the fifth calendar day following the date of execution of the contract, and the contract must contain a provision to that effect.

(j) A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the common-interest community of which a declarant has actual knowledge.

(k) Any current or expected fees or charges to be paid by units' owners for the use of the common elements and other facilities related to the common-interest community.

(l) ***In addition to any other document, a statement describing all current or expected fees or charges for each unit, including, without limitation, association fees, fines, assessments, late charges or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each unit.***

(m) The information statement set forth in NRS 116.41095.

2. A declarant is not required to revise a public offering statement more than once each calendar quarter, if the following warning is given prominence in the statement: "THIS PUBLIC OFFERING STATEMENT IS CURRENT AS OF (insert a specified date). RECENT DEVELOPMENTS REGARDING (here refer to particular provisions of NRS 116.4103 and 116.4105) MAY NOT BE REFLECTED IN THIS STATEMENT."

~~[Sec. 14.]~~ ***Sec. 18.*** 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
4. The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in NRS 116.3116 and 116.31162.

~~[Sec. 15.]~~ ***Sec. 19.*** NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his authorized agent shall furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095;

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152; and

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge.

(e) In addition to any other document, a statement describing all current or expected fees or charges for each unit, including, without limitation, association fees, fines, assessments, late charges or penalties, interest rates on delinquent assessments, additional costs for collecting past due fines and charges for opening or closing any file for each unit.

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, he must hand deliver the notice of cancellation to the unit's owner or his authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his authorized agent, the association shall furnish all of the following to the unit's owner or his authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b) and (d) of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by this section, the seller is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

~~*[7. In addition to the resale package required to be furnished to a purchaser pursuant to this section, the association shall make available to a purchaser, at the expense of the association, a presentation, conducted in person or through the use of multimedia technology, containing a description and summary of the governing documents. As used in this subsection, "multimedia technology" means an audio compact disc, digital video disc, computer file or other similar technology that allows a person to view or listen to recorded material.]*~~

~~[Sec. 16.]~~ ***Sec. 20.*** NRS 116.41095 is hereby amended to read as follows:

116.41095 The information statement required by NRS 116.4103 and 116.4109 must be in substantially the following form:

BEFORE YOU PURCHASE PROPERTY IN A COMMON-INTEREST COMMUNITY DID YOU KNOW . . .

1. YOU GENERALLY HAVE 5 DAYS TO CANCEL THE PURCHASE AGREEMENT?

When you enter into a purchase agreement to buy a home or unit in a common-interest community, in most cases you should receive either a public offering statement, if you are the original purchaser of the home or unit, or a resale package, if you are not the original purchaser. The law generally provides for a 5-day period in which you have the right to cancel the purchase agreement. The 5-day period begins on different starting dates, depending on whether you receive a public offering statement or a resale package. Upon receiving a public offering statement or a resale package, you should make sure you are informed of the deadline for exercising your right to cancel. In order to exercise your right to cancel, the law generally requires that you hand deliver the notice of cancellation to the seller within the 5-day period, or mail the notice of cancellation to the seller by prepaid United States mail within the 5-day period. For more information regarding your right to cancel, see Nevada Revised Statutes 116.4108, if you received a public offering statement, or Nevada Revised Statutes 116.4109, if you received a resale package.

2. YOU ARE AGREEING TO RESTRICTIONS ON HOW YOU CAN USE YOUR PROPERTY?

These restrictions are contained in a document known as the Declaration of Covenants, Conditions and Restrictions. The CC&Rs become a part of the title to your property. They bind you and every future owner of the property whether or not you have read them or had them explained to you. The CC&Rs, together with other "governing documents" (such as association bylaws and rules and regulations), are intended to preserve the character and value of properties in the community, but may also restrict what you can do to improve or change your property and limit how you use and enjoy your property. By purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your lifestyle and freedom of choice. You should review the CC&Rs, and other governing documents before purchasing to make sure that these limitations and controls are acceptable to you.

3. YOU WILL HAVE TO PAY OWNERS' ASSESSMENTS FOR AS LONG AS YOU OWN YOUR PROPERTY?

As an owner in a common-interest community, you are responsible for paying your share of expenses relating to the common elements, such as

landscaping, shared amenities and the operation of any homeowners' association. The obligation to pay these assessments binds you and every future owner of the property. Owners' fees are usually assessed by the homeowners' association and due monthly. You have to pay dues whether or not you agree with the way the association is managing the property or spending the assessments. The executive board of the association may have the power to change and increase the amount of the assessment and to levy special assessments against your property to meet extraordinary expenses. In some communities, major components of the common elements of the community such as roofs and private roads must be maintained and replaced by the association. If the association is not well managed or fails to provide adequate funding for reserves to repair, replace and restore common elements, you may be required to pay large, special assessments to accomplish these tasks.

4. IF YOU FAIL TO PAY OWNERS' ASSESSMENTS, YOU COULD LOSE YOUR HOME?

If you do not pay these assessments when due, the association usually has the power to collect them by selling your property in a nonjudicial foreclosure sale. If fees become delinquent, you may also be required to pay penalties and the association's costs and attorney's fees to become current. If you dispute the obligation or its amount, your only remedy to avoid the loss of your home may be to file a lawsuit and ask a court to intervene in the dispute.

5. YOU MAY BECOME A MEMBER OF A HOMEOWNERS' ASSOCIATION THAT HAS THE POWER TO AFFECT HOW YOU USE AND ENJOY YOUR PROPERTY?

Many common-interest communities have a homeowners' association. In a new development, the association will usually be controlled by the developer until a certain number of units have been sold. After the period of developer control, the association may be controlled by property owners like yourself who are elected by homeowners to sit on an executive board and other boards and committees formed by the association. The association, and its executive board, are responsible for assessing homeowners for the cost of operating the association and the common or shared elements of the community and for the day to day operation and management of the community. Because homeowners sitting on the executive board and other boards and committees of the association may not have the experience or professional background required to understand and carry out the responsibilities of the association properly, the association may hire professional community managers to carry out these responsibilities.

