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Attorney for appellant

SUPREME COURT COURT

STATE OF NEVADA

7510 PERLA DEL MAR AVE TRUST, Appellant, vs. BANK OF AMERICA, N.A., Respondent.	CASE NO.: 65069

JOINT APPENDIX 1

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Las Vegas, NV 89144

Attorney for Respondent

INDEX TO APPENDIX 1

ALPHABETICAL INDEX TO JOINT APPENDIX

CIVIL COVER SHEET

Clark County, Nevada

Case No. _____
(Assigned by Clerk's Office)

A-13-686277-C

XXX

I. Party Information

Plaintiff Perla Del Mar Ave., Trust Attorney Michael F. Bohn, Esq 376 E. Warm Springs Road, Ste. 125 Las Vegas NV 89119 (702) 642-3113	Defendants Bank of America, N.A.; North American Title Company, a Nevada Corporation;and Dominic J. Nolan Attorney N/A

II. Nature of Controversy EXEMPTION FROM ARBITRATION Title to Real Property

Civil Cases

Real Property

☐ **Landlord/Tenant**
- ☐ Unlawful Detainer

☐ **Title to Property**
- ☐ Foreclosure
- ☐ Liens
- X Quiet Title
- ☐ Specific Performance

☐ **Condemnation/Eminent Domain**

☐ **Other Real Property**
- ☐ Partition
- ☐ Planning/Zoning

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☐ **Negligence – Medical/Dental**

☐ **Negligence – Premises Liability** (Slip/Fall)

☐ **Negligence – Other**

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- ☐ Product Liability/Motor Vehicle
- ☐ Other Torts/Product Liability

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- ☐ Torts/Defamation (Libel/Slander)
- ☐ Interfere with Contract Rights

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☐ **Other Torts**
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- ☐ Fraud/Misrepresentation
- ☐ Insurance
- ☐ Legal Tort
- ☐ Unfair Competition

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Estimated Estate Value: _____

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☐ **General Administration**

☐ **Special Administration**

☐ **Set Aside Estates**

☐ **Trust/Conservatorships**
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- ☐ Corporate Trustee

☐ **Other Probate**

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- ☐ General

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- ☐ Commercial Instrument
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- ☐ Collection of Actions
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- ☐ Guarantee
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☐ **Civil Petition for Judicial Review**
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- ☐ Other Administrative Law
- ☐ Department of Motor Vehicles
- ☐ Worker's Compensation Appeal

☐ **Appeal from Lower Court** *(also check applicable civil case box)*
- ☐ Transfer from Justice Court
- ☐ Justice Court Civil Appeal

☐ **Civil Writ**
- ☐ Other Special Proceeding

☐ **Other Civil Filing**
- ☐ Compromise of Minor's Claim
- ☐ Conversion of Property
- ☐ Damage to Property
- ☐ Employment Security
- ☐ Enforcement of Judgment
- ☐ Foreign Judgment – Civil
- ☐ Other Personal Property
- ☐ Recovery of Property
- ☐ Stockholder Suit
- ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category; *for Clark or Washoe Counties only*.)

☐ NRS Chapters 78-88	☐ Investments (NRS 104 Art. 8)	☐ Enhanced Case Mgmt/Business
☐ Commodities (NRS 90)	☐ Deceptive Trade Practices (NRS 598)	☐ Other Business Court Matters
☐ Securities (NRS 90)	☐ Trademarks (NRS 600A)	

August 1, 2013
Date

/ S / Michael F. Bohn, Esq. /
Signature of initiating party or representative

COMP
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Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; NORTH AMERICAN TITLE COMPANY, A NEVADA CORPORATION; and DOMINIC J. NOLAN, Defendants.	CASE NO.: A-13-686277-C DEPT NO.: XXX **EXEMPTION FROM ARBITRATION:** **Title to real property**

COMPLAINT

Plaintiff, 7510 Perla Del Mar Ave Trust, by and through it's attorney, Michael F. Bohn, Esq. alleges as follows:

FIRST CLAIM FOR RELIEF

1. Plaintiff is the owner of the real property commonly known as 7510 Perla Del Mar Avenue, Las Vegas, Nevada 89179.

2. Plaintiff obtained title by way of a Foreclosure Deed recorded on February 7, 2013.

3. Plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments due from the former owner to Mandolin pursuant to NRS Chapter 116.