Homeowners' associations operate on democratic principles. Some decisions require all homeowners to vote, some decisions are made by the executive board or other boards or committees established by the association or governing documents. Although the actions of the

association and its executive board are governed by state laws, the CC&Rs and other documents that govern the common-interest community, decisions made by these persons will affect your use and enjoyment of your property, your lifestyle and freedom of choice, and your cost of living in the community. You may not agree with decisions made by the association or its governing bodies even though the decisions are ones which the association is authorized to make. Decisions may be made by a few persons on the executive board or governing bodies that do not necessarily reflect the view of the majority of homeowners in the community. If you do not agree with decisions made by the association, its executive board or other governing bodies, your remedy is typically to attempt to use the democratic processes of the association to seek the election of members of the executive board or other governing bodies that are more responsive to your needs. If you have a dispute with the association, its executive board or other governing bodies, you may be able to resolve the dispute through the complaint, investigation and intervention process administered by the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, the Nevada Real Estate Division and the Commission for Common-Interest Communities and Condominium Hotels. However, to resolve some disputes, you may have to mediate or arbitrate the dispute and, if mediation or arbitration is unsuccessful, you may have to file a lawsuit and ask a court to resolve the dispute. In addition to your personal cost in mediation or arbitration, or to prosecute a lawsuit, you may be responsible for paying your share of the association's cost in defending against your claim.

~~[6.]~~ *5.* YOU ARE REQUIRED TO PROVIDE PROSPECTIVE PURCHASERS OF YOUR PROPERTY WITH INFORMATION ABOUT LIVING IN YOUR COMMON-INTEREST COMMUNITY? The law requires you to provide a prospective purchaser of your property with a copy of the community's governing documents, including the CC&Rs, association bylaws, and rules and regulations, as well as a copy of this document. You are also required to provide a copy of the association's current year-to-date financial statement, including, without limitation, the most recent audited or reviewed financial statement, a copy of the association's operating budget and information regarding the amount of the monthly assessment for common expenses, including the amount set aside as reserves for the repair, replacement and restoration of common elements. You are also required to inform prospective purchasers of any outstanding judgments or lawsuits pending against the association of which you are aware. For more information regarding these requirements, see Nevada Revised Statutes 116.4109.

~~[7.]~~ *6.* YOU HAVE CERTAIN RIGHTS REGARDING OWNERSHIP IN A COMMON-INTEREST COMMUNITY THAT ARE GUARANTEED YOU BY THE STATE?

Pursuant to provisions of chapter 116 of Nevada Revised Statutes, you have the right:

(a) To be notified of all meetings of the association and its executive board, except in cases of emergency.

(b) To attend and speak at all meetings of the association and its executive board, except in some cases where the executive board is authorized to meet in closed, executive session.

(c) To request a special meeting of the association upon petition of at least 10 percent of the homeowners.

(d) To inspect, examine, photocopy and audit financial and other records of the association.

(e) To be notified of all changes in the community's rules and regulations and other actions by the association or board that affect you.

~~[8.]~~ *7.* QUESTIONS?

Although they may be voluminous, you should take the time to read and understand the documents that will control your ownership of a property in a common-interest community. You may wish to ask your real estate professional, lawyer or other person with experience to explain anything you do not understand. You may also request assistance from the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, Nevada Real Estate Division, at (telephone number).

Buyer or prospective buyer's initials:_____

Date:_____

~~[Sec. 17.]~~ ***Sec. 21.*** NRS 116.745 is hereby amended to read as follows:

116.745 As used in NRS 116.745 to 116.795, inclusive, unless the context otherwise requires, "violation" means a violation of ~~[any]~~ *:*

*1. **Any** provision of this chapter ~~[, any]~~ ;*

*2. **Any** regulation adopted pursuant ~~[thereto or any]~~ **to this chapter;***

*3. **Any** order of the Commission or a hearing panel ~~[.]~~ **; or***

4. Any provision of the governing documents of an association.

~~[Sec. 18.]~~ ***Sec. 22.*** ~~[NRS 116.785 is hereby amended to read as follows:~~

~~116.785 1. If the Commission or the hearing panel, after notice and hearing, finds that the respondent has committed a violation, the Commission or the hearing panel may take any or all of the following actions:~~

~~(a) Issue an order directing the respondent to cease and desist from continuing to engage in the unlawful conduct that resulted in the violation.~~

~~(b) Issue an order directing the respondent to take affirmative action to correct any conditions resulting from the violation.~~

~~(c) Impose an administrative fine [of] against:~~

~~*(1) A unit's owner or tenant of a unit's owner if the tenant has entered into an agreement with the unit's owner to abide by the governing documents of the association and the provisions of this chapter and any regulations adopted pursuant thereto. The amount of the administrative fine must be* not more than [$1,000] *$100* for each violation [.] *, except that the total of all administrative fines imposed against a unit's owner or tenant pursuant to this subparagraph must not exceed $400 during any 2 year period.*~~

~~*(2) An association, any officer, employee or agent of an association, any member of an executive board, any community manager who holds a certificate and any other community manager, any person who holds a permit to conduct a study of the reserves of an association issued pursuant to chapter 116A of NRS, and any declarant or affiliate of a declarant. Except as otherwise provided in this subparagraph, the amount of the administrative fine must be not more than $2,000 for each violation and the total of all administrative fines imposed against any person pursuant to this subparagraph must not exceed $6,000 during any 2 year period. If a person has committed three violations within a 2-year period, an administrative fine may be imposed of not more than $4,500 for each additional violation that occurs within the 2 year period and the limitation of $6,000 on the total of all administrative fines imposed against the person during the 2-year period does not apply.*~~

~~2. If the respondent is a member of an executive board or an officer of an association, the Commission or the hearing panel may order the respondent removed from his office or position if the Commission or the hearing panel, after notice and hearing, finds that:~~