4. Defendant Bank of America, N.A. is the assignee of a deed of trust which was recorded as

an encumbrance to the subject property on December 10, 2010.

5. Defendant North American Title Company is the trustee on the deed of trust.

6. Defendant Dominic J. Nolan is the former owner of the subject real property.

7. The interest of each of the defendants has been extinguished by reason of the foreclosure sale resulting from a delinquency in assessments due from the former owner, Dominic J. Nolan, to Mandolin, pursuant to NRS Chapter 116.

8. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010, that the plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim to the subject property.

9. Plaintiff is entitled to an award of attorneys fees and costs.

SECOND CLAIM FOR RELIEF

10. Plaintiff repeats the allegations contained in paragraphs 1 through 9.

11. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

12. Plaintiff is entitled to an award of attorneys fees and costs.

WHEREFORE, plaintiff prays for Judgment as follows:

1. For injunctive relief;

2. For a determination and declaration that plaintiff is the rightful holder of title to the property, free and clear of all liens, encumbrances, and claims of the defendants.

3. For a determination and declaration that the defendants have no estate, right, title, interest or claim in the property.

/ / /

/ / /

/ / /

4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest or claim in the property; and

5. For such other and further relief as the Court may deem just and proper.

DATED this 1st day of August 2013.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
Attorney for plaintiff

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Iyad Haddad, being first duly sworn, deposes and says;

That he is the manager of the trustee of plaintiff trust, and that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.

IYAD HADDAD

SUBSCRIBED and SWORN to before me
this 1st day of August, 2013.

NOTARY PUBLIC in and for said
County and State

MAURIZIO MAZZA
Notary Public State of Nevada
No. 05-94588-1
My Appt. Exp. Feb. 1, 2017

IAFD

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Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; NORTH AMERICAN TITLE COMPANY, A NEVADA CORPORATION; and DOMINIC J. NOLAN, Defendants	CASE NO.: A-13-686277-C DEPT NO.: XXX

INITIAL APPEARANCE FEE DISCLOSURE

Pursuant to NRS Chapter 19, filing fees are submitted for the party appearing in the above-entitled action as indicated below:

7510 PERLA DEL MAR AVE TRUST	$270.00
TOTAL REMITTED:	$270.00

DATED this 1st day of August 2013.

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DISTRICT COURT

CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; NORTH AMERICAN TITLE COMPANY, A NEVADA CORPORATION; MOUNTAINS EDGE MASTER ASSOCIATION; and DOMINIC J. NOLAN, Defendants.	CASE NO.: A686277 DEPT NO.: **EXEMPTION FROM ARBITRATION:** **Title to real property**

AMENDED COMPLAINT

Plaintiff, 7510 Perla Del Mar Ave Trust, by and through it's attorney, Michael F. Bohn, Esq. alleges as follows:

FIRST CLAIM FOR RELIEF

1. Plaintiff is the owner of the real property commonly known as 7510 Perla Del Mar Avenue, Las Vegas, Nevada 89179.

2. Plaintiff obtained title by way of a Foreclosure Deed recorded on February 7, 2013.

3. Plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments due from the former owner to Mandolin pursuant to NRS Chapter 116.

4. Defendant Bank of America, N.A. is the assignee of a deed of trust which was recorded as an encumbrance to the subject property on December 10, 2010.

5. Defendant North American Title Company is the trustee on the deed of trust.

6. Defendant Dominic J. Nolan is the former owner of the subject real property.

7. The interest of each of the defendants has been extinguished by reason of the foreclosure sale resulting from a delinquency in assessments due from the former owner, Dominic J. Nolan, to Mandolin, pursuant to NRS Chapter 116.

8. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010, that the plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim to the subject property.

9. Plaintiff is entitled to an award of attorneys fees and costs.

SECOND CLAIM FOR RELIEF

10. Plaintiff repeats the allegations contained in paragraphs 1 through 9.

11. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

12. Plaintiff is entitled to an award of attorneys fees and costs.

WHEREFORE, plaintiff prays for Judgment as follows:

1. For injunctive relief;

2. For a determination and declaration that plaintiff is the rightful holder of title to the property, free and clear of all liens, encumbrances, and claims of the defendants.

3. For a determination and declaration that the defendants have no estate, right, title, interest or claim in the property.

/ / /

/ / /

/ / /

4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest or claim in the property; and

5. For such other and further relief as the Court may deem just and proper.

DATED this 1st day of September 2013.

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Attorneys for Bank of America, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE. TRUST,

Plaintiff,

v.

BANK OF AMERICA, N.A.; NORTH AMERICAN TITLE COMPANY, a Nevada corporation; MOUNTAINS EDGE MASTER ASSOCIATION; and DOMINIC NOLAN,

Defendants.

Case No.: A-13-686277-C
Dept.: XXX

BANK OF AMERICA, N.A.'S MOTION TO DISMISS

Bank of America, N.A. (**Bank of America**) moves to dismiss plaintiff's amended complaint pursuant to N.R.C.P. 12(b)(5).

DATED this 15th day of November, 2013.

AKERMAN LLP

/s/ Steven Shevorski, Esq.
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Attorneys for Bank of America, N.A.

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NOTICE OF MOTION

TO: ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Bank of America, N.A., will bring the foregoing, MOTION TO DISMISS, on for hearing before the Court on the 19 day of Dec, 2013, at the hour of 9:00a a.m., or as soon thereafter as counsel can be heard.

DATED this 15th day of November, 2013.

AKERMAN LLP

/s/ Steven Shevorski, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Court should grant Bank of America's motion to dismiss. **First**, the plain language of NEV. REV. STAT. §116.3116(2)(b) gives senior recorded deeds of trust priority of assessment liens. **Second**, plaintiff's interpretation of NEV. REV. STAT. §116.3116(2)(c) renders the Nevada's legislature's explicit grant of priority under section NEV. REV. STAT 116.3116(2)(b) to be completely nugatory. **Third**, there is no section in Chapter 116 that states an HOA foreclosure can extinguish a senior deed of trust. Plaintiff bought the property at the HOA trustee's sale subject to the senior deed of trust.

II.

REQUEST FOR JUDICIAL NOTICE

Pursuant to Nev. Rev. Stat. § 47.130, the Court may take judicial notice of public records. This statute provides as follows:

> 1. The facts subject to judicial notice are facts in issue or facts from which they may be inferred.
> 2. A judicially noticed fact must be:
> (a) Generally known within the territorial jurisdiction of the trial court; or
> (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.

Pursuant to NEV. REV. STAT. § 47.150, "court shall take judicial notice if requested by a party and supplied with the necessary information." A district court on considering a dispositive motion can consider matters of public record in its decision. In *Stockmeier v. Nevada Dept. of Corrections Psychological Review Panel*, 124 Nev. 313____, 183 P.3d 133, 135 (2008), that court dismissed an amended complaint after the court took judicial notice of facts in a related state district court proceeding. Therefore, this Court can take judicial notice of **Exhibits A through L** in determining this motion to dismiss.

III.

STATEMENT OF FACTS

A. Property History.

Dominic Nolan (**Nolan**) obtained title via grant, bargain, and sale deed, which was recorded on December 10, 2010. (*See* **Exhibit A**, Deed). Nolan borrowed $161,524.00 from KEA Mortgage, LLC. (*See* **Exhibit B**, Senior Deed of Trust). This loan was secured by a first position deed of trust, which was recorded on December 10, 2010. (*Id.*). The senior deed of trust was then assigned to Bank of America. (*See* **Exhibit C**, Assignment). The assignment was recorded on January 6, 2012. (*Id.*). Bank of America then assigned the senior deed of trust, together with the note, to Nationstar Mortgage, LLC. (*See* **Exhibit D**, Assignment). The assignment was recorded on July 10, 2013. (*Id.*).

B. HOA Foreclosure History.

The Mandolin (**HOA**) issued an assessment lien, which was recorded on January 4, 2012. (*See* **Exhibit E**, Assessment Lien). HOA recorded a notice of default and election to sell on February 27, 2012. (*See* **Exhibit F**, HOA Notice of Default). HOA recorded its notice of trustee's sale on November 15, 2012. (*See* **Exhibit G**, HOA Notice of Sale). HOA sold the property to plaintiff via a trustee's sale on February 1, 2013. (*See* **Exhibit H**, HOA Trustee's Deed). HOA recorded the trustee's deed on February 7, 2013. (*Id.*)

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IV.