~~(a) The respondent has knowingly and willfully committed a violation; and~~

~~(b) The removal is in the best interest of the association.~~

~~3. If the respondent violates any order issued by the Commission or the hearing panel pursuant to this section, the Commission or the hearing panel, after notice and hearing, may impose an administrative fine of not more than $1,000 for each violation.~~

~~4. If the Commission or the hearing panel takes any disciplinary action pursuant to this section, the Commission or the hearing panel may order the respondent to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation. [and reasonable attorney's fees.]~~

~~*5. In any matter brought before the Commission or a hearing panel pursuant to the provisions of this chapter, regardless of whether or not the governing documents provide for such fees to be granted to a prevailing party, attorney's fees may be granted to:*~~

~~*(a) A unit's owner who is the prevailing party; or*~~

~~*(b) Any person other than a unit's owner who is the prevailing party, except that if the matter is brought before the Commission or a hearing panel based upon an affidavit filed by a unit's owner pursuant to NRS 116.760, that unit's owner must not be required to pay any attorney's fees unless it is determined that the affidavit was filed in bad faith or for a vexatious purpose.*~~

~~6. Notwithstanding any other provision of this section, unless the respondent has knowingly and willfully committed a violation, if the respondent is a member of an executive board or an officer of an association:~~

~~(a) The association is liable for all fines and costs imposed against the respondent pursuant to this section; and~~

~~(b) The respondent may not be held personally liable for those fines and costs.]~~ **(Deleted by amendment.)**

~~[Sec. 19.]~~ *Sec. 23.* ~~[NRS 278A.170 is hereby amended to read as follows:~~

~~278A.170 The procedures for enforcing payment of an assessment for the maintenance of common open space provided in NRS 116.3116 [to 116.31168, inclusive,] are also available to any organization for the ownership and maintenance of common open space established other than under this chapter or chapter 116 of NRS and entitled to receive payments from owners of property for such maintenance under a recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude which provides that any reasonable and ratable assessment thereon for the organization's costs of maintaining the common open space constitutes a lien or encumbrance upon the property.]~~ **(Deleted by amendment.)**

~~[Sec. 20.]~~ *Sec. 24.* ~~[NRS 649.020 is hereby amended to read as follows:~~

~~649.020 1. "Collection agency" means 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 or 116B 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.~~

~~(f) Duly licensed real estate brokers, except for those real estate brokers 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 or the management of] an association of a condominium hotel 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, or] 116B.635 to 116B.660, inclusive; and~~

~~(b) Does not include any other community manager while engaged in the management of [a common interest community or the management of] an association of a condominium hotel.~~

~~4. As used in this section:~~

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

~~(b) "Unit owners' association" has the meaning ascribed to it in NRS 116.011 or 116B.030.]~~ **(Deleted by amendment.)**

~~[Sec. 21.]~~ *Sec. 25.* ~~[NRS 116.21175, 116.31162, 116.31163, 116.311635, 116.31164, 116.31166 and 116.31168 are hereby repealed.]~~ **(Deleted by amendment.)**

Sec. 26. **Chapter 116A of NRS is hereby amended by adding thereto the provisions set forth as sections ~~[26]~~ 27 to ~~[31,]~~ 32, inclusive, of this act.**

Sec. 27. ***"Client" means an executive board that has entered into a management agreement with a community manager.***

~~[Sec. 26.]~~ *Sec. 28.* ***"Management agreement" means an agreement for the management of a common-interest community.***

Sec. 29. ***Before entering into a management agreement, a community manager shall disclose in writing to the prospective client any material and relevant information which he knows, or by the exercise of reasonable care and diligence should know, relate to the performance of the management agreement, including any matters which may affect his ability to comply with the provisions of this chapter or chapter 116 or 116B of NRS. Such written disclosure must include, without limitation:***

1. Whether he, or any member of his organization, expects to receive any direct or indirect compensation, gifts or profits from any person who will perform services for the client and, if so, the identity of the person and the nature of the services rendered.

2. Any affiliation with or financial interest in any person or business who furnishes any goods or services to the association.

3. Any pecuniary relationships with any unit's owner, member of the executive board or officer of the association.

~~[Sec. 28.]~~ *Sec. 30. 1. Any management agreement must:*

(a) Be in writing and signed by all parties;

(b) Be entered into between the client and the community manager or the employer of the community manager if the community manager is acting on behalf of a corporation, partnership, limited partnership, limited-liability company or other entity;

(c) State the term of the management agreement;

(d) State the basic consideration for the services to be provided and the payment schedule;

(e) Include a complete schedule of all fees, costs, expenses and charges to be imposed by the community manager, whether direct or indirect, including, without limitation:

(1) The costs for any new association or start-up costs;

(2) The fees for special or nonroutine services, such as the mailing of collection letters, the recording of liens and foreclosing of property;

(3) Reimbursable expenses;

(4) The fees for the sale or resale of a unit or for setting up the account of a new member; and

(5) The portion of fees that are to be retained by the client and the portion to be retained by the community manager;

(f) State the identity and the legal status of the contracting parties;

(g) State any limitations on the liability of each contracting party;

(h) Include a statement of the scope of work of the community manager;

(i) State the spending limits of the community manager;

(j) Include provisions relating to the grounds and procedure for termination of the community manager;

(k) Identify the types and amounts of insurance coverage to be carried by each contracting party, including, without limitation:

(1) A requirement that the community manager or his employer shall maintain insurance covering liability for errors or omissions, professional liability or a surety bond to compensate for losses actionable pursuant to this chapter in an amount of $1,000,000 or more;

(2) An indication of which contracting party will maintain fidelity bond coverage; and

(3) A statement as to whether the association will maintain directors and officers liability coverage for the executive board;

(l) Include provisions for dispute resolution;

(m) Acknowledge that all records and books of the client are the property of the client, except any proprietary information and software belonging to the community manager;

(n) State the physical location, including the street address, of the records of the client, which must be within 60 miles from the physical location of the common-interest community;

(o) State the frequency and extent of regular inspections of the common-interest community; and

(p) State the extent, if any, of the authority of the community manager to sign checks on behalf of the client in an operating account.