LEGAL STANDARDS

Rule 12(b)(5) of the Nevada Rules of Civil Procedure provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." When passing on such a motion, the factual allegations in the complaint are treated as true, and all inferences are drawn in favor of the non-moving party. *Hamp v. Foote*, 118 Nev. 405, 47 P.3d 438 (2002). A complaint should be dismissed where the allegations are insufficient to establish the elements of a claim for relief. *Id.* at 408.

V.

DISCUSSION

"A quiet title claim requires a plaintiff to allege that the defendant is unlawfully asserting an adverse claim to title to real property." *Kemberling v. Ocwen Loan Servicing, LLC*, Case No. 2:09-cv-00567, 2009 WL 5039495, at *2 (D. Nev. Dec. 15, 2009). "The very object of the proceeding assumes that there are other claimants adverse to the Plaintiff, setting up titles and interests in the land or other subject-matter hostile to his [own]." *See Clay v. Scheeline Banking & Trust Co.*, 40 Nev. 9, 16, 159 P. 1081, 1082 (1916). Where such adverse claims exist, the party seeking to have another party's right to property extinguished, bears the burden of overcoming the "presumption in favor of the record titleholder." *See Breliant v. Preferred Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996); *see Clay*, 40 Nev. at 16, 159 P. at 1082. Plaintiff's quiet title claim, and his derivative request for declaratory relief, fails. Plaintiff bought the property subject to the senior deed of trust. Nationstar owns the note and deed of trust and not Bank of America. Plaintiff is suing the wrong party.

Plaintiff's case fails for other reasons.

1. The Legislative History Demonstrates Plaintiff's Quiet Title Claim Fails.

Plaintiff mistakenly asserts that the legislative history supports plaintiff's position. Plaintiff cites to the Legislative Counsel Bureau and Carl Lisman, Esq.'s letter for support. The legislative history, to the contrary, demonstrates plaintiff's theory of the super priority lien is wrong as a matter of law. These letters ignore the UCIOA's legislative history in Nevada.

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Nevada adopted the UCIOA in 1991. *See* 1991 Nev. Stat., Page 535. NEV. REV. STAT. §116.3116(2)(c) was amended by Assembly Bill 204 in 2009. *See* 2009 Nev. Stat., Page 1207. AB 204 amended section 116.3116(2)(c) as follows:

> (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.

Id. (Emphasis in Original). In its original form, AB 204 extended the period of priority from six months to two years, but this provision was reduced to nine months of priority. Assembly Person Ellen Spiegel testified about the legislature's purpose in extending the period of priority in her March 6, 2009 testimony:

> 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.

(**Exhibit I**, Hearing on AB 204 Before Assemb. Comm. on the Judiciary, 75th Legislature, (2009) (Statement of Assemblyperson Ellen Spiegel). In sum, AB 204 extended the period of priority because an HOA can only collect its assessments given super priority after the senior deed of trust

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beneficiary forecloses on the property. Non-judicial forecloses by the banks were taking longer, therefore, Nevada's legislature extended the period of priority to protect the HOAs.

In 2011, Nevada's legislature again considered amending NEV. REV. STAT. §116.3116(2)(c) with Senate Bill 174. (**Exhibit J**, Hearing on SB 174 Before Senate Comm. on the Judiciary, 76th Legislature, (2011) (Statement of Michael Buckley, Commission, Las Vegas, Commission for Common Interest Communities Commission, Real Estate Division, Department of Business and Industry; Real Property Division, State Bar of Nevada). Mr. Buckley testified as follows regarding the amendment of Section 116.3116(2)(c) in 2009 and he explained the meaning of a super priority lien on February 24, 2011:

> 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.

Id.

Mr. Buckley, ***again***, testified regarding the existing meaning of an HOA super priority lien on May 17, 2011:

> **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**

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> **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.

(**Exhibit K**, Hearing on SB 174 Before Senate Comm. on the Judiciary, 76th Legislature, (2011) (Statement of Michael Buckley, Commission, Las Vegas, Commission for Common Interest Communities Commission, Real Estate Division, Department of Business and Industry; Real Property Division, State Bar of Nevada). (Emphasis Added).

Senator Allison Copening testified on the existing state of the law and the meaning of super priority on June 4, 2011:

> 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.

(**Exhibit L**, Hearing on SB 174 Before Senate Comm. on the Finance, 76th Legislature, (2011) (Statement of Senator Allison Copening). (Emphasis Added).