2. In addition to any other requirements under this section, a management agreement may:

(a) Provide for mandatory binding arbitration; or

(b) Allow the provisions of the management agreement to apply month to month following the end of the term of the management agreement, but the management agreement may not contain an automatic renewal provision.

3. Not later than 10 days after the effective date of a management agreement, the community manager shall provide each member of the executive board evidence of the existence of the required insurance, including, without limitation:

(a) The names and addresses of all insurance companies;

(b) The total amount of coverage; and

(c) The amount of any deductible.

4. After signing a management agreement, the community manager shall provide a copy of the management agreement to each member of the executive board. Within 30 days after an election or appointment of a new member to the executive board, the community manager shall provide the new member with a copy of the management agreement.

5. Any changes to a management agreement must be initialed by the contracting parties. If there are any changes after the execution of a management agreement, those changes must be in writing and signed by the contracting parties.

6. Except as otherwise provided in the management agreement, upon the termination or assignment of a management agreement, the community manager shall, within 30 days after the termination or assignment, transfer possession of all books, records and other papers of the client to the succeeding community manager, or to the client if there is no succeeding community manager, regardless of any unpaid fees or charges to the community manager or management company.

7. Notwithstanding any provision in a management agreement to the contrary, a management agreement may be terminated by the client

without penalty upon 30 days' notice following a violation by the community manager of any provision of this chapter or chapter 116 of NRS.

~~[Sec. 29.]~~ *Sec. 31. In addition to any additional standards of practice for community managers adopted by the Commission by regulation pursuant to NRS 116A.400, a community manager shall:*

1. Except as otherwise provided by specific statute, at all times:

(a) Act as a fiduciary in any client relationship; and

(b) Exercise ordinary and reasonable care in the performance of his duties.

2. Comply with all applicable:

(a) Federal, state and local laws, regulations and ordinances; and

(b) Lawful provisions of the governing documents of each client.

3. Keep informed of new developments in the management of a common-interest community through continuing education, including, without limitation, new developments in law, insurance coverage and accounting principles.

4. Advise a client to obtain advice from an independent expert relating to matters that are beyond the expertise of the community manager.

5. Under the direction of a client, uniformly enforce the provisions of the governing documents of the association.

6. At all times ensure that:

(a) The financial transactions of a client are current, accurate and properly documented; and

(b) There are established policies and procedures that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation:

(1) Proper maintenance of accounting records;

(2) Documentation of the authorization for any purchase orders, expenditures or disbursements;

(3) Verification of the integrity of the data used in business decisions;

(4) Facilitation of fraud detection and prevention; and

(5) Compliance with all applicable laws and regulations governing financial records.

8. Prepare or cause to be prepared interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of an association is fairly presented in accordance with all applicable laws and regulations.

9. Cause to be prepared annually a financial audit performed by an independent certified public accountant of the records of the community

manager pertaining to the common-interest community, which must be made available to the Division.

10. Make the financial records of an association available for inspection by the Division in accordance with the applicable laws and regulations.

11. Cooperate with the Division in resolving complaints filed with the Division.

12. Upon written request, make the financial records of an association available to the units' owners electronically or during regular business hours required for inspection at a reasonably convenient location which must be within 60 miles from the physical location of the common-interest community and provide copies of such records in accordance with the applicable laws and regulations. As used in this subsection, "regular business hours" means Monday through Friday, 9 a.m. to 5 p.m., excluding legal holidays.

13. Maintain and invest association funds in a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, National Credit Union Share Insurance Fund, Securities Investor Protection Corporation, or a private insurer approved pursuant to NRS 647.755, or in government securities that are backed by the full faith and credit of the United States government.

14. Except as required under collection agreements, maintain the various funds of the association in separate financial accounts in the name of the association and ensure that the association is authorized to have direct access to those accounts.

15. Provide notice to each unit's owner that the executive board is aware of all legal requirements pursuant to the applicable laws and regulations.

16. Maintain internal accounting controls, including, without limitation, segregation of incompatible accounting functions.

17. Ensure that the executive board develops and approves written investment policies and procedures.

18. Recommend in writing to each client that the association register with the Division, maintain its registration and file all papers with the Division and the Secretary of State as required by law.

19. Comply with the directions of a client, unless the directions conflict with the governing documents of the association or the applicable laws or regulations of this State.

20. Recommend in writing to each client that the association be in compliance with all applicable federal, state and local laws, regulations and ordinances and the governing documents of the association.

21. Obtain, when practicable, at least three qualified bids for any capital improvement project for the association.

22. Develop written collection policies, approved by the executive board, to comply with all applicable federal, state and local laws,

regulations and ordinances relating to the collection of debt. The collection policies must require:

(a) That the executive board approve all write-offs of debt; and

(b) That the community manager provide timely updates and reports as necessary.

~~[Sec. 30.]~~ *Sec. 32. In addition to the standards of practice for community managers set forth in section 31 of this act and any additional standards of practice adopted by the Commission by regulation pursuant to NRS 116A.400, a community manager shall not:*

1. Except as otherwise required by law or court order, disclose confidential information relating to a client, which includes, without limitation, the business affairs and financial records of the client, unless the client agrees to the disclosure in writing.

2. Impede or otherwise interfere with an investigation of the Division by:

(a) Failing to comply with a request of the Division to provide documents;

(b) Supplying false or misleading information to an investigator, auditor or any other officer or agent of the Division; or

(c) Concealing any facts or documents relating to the business of a client.

3. Commingle money or other property of a client with the money or other property of another client, another association, the community manager or the employer of the community manager.

4. Use money or other property of a client for his own personal use.

5. Be a signer on a withdrawal from a reserve account of a client.

6. Except as otherwise permitted by the provisions of the court rules governing the legal profession, establish an attorney-client relationship with an attorney or law firm which represents a client that employs the community manager or with whom the community manager has a management agreement.