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The legislative history of NEV. REV. STAT. §116.3116(2)(c) demonstrates that this section is merely an order of payment schedule when the senior deed of trust beneficiary forecloses. **First**, the 2009 amendment to NEV. REV. STAT. §116.3116(2)(c), which increased the super priority period from six months to nine months only makes sense if plaintiff's interpretation of super priority law is rejected. There is no logical reason to extend super priority if the HOA could, as plaintiff mistakenly argues, simply foreclose and extinguish a senior deed of trust. **Second**, the testimony by AB 204's sponsor, Assemblyperson Spiegel demonstrates that the 2009 amendments were created to attempt to solve a problem, the super priority period was too short light of how long it was taking senior deed of trust beneficiary's to foreclose. Plaintiff's legal theory, *again*, is illogical given this legislative history. **Third**, Sen. Copening and Commissioner Buckley's testimony in support of failed Senate Bill 174 expressly described the current state of super priority law. Sen. Copening and Commissioner Buckley expressly stated that Bank of America's construction of Nev. Rev. Stat. §116.3116(2)(c) was correct.

2. Plaintiff's Statutory Interpretation is Not Supported by Chapter 116's Text.

No part of a statute should be rendered meaningless. *Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (quoting *Glover v. Concerned Citizens for Fuji Park*, 118 Nev. 488, 492, 50 P.3d 546, 548 (2002), overruled in part on other grounds by *Garvin v. Dist. Ct.*, 118 Nev. 749, 765 n. 71, 59 P.3d 1180, 1190 n. 71 (2002)). Whenever possible, a court should interpret a rule or statute in harmony with other rules and statutes. *See Bowyer v. Taack*, 107 Nev. 625, 627, 817 P.2d 1176, 1177 (1991); *City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 892, 784 P.2d 974, 978 (1989).

NEV. REV. STAT. §116.3116 provides in relevant part:

> 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

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> (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…

NEV. REV. STAT. §116.3116 (Emphasis Added).

First, plaintiff's interpretation contradicts the Nevada legislature's language in 2(b) giving priority to the senior deed of trust beneficiary and renders nugatory the limiting language in 2(c) regarding the limited 9 month super priority. Plaintiff's mistaken interpretation of 2(c) renders the limiting language "to the extent of any charges" used by the legislature to be completely meaningless. Plaintiff elevates this phrase into a complete priority over the senior deed of trust. In doing so, plaintiff eliminates the express priority given in 2(b) and eliminates the limits on the super priority described in 2(c).

Properly understood, Nevada's legislature merely created an order of payment scheme when it adopted the UCIOA. An HOA will necessarily get paid its 9 months after the senior lender forecloses because the senior lender will necessarily want to clear title to the property by selling it to a third party. This is the express purpose of the super priority statute. That is all the HOA is entitled to under the UCIOA. Section 3116(2)(c) creates an order of payment and, again, properly understood, is a balanced protection of both the senior secured lender and the HOA. Plaintiff's interpretation disrupts this balance.

Second, there is no provision in Chapter 116 to effectuate a super priority foreclosure against a senior secured lender. Plaintiff would have this Court believe that Nevada's legislature created a super priority lien that could wipe out a senior secured lender, whom Nevada's legislature expressly protected in 116.3116(2)(b), but provided no statutory nonjudicial foreclosure scheme to effectuate this radical purpose. The notice of lien, notice of default, notice of trustee's sale, and order of proceeds distribution statutes never refer to the limited, and indeed inchoate, super priority provision in 116.3116(2)(c). Plaintiff, inexplicably, wants this Court to extinguish Bank of America's

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collateral for its loan without any statutory language to support such a radical departure from Nevada's express protection of senior deeds of trust in 116.3116(2)(b).

The notice of lien statute, NEV. REV. STAT. §116.31162, does not even refer to plaintiff's vaunted "super priority" statute. It actually provides as follows:

> 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.

NEV. REV. STAT. §116.31162(1)(a) (Emphasis Added). This statute clearly only applies to a foreclosure against the unit owner's interest.

The notice of default section, NEV. REV. STAT. §116.31162(1)(b), does not refer to the super priority statute:

> (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!

NEV. REV. STAT. §116.31162(1)(b) (Emphasis Added). A senior secured lender does not have a deficiency in payment. The senior lender does not owe the assessment lien stated in the notice of

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assessment and again repeated in notice of default. This statute also does not reference the super priority provision in section 3116(2)(c) at all.