7. Provide or attempt to provide to a client a service concerning a type of property or service:

(a) That is outside his field of experience or competence without the assistance of a qualified authority unless the fact of his inexperience or incompetence is disclosed fully to the client and is not otherwise prohibited by law; or

(b) For which he is not properly licensed.

8. Intentionally apply a payment of an assessment from a unit's owner towards any fine, fee or other charge that is due.

9. Refuse to accept from a unit's owner payment of any assessment, fine, fee or other charge that is due because there is an outstanding payment due.

10. Collect any fees or other charges from a client not specified in the management agreement.

11. Accept any compensation, gift or any other item of material value as payment or consideration for a referral or in the furtherance or performance of his normal duties unless:

(a) Acceptance of the compensation, gift or other item of material value complies with the provisions of NRS 116.31185 or 116B.695 and all other applicable federal, state and local laws, regulations and ordinances; and

(b) Before acceptance of the compensation, gift or other item of material value, the community manager provides full disclosure to the client and the client consents, in writing, to the acceptance of the compensation, gift or other item of material value by the community manager.

Sec. 33. **NRS 116A.010 is hereby amended to read as follows:**

116A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 116A.020 to 116A.130, inclusive, *and sections 27 and 28 of this act* have the meanings ascribed to them in those sections.

Sec. 34. **NRS 116A.400 is hereby amended to read as follows:**

116A.400 1. Except as otherwise provided in this section, a person shall not act as a community manager unless the person holds a certificate.

2. ~~[The]~~ *In addition to the standards of practice for community managers set forth in sections 31 and 32 of this act, the* Commission shall by regulation ~~[provide for the]~~ *adopt any additional* standards of practice for community managers who hold certificates ~~[.]~~ *that the Commission deems appropriate and necessary.*

3. The Division may investigate any community manager who holds a certificate to ensure that the community manager is complying with the provisions of this chapter and chapters 116 and 116B of NRS and ~~[the]~~ *any additional* standards of practice adopted by the Commission.

4. In addition to any other remedy or penalty, if the Commission or a hearing panel, after notice and hearing, finds that a community manager who holds a certificate has violated any provision of this chapter or chapter 116 or 116B of NRS or any of the *additional* standards of practice adopted by the Commission, the Commission or the hearing panel may take appropriate disciplinary action against the community manager.

5. In addition to any other remedy or penalty, the Commission may:

(a) Refuse to issue a certificate to a person who has failed to pay money which the person owes to the Commission or the Division.

(b) Suspend, revoke or refuse to renew the certificate of a person who has failed to pay money which the person owes to the Commission or the Division.

6. The provisions of this section do not apply to:

(a) A financial institution that is engaging in an activity permitted by law.

(b) An attorney who is licensed to practice in this State and who is acting in that capacity.

(c) A trustee with respect to the property of the trust.

(d) A receiver with respect to property subject to the receivership.

(e) A member of an executive board or an officer of an association who is acting solely within the scope of his duties as a member of the executive board or an officer of the association.

Sec. 35. **NRS 116B.695 is hereby amended to read as follows:**

116B.695 1. Except as otherwise provided in subsection 2, 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:

(a) Would improperly influence or would appear to a reasonable person to improperly influence the decisions made by those persons; or

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

2. Notwithstanding the provisions of subsection 1, a member of an executive board, an officer of an association or a community manager shall not accept, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value from:

(a) An attorney, law firm or vendor, or any person working directly or indirectly for the attorney, law firm or vendor, which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such attorney, law firm or vendor; or

(b) A declarant, an affiliate of a declarant or any person responsible for the construction of the applicable condominium hotel or association which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such declarant, affiliate or person.

3. An attorney, law firm or vendor, or any person working directly or indirectly for the attorney, law firm or vendor, shall not provide, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value to a member of the executive board or an officer of the association, the community manager or any person working for the community manager which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such member, officer, community manager or person.

4. A declarant, an affiliate of a declarant or any person responsible for the construction of a condominium hotel or association ~~[,]~~ shall not provide, directly or indirectly, any gifts, incentives, gratuities, rewards or other items of value to a member of the executive board or an officer of the association, the community manager or any person working for the community manager which total more than the amount established by the Commission by regulation, not to exceed $100 per year per such member, officer, community manager or person.

5. 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 this chapter for violations of the governing documents of the association; or

(b) Any percentage or proportion of those fines.

6. 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 ***set forth in sections 31 and 32 of this act and any additional standards of practice*** adopted by the Commission ***by regulation*** pursuant to NRS 116A.400;

(b) The compensation, fee or other remuneration is being paid to the community manager for providing management of the association of the condominium hotel; and

(c) The compensation, fee or other remuneration is not structured in a way that would violate the provisions of subsection 1 or 5.

~~[Sec. 22.]~~ ***Sec. 36.*** This act becomes effective on July 1, 2009.

LEADLINES OF REPEALED SECTIONS

~~[116.21175 Procedure for seeking confirmation from district court of certain amendments to declaration.~~

~~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.]~~

H

1

Southerland, Cindy

From: Bill Uffelman [wuffelman@nvbankers.org]
Sent: Tuesday, March 31, 2009 8:15 AM
To: Spiegel, Ellen Assemblywoman
Subject: FW: AB 204 Amendment

At last week's Assembly Judiciary subcommittee hearing on AB204 I was directed by the Chair to prepare an amendment that would exempt condominium and attached dwellings from the 24 month lien superiority provisions of the bill to conform with current Fannie Mae lending provisions. I agreed to prepare an amendment with the understanding that the NBA is still opposed the bill.

I have prepared the following to comply with the directive.

Bill Uffelman
702-375-9025

****

AB 204 by Assemblywoman Spiegel et al

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.
_ The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses
based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration

Page 5 Lines 11 & 12

,**with respect to a single family detached dwelling,** during the [6 months] *2 years* immediately preceding institution of an action to enforce the lien or, **with respect to all other dwellings, during the 6 months immediately preceding institution of an action to enforce the lien.** This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

NRS 116.31151 Annual distribution to units' owners of operating and reserve budgets or summaries of such budgets and collection policy; ratification of budget.

1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

(c) The collection policy established by the association. The collection policy shall:

(1) Generally outline the responsibilities and obligation of paying timely assessments assessments; and

(2) Generally describe the options available to the association should the unit's owner fail to pay assessments

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

(Added to NRS by 1999, 2993; A 2003, 2241; 2005, 2605)

David Stone

AB 204

Proposed Amendment to Assembly Bill No. 207
(by Assemblyman Carpenter)

Add a new section following section 1 to exclude small associations of 20 or fewer units from the requirement of having a reserve study conducted by a person who holds a permit, and instead allows the executive board to determine the qualifications of the person conducting the study. The new section would read as follows:

Sec. 1.5. NRS 116.31152 is hereby amended to read as follows:

1. The executive board shall:

(a) At least once every 5 years, cause to be conducted a study of the reserves required to repair, replace and restore the major components of the common elements;

(b) At least annually, review the results of that study to determine whether those reserves are sufficient; and

(c) At least annually, make any adjustments to the association's funding plan which the executive board deems necessary to provide adequate funding for the required reserves.

2. The study of the reserves required by subsection 1 must be conducted by a person who holds a permit issued pursuant to chapter 116A of NRS ~~[.]~~, ***unless the association contains 20 or fewer units and is located in a county whose population is 45,000 or less, and then the study must be conducted by a person deemed qualified by the executive board to conduct such a study.***

3. The study of the reserves must include, without limitation:

(a) A summary of an inspection of the major components of the common elements that the association is obligated to repair, replace or restore;

(b) An identification of the major components of the common elements that the association is obligated to repair, replace or restore which have a remaining useful life of less than 30 years;

(c) An estimate of the remaining useful life of each major component of the common elements identified pursuant to paragraph (b);

(d) An estimate of the cost of repair, replacement or restoration of each major component of the common elements identified pursuant to paragraph (b) during and at the end of its useful life; and

(e) An estimate of the total annual assessment that may be necessary to cover the cost of repairing, replacement or restoration of the major components of the common elements identified pursuant to paragraph (b), after subtracting the reserves of the association as of the date of the study, and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves.

4. A summary of the study of the reserves required by subsection 1 must be submitted to the Division not later than 45 days after the date that the executive board adopts the results of the study.

5. If a common-interest community was developed as part of a planned unit development pursuant to chapter 278A of NRS and is subject to an agreement with a city or county to receive credit against the amount of the residential construction tax that is imposed pursuant to NRS 278.4983 and 278.4985, the association that is organized for the common-interest community may use the money from that credit for the repair, replacement or restoration of park facilities and related improvements if:

(a) The park facilities and related improvements are identified as major components of the common elements of the association; and

(b) The association is obligated to repair, replace or restore the park facilities and related improvements in accordance with the study of the reserves required by subsection 1.

MOCK-UP

PROPOSED AMENDMENT 3604 TO ASSEMBLY BILL NO. 251

PREPARED FOR ASSEMBLYMAN SEGERBLOM
MARCH 25, 2009

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

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

Section 1. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, at least a majority of whom must be units' owners. Unless the governing documents provide otherwise, the remaining members of the executive board do not have to be units' owners. The executive board shall elect the officers of the association. The members of the executive board and the officers of the association shall take office upon election.

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

3. The governing documents of the association must provide for terms of office that are staggered in such a manner that, to the extent possible, an

equal number of members of the executive board are elected at each election. The provisions of this subsection do not apply to:

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

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

4. Not less than 30 days before the preparation of a ballot for the election of members of the executive board, the secretary or other officer specified in the bylaws of the association shall cause notice to be given to each unit's owner of his eligibility to serve as a member of the executive board. Each unit's owner who is qualified to serve as a member of the executive board may have his name placed on the ballot along with the names of the nominees selected by the members of the executive board or a nominating committee established by the association. ***Before the secretary or other officer specified in the bylaws of the association causes notice to be given to each unit's owner of his eligibility to serve as a member of the executive board pursuant to this subsection, the executive board may determine that if, at the closing of the prescribed period for nominations for membership on the executive board is equal to or less than the number of members to be elected to the executive board at the election, then:***

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

(b) The candidates so nominated shall be deemed to be duly elected to the executive board not later than 30 days after the date of closing of the prescribed period for nominations; and

(c) Units' owners will receive notification that the candidates so nominated have been elected to the executive board.

5. Each person ~~[whose name is placed on the ballot]~~ ***who is nominated*** as a candidate for a member of the executive board ***pursuant to subsection 4*** must:

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

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

➥ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his candidacy information. The association shall distribute the disclosures to each member of the association with the ballot ***or, in the event ballots are not prepared and mailed pursuant to subsection 4,*** in the manner established ***for distribution of ballots*** in the bylaws of the association.

6. Unless a person is appointed by the declarant:

(a) A person may not be a member of the executive board or an officer of the association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

(b) A person may not be a member of the executive board of a master association or an officer of that master association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for:

(1) That master association; or

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

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

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

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

8. ~~[The]~~ ***Except as otherwise provided in subsection 4, the*** election of any member of the executive board must be conducted by secret written ballot unless ***the election is for an incumbent member of the executive board who is unopposed in seeking reelection or unless*** the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the election of any member of the executive board is conducted by secret written ballot:

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

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

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

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

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

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

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

Sec. 2. NRS 116A.410 is hereby amended to read as follows:

116A.410 1. The Commission shall by regulation provide for the issuance by the Division of certificates. The regulations:

(a) Must establish the qualifications for the issuance of such a certificate, including, without limitation, the education and experience required to obtain such a certificate.

(b) May require applicants to pass an examination in order to obtain a certificate. If the regulations require such an examination, the Commission shall by regulation establish fees to pay the costs of the examination, including any costs which are necessary for the administration of the examination.