Finally, the order of payment statute is the opposite of a super priority foreclosure scheme. NEV. REV. STAT. §116.31164 provides:

> 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.

NEV. REV. STAT. §116.31164. The statute, by using the word "shall," mandates that the order of payment be carried out in this fashion. The order of payments from 1 through 3 are absolutely contradictory of a super priority scheme. This is so because section 31164 states that the first payment is the "expenses of the sale." Next, are taxes, government charges, premiums on insurance, reasonable attorney's fees, and other legal expenses. Still next, satisfaction of the association's lien. None of these payments are prior to a senior deed of trust beneficiary. Section 116.3116(2)(b) expressly states that the senior deed of trust beneficiary has first priority. If plaintiff's theory were correct, then the legislature would have created an order of payment schedule with the HOA being paid its 9 months of common assessments and then the senior deed of trust beneficiary would be

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paid. Plaintiff is quiet mistakenly seeking to have this Court re-write the statute. The senior secured lender would be paid first in section 31164's order of payment. A senior secured lender is not even mentioned in NEV. REV. STAT. §116.31164. Plaintiff's statutory interpretation of Chapter 116 is mistaken.

3. Plaintiff's Theory Ignores Scholarly Authority, Other State's Interpretation of the UCIOA, and Procedural Due Process.

A number of legal scholars have reviewed the UCIOA's super priority provision. They do not agree with plaintiff's interpretation. Andrea Boyack in the Loyola University Chicago Law Journal writes as follows:

> The six-month capped "super priority" provision of the association lien does not have a true priority status under UCIOA since the six-month assessment lien cannot be foreclosed as senior to a mortgage lien. Rather it creates a payment priority for some portion of unpaid assessments, which would take the first position in the foreclosure repayment waterfall," or grants durability to some portion of unpaid assessments allowing the security for such debt to survive foreclosure.

Boyack, Andrea J., "Community Collateral Damage, A Question of Priorities," Loyola University Chicago Law Journal, p. 99 (Vol. 43, 2011).

Katharine Rosenberry and Curtis Sproul in the Santa Clara Law Review also confirmed that the UCIOA's super priority merely sets forth an order of payment that is to be followed when the senior lender forecloses. In comparing the UCIOA to California's Davis-Stirling Act, the scholars wrote as follows:

> A significant difference exists, however, between the UCIOA and Davis-Stirling. Under UCIOA, the association's lien is prior to all other liens and encumbrances, other than the following: (1) liens and encumbrances recorded prior to the declaration, and not subordinated; (2) **first security interests on the unit recorded prior to the date when the assessments became delinquent, but not as to assessments accrued within the six months prior to the lender initiation action to enforce the lien**; and (3) liens for real property taxes and other governmental obligation.

Rosenberry, Katharine and Sproul, Curtis, "A Comparison of California Common Interest Development Law and The Uniform Common Interest Ownership Act, pg. 1060 (Santa Clara Law Review, 1998) (Emphasis Added).

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There are eight states that have adopted the UCIOA: Nevada, Alaska, Colorado, Minnesota, West Virginia, Connecticut, Delaware, and Vermont. None of these states permit an HOA non-judicial foreclosure to wipe out a senior deed of trust.

Colorado is a good example of a state that does not permit a non-judicial foreclose to eliminate a senior lender's collateral. **First**, Colorado does not permit an HOA to proceed through non-judicial foreclosure. *Compare* COLO. REV. STAT. § 38-33.3-316 (11)(b)(association's lien must be foreclosed like a mortgage on real estate) and COLO. REV. STAT. §38-39-101. (private deed of trust must be foreclosed judicially). **Second**, Colorado's version of the UCIOA super priority lien as merely setting forth an order of payment when the senior lender forecloses:

> Foreclosure and Redemption Options
>
> CCIOA provides that the association lien in condominium and planned communities may be foreclosed "in like manner as a mortgage on real estate" [316(11)(a)]—that is, judicially (CRS § 38-39-101). Acting on its prioritized lien, the association would initiate judicial foreclosure against a unit in default. Along with the unit owner, the holders of any other interests in the property would be joined in the foreclosure. Holders of junior interests would stand to receive the excess, if any, of the foreclosure sale price over the amount of the prioritized lien in the order of their priorities. The association's less-prioritized lien would be among those junior interests.
>
> The process would vary considerably if, instead, the party seeking foreclosure were the holder of a first deed of trust on a CIC unit. Regardless of whether the first deed of trust holder's loan is in payment default, default on the association assessment also is likely an event of default under the deed of trust, allowing its holder to initiate foreclosure. If a prioritized lien were outstanding against the unit, the deed of trust and its foreclosure would be subject to the prioritized lien which, as a senior interest, would not be extinguished by the deed of trust foreclosure.
>
> If the association pursued foreclosure of its prioritized lien (perhaps to seek sure payment of its prioritized lien during the foreclosure, rather than likely payment at some time after foreclosure), its foreclosure would have to be by judicial foreclosure, in which the first deed of trust holder would be joined as a necessary party. Pursuit of this foreclosure lawsuit should require suspension of the first deed of trust holder's public trustee foreclosure, in which case enforcement of the association's lien will threaten substantial delays to the secured lender. **At first glance, the first deed of trust holder might consider paying off the unit owner's debt secured by the prioritized lien, rather than foreclose itself. Curing the default might seem particularly appropriate to the first deed of trust holder where an assessment default is not accompanied by a default on payments owing under the first deed of trust. Provisions in most deeds of trust allow the**

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lender's payment of its borrower's delinquent assessments to be added to the secured debt.

Despite the theoretical advantages to curing the assessment default, a first deed of trust holder more often will elect to foreclose its lien, paying the assessment secured by the prioritized lien only after completion of the foreclosure process. Earlier payment of the delinquent assessments cannot permanently eliminate the prioritized lien threatening the deed of trust.

Under the statute, once paid, the prioritized lien could be "refueled" by additional unpaid present or future assessment delinquencies. The prioritized lien includes, by definition, all unpaid assessments up to the maximum set by § 316(2)(b)(1). If the lender paid off only the assessments secured by the prioritized lien, any remaining or future assessment delinquencies, up to the § 316(2)(b)(I) maximum, would be elevated immediately in priority and included in a refueled prioritized lien. Any effort by the lender to avoid the refueling of the prioritized lien should violate CCIOA's prohibition against waiver or variation of CCIOA-created rights (104).

Instead, the first deed of trust holder generally will not pay assessment delinquencies until the lender obtains title to the unit in foreclosure. At that time, payment of the prioritized lien, which, unlike the less-prioritized lien, survives this foreclosure as a senior interest, will be necessary to clear title for any resale of the unit.

Jordan, Lynn S., Kirch, David W., Orten, C.M. Jerry, Tobey, Gary H., Winokur, James L., "The Colorado Common Interest Ownership Act," pg. 654 (21 Col. Law. 645, 1992).

Minnesota's legislature, in fact, made explicit the scholar's interpretation of the UCIOA:

(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.

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MINN. STAT. §515B.3-116(b)(c) (Emphasis Added).

4. Plaintiff's Theory Ignores Procedural Due Process.

Plaintiff's allegations doe violence to Bank of America's procedural due process rights. An association lien, like a mechanic's lien, is a taking that entitles a senior deed of trust beneficiary to federal and state due process protection. *See e.g. J.D. Constr. v. IBEX Int'l. Group, LLC*, 240 P.3d 1033, 1040 (Nev. 2010). The reason procedural due process protections are warranted is that the HOA through its so-called super priority lien foreclosure seeks to wipe out a significant property interest. *Id.* Procedural due process requires that a deed of trust's beneficiary be provide actual notice and an actual opportunity to be heard. *Id.* **The opportunity to be heard must be meaningful and not illusory**. *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.E.2d 18 (1976)). Procedural due process also requires that the opportunity to be heard be provided at a meaningful time. *Id.* at 1041. Procedural due process requires that the notice given must be of a quality that one desirous of providing notice might actually accomplish it. *Konecki v. Augustine*, 87 Nev. 393, 394, 487 P.2d 925, 926 (1971).

Bank of America certainly was not provided with "notice" in a procedural due process sense. **First**, the CC&Rs, cited in the Notice of Delinquent Assessment, provide that Bank of America's deed of trust is superior to any assessment lien. **Second**, there is no content in the foreclosure notices recorded against the property, which state an assessment lien, which could affect Bank of America's deed of trust is being foreclosed upon. **Third**, Bank of America attempt to tender the putative amount described in NEV. REV. STAT. §116.3116(2)(c); however, HOA refused to even provide an amount corresponding to 116.3116(2)(c). **Fourth**, there is no content in the foreclosure notices recorded against the property, which describe an NEV. REV. STAT. §116.3116(2)(c) foreclosure or describe the amount due in reference to NEV. REV. STAT. §116.3116(2)(c).