(c) ***Must establish a procedure for a person who was previously issued a certificate and who no longer holds a certificate to reapply for and obtain a new certificate without undergoing any period of supervision under another community manager, regardless of the length of time that has passed since the person last acted as a community manager.***

(d) May require an investigation of an applicant's background. If the regulations require such an investigation, the Commission shall by regulation establish fees to pay the costs of the investigation.

~~[(d)]~~ *(e)* Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate.

~~[(e)]~~ *(f)* Must establish rules of practice and procedure for conducting disciplinary hearings.

2. The Division may collect a fee for the issuance of a certificate in an amount not to exceed the administrative costs of issuing the certificate.

Sec. 3. This act becomes effective on July 1, 2009.

H

MOCK-UP

PROPOSED AMENDMENT 3626 TO ASSEMBLY BILL NO. 311

PREPARED FOR ASSEMBLYMAN SETTELMEYER
MARCH 26, 2009

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

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

Section 1. NRS 116.31144 is hereby amended to read as follows:

116.31144 1. Except as otherwise provided in subsection 2, the executive board shall:

(a) If the annual budget of the association is less than $75,000, cause the financial statement of the association to be ~~[audited]~~ ***reviewed*** by an independent certified public accountant ~~[at least]~~ ~~[once every 4 fiscal years.]~~ ***during the year immediately preceding the year in which a study of the reserves of the association is to be conducted pursuant to NRS 116.31152.***

(b) If the annual budget of the association is $75,000 or more but less than $150,000, cause the financial statement of the association to be ~~[:~~

~~(1) Audited by an independent certified public accountant at least once every 4 fiscal years; and~~

~~(2) Reviewed]~~ ***reviewed*** by an independent certified public accountant every fiscal year . ~~[for which an audit is not conducted.]~~

PROPOSED AMENDMENT TO AB311

(c) If the annual budget of the association is $150,000 or more, cause the financial statement of the association to be audited by an independent certified public accountant every fiscal year.

2. For any fiscal year for which ~~[an audit]~~ ***a review*** of the financial statement of the association will not be conducted pursuant to subsection 1, the executive board shall cause the financial statement for that fiscal year to be ~~[audited]~~ ***reviewed*** by an independent certified public accountant if, within 180 days before the end of the fiscal year, 15 percent of the total number of voting members of the association submit a written request for such ~~[an audit.]~~ ***a review.***

3. The Commission shall adopt regulations prescribing the requirements for the auditing or reviewing of financial statements of an association pursuant to this section. Such regulations must include, without limitation:

(a) The qualifications necessary for a person to audit or review financial statements of an association; and

(b) The standards and format to be followed in auditing or reviewing financial statements of an association.

H

PROPOSED AMENDMENT TO AB311

MOCK-UP

PROPOSED AMENDMENT TO ASSEMBLY BILL NO. 361

PREPARED FOR ASSEMBLYMAN MCARTHUR
MARCH 30, 2009

PREPARED BY THE RESEARCH DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment and (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment.

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person who ~~[lending institution which]~~ holds a security interest in a unit must provide the association with that person's ~~[the]~~ contact information ~~[of the lending institution,]~~ including any department of the lending institution which handles residential mortgages, as soon as reasonably practicable, but not more than 30 days, after the ~~[lending institution is aware that:]~~ person:

(a) ~~[A person has filed]~~ Files an action for recovery of a debt secured by the unit pursuant to NRS 40.430; or

(b) ~~[A person has recorded]~~ Records a notice of a breach of obligation secured by the unit and the election to sell or have the unit sold pursuant to NRS 107.080; ~~[or~~

~~***(c) The association or another authorized person has executed and caused to be recorded a notice of default and election to sell the unit pursuant to NRS 116.31162.]***~~

Replace "lending institution" with "person" to ensure any person or entity with a security interest in a unit is included and to clarify any confusion with the term "lending institution."

Addition of phrase "***but not more than 30 days***" is intended to ensure the information is provided within a maximum period of time.

According to testimony, a person or lending institution with a security interest in a unit would not foreclose an association's lien, so subsection (c) is deleted. Related language is deleted in subsection 6.

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions if the unit's owner refuses or fails to comply with any requirement imposed by the association as a result of such notice and hearing to: ~~[do so:]~~

(a) Maintain the exterior of the unit in accordance with the governing documents, including, without limitation, any provisions governing landscaping, standing water or snow removal.

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

(1) Is visible from any common area of the community ~~[;]~~ or public streets;

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

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

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

3. If a unit is vacant and the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association may enter the grounds of the unit to maintain the exterior of the unit or abate a public nuisance as described in subsection 2 if the unit's owner refuses or fails to do so. A unit may be considered vacant if it appears uninhabited, the owner has failed to pay association assessments for more than 30 days, and the owner has not maintained the exterior of the unit pursuant to the applicable governing documents of the association.

4. The association may order that the costs of any maintenance or abatement conducted pursuant to subsection 2 or 3, including, without limitation, any inspection fees, notification and collection costs and interests, be charged against the unit. The association has a super priority lien on the unit for any unpaid amount of the charges.

5. A lien described in subsection 4:

(a) Bears interest from the date that the charges become due at a rate determined pursuant to NRS 17.130 until the charges and all interest due is paid;

(b) Is coequal with the most recent lien on the unit which secures the payment of any assessments and, in a planned community, which has priority over all security interests described in paragraph (b) of subsection 2 of NRS 116.3116;

Addition of phrase "***including its employees, agents and community manager***" is intended as clarifying language.

Addition of phrase "***but is not required to***" is included to clarify in statute that the association is not required to take any action, even if other unit owners want it to do so.

Addition of phrase "***comply with any requirements imposed by the association as a result of such notice and hearing***" is intended to ensure that the unit owner has an opportunity to fix the problem or take any action ordered at such a hearing.

Addition of phrase "***or public streets***" is intended as clarifying language.

The intent of the language is to define "vacant" to provide direction to associations and distinguish between situations in which a unit may be uninhabited for long periods (i.e. the owner only is there a few months out of the year, for example), but is not "vacant" and the owner is paying the assessments and maintaining the property.

Addition of word "***super priority***" is requested to clarify the importance of the lien, ***if*** subsection 5(d) of Section 1 at the top of page 3 of this mock-up , as well Section 3 of the bill on page 5 do not already do so.

Addition of phrase "***in a planned community***" in Subsection 5 limits the application to planned communities and thus excludes, by definition, condominiums. According to information provided, increasing the priority of assessment liens in condominiums would be in violation of federal Fannie Mae guidelines.

(c) In a planned community, is ~~[Is]~~ not subject to extinguishment by the sale of the unit because of the nonpayment by the first lien holder; and

(d) In a planned community, is ~~[Is]~~ prior and superior to all liens, claims, encumbrances and titles other than the liens of assessments described in paragraph (b) and general taxes.

6. A person who purchases or acquires the unit at a foreclosure sale pursuant to NRS 40.430 ~~[,]~~ or a trustee's sale pursuant to NRS 107.080 ~~[for a foreclosure sale pursuant to NRS 116.31162 to 116.31168, inclusive,]~~ shall maintain the exterior of the unit in accordance with the governing documents of the association. Units may only be removed from an association in accordance with the governing documents of the association pursuant to Chapter 116 of NRS.

The intent of this language is to clarify that banks do not have the authority to remove a unit from an association at a foreclosure sale.

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

Addition of phrase "*community manager, or agent of the board*" is intended as clarifying language.

ADD A NEW SECTION TO THE BILL AMENDING NRS 107.090 TO PERMIT ASSOCIATIONS TO REQUEST COPIES OF TRUSTEE'S DEEDS

NRS 107.090 Request for notice of default and sale: Recording and contents; mailing of notice; effect of request.

1. As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.

2. A person with an interest or any other person who is or may be held liable for any debt secured by a lien on the property desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale upon real property may at any time after recordation of the deed of trust record in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of the notice of default or of sale. The request must state the name and address of the person requesting copies of the notices and identify the deed of trust by stating the names of the parties thereto, the date of recordation, and the book and page where it is recorded.

Amend NRS 107.090 to add a new section to permit associations to request copies of trustee's deeds and to specify that failure to mail the request shall not affect the title to the real property.

3. The trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:

(a) Each person who has recorded a request for a copy of the notice; and

(b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each person described in subsection 3.

5. No request recorded pursuant to the provisions of subsection 2 affects the title to real property.

6. With respect to units, as defined in NRS 116.093, governed by an association, as defined in NRS 116.011, the association may cause to be filed in the office of the recorder in the county in which the units are situation a request that a trustee or other person authorized to record a notice of default regarding any of those units mail to the association a copy of any trustee's deed upon sale concerning a unit. The request shall include a legal description or the assessor's parcel number of the unit. A request recorded pursuant to this subsection shall include the name and address of the association and a statement that it is an association. Subsequent requests of an association shall supersede prior requests. A request pursuant to this subsection shall be recorded before the filing of a notice of default. the trustee or other authorized person shall mail the requested information to the association within 15 business days following the date the trustee's deed is recorded. Failure to mail the request, pursuant to this subsection, shall not affect the title to real property.

Amendment No. 355

Assembly Amendment to Assembly Bill No. 204 (BDR 10-920)
Proposed by: Assembly Committee on Judiciary
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted ☐	Lost ☐	_____	Adopted ☐	Lost ☐	_____
Concurred In ☐	Not ☐	_____	Concurred In ☐	Not ☐	_____
Receded ☐	Not ☐	_____	Receded ☐	Not ☐	_____

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold dashed underlining** is newly added transitory language.

NMB/RRY Date: 4/13/2009

A.B. No. 204—Revises provisions relating to the priority of certain liens against units in common-interest communities. (BDR 10-920)

ASSEMBLY BILL NO. 204–ASSEMBLYMEN SPIEGEL, MCCLAIN; AIZLEY, ANDERSON, ARBERRY, BOBZIEN, BUCKLEY, CHRISTENSEN, CLABORN, CONKLIN, DENIS, HARDY, KIRKPATRICK, KOIVISTO, LESLIE, MANENDO, MASTROLUCA, MUNFORD, PARNELL, PIERCE, SEGERBLOM, SMITH, STEWART AND WOODBURY

FEBRUARY 19, 2009

JOINT SPONSORS: SENATORS PARKS; WOODHOUSE

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to ~~[the priority of certain liens against units in]~~ common-interest communities. (BDR 10-920)

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; **requiring the executive board of a unit owners' association of a common-interest community to make available to each unit's owner certain information concerning the association's collection policy;** extending the period of time certain liens have priority over other certain security interests; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, not less than 30 days or more than 60 days before the beginning of the fiscal year of a unit owners' association of a common-interest community, the executive board of the association must provide each unit's owner with certain information pertaining to the budget of the association. (NRS 116.31151) Section 1 of this bill requires the executive board to also make available to each unit's owner information pertaining to a policy established by the association for the collection of any fees, fines, assessments or costs imposed against a unit's owner, including the unit's owner's responsibility to pay such fees, fines, assessments or costs and the rights of the association to recover the fees, fines, assessments or costs if the unit's owner does not pay them.

Under existing law, a unit-owners' association of a common-interest community has priority over certain other creditors with respect to a lien on a unit for any construction penalty imposed against the unit's owner, any assessment levied against the unit or certain fines imposed against the unit's owner. Such a lien is also prior to a first security interest on the unit recorded before the assessments became delinquent to the extent of the assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration during the 6 months preceding an action to enforce the lien. ~~[This]~~ **Section 2 of this** bill changes the 6-month threshold for super priority of a lien

for an association to 2 years. ~~If~~ , if the unit is a single-family detached dwelling. (NRS 116.3116)

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

Section 1. NRS 116.31151 is hereby amended to read as follows:

116.31151 1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards, the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.