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VI.

CONCLUSION

This Court should grant Bank of America's motion to dismiss. Plaintiff purchased the property subject to the senior deed of trust.

DATED this 15th day of November, 2013.

AKERMAN LLP

/s/ Steven Shevorski, Esq.
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EXHIBIT A

EXHIBIT A

Inst #: 201012100002324
Fees: $22.00 N/C Fee: $25.00
RPTT: $821.10 Ex: #
12/10/2010 02:05:11 PM
Receipt #: 608447
Requestor:
NORTH AMERICAN TITLE MAIN
Recorded By: OSA Pgs: 10
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN NO: 176-34-114-031
RPTT $821.10
Escrow No.: 45002-10-12984

Recording requested by:
NORTH AMERICAN TITLE COMPANY

When recorded mail along with tax statement to:
Dominic J Nolan
7510 Perla Del Mar Avenue
Las Vegas, Nevada 89179-2500

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

GREYSTONE NEVADA, LLC A DELAWARE LIMITED LIABILITY COMPANY

In consideration of $10.00 and other valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to:

DOMINIC J NOLAN, A SINGLE MAN

All that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

See Exhibit "A" attached hereto and by reference made a part hereof for the complete legal description

See Exhibit "B" attached hereto and by reference made a part hereof for the Acceptance by the Grantee

See Exhibit "C" attached hereto and by reference made a part hereof for the Deed Restriction

Subject to:
1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any,

Together with all tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversions, remainder and remainders, rents, issues of profits thereof.

Dated this 8th day of December, 2010

GREYSTONE NEVADA LLC., a Delaware Limited Liability Company
BY: Greystone Homes of Nevada, Inc., a Delaware Corporation

by: Jeremy Parness, Authorized Agent

Jeremy Parness

State of Nevada
County of Clark

On 12-9-10 before me, the undersigned, a Notary Public in and for said County and State, personally appeared JEREMY PARNESS, AUTHORIZED AGENT FOR GREYSTONE HOMES OF NEVADA, INC. A DELAWARE CORPORATION personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that be his/her/their signature (s) on the instrument the person (s), or WITNESS my and official seal.

(Notary Public)

My Commission Expires: _____

LYNN MENESES WITTER
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 97-0701-1
My Appt. Expires Aug. 13, 2012

EXHIBIT "A"

PARCEL ONE (1):

LOT SIXTY-THREE (63) OF MANDOLIN PHASE 3 AT MOUNTAIN'S EDGE (A PLANNED UNIT DEVELOPMENT AND COMMON INTEREST COMMUNITY) AS SHOWN BY MAP THEREOF ON FILE IN BOOK 134 OF PLATS, PAGE 21, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL TWO (2):

NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN TRAFFIC AS PROVIDED FOR AND SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH IN THAT CERTAIN "MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR MOUNTAINS EDGE," RECORDED APRIL 14, 2003 IN BOOK 20030414 AS DOCUMENT NO. 2089, OF OFFICIAL RECORDS.

PARCEL THREE (3):

NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS AND UTILITY PURPOSES AS SET FORTH IN THAT CERTAIN "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MANDOLIN," RECORDED JULY 6, 2006, IN BOOK 20060706 AS DOCUMENT NO. 2647, OF OFFICIAL RECORDS.

EXHIBIT "B"

ACCEPTANCE BY GRANTEE

Grantee, by acceptance and recordation of this Deed, expressly accepts, covenants, and agrees to be bound by and to assume performance of all the provisions and requirements set forth in the Declaration of Covenants, Conditions, Restrictions, and Grant and Reservation of Easements for Mandolin Phase 3 @ Mountain's Edge, set forth in Exhibit "B" to this Deed, which provisions and requirements are incorporated herein by this reference thereto.

The agreements of Grantee herein contained shall be covenants running with the real property granted hereby and shall be binding upon Grantee and Grantee's successors and assigns.

ACCEPTED AND AGREED:

DATE: 12-9-10

Dominic J Nolan

State of Nevada)
) SS.
County of Clark)

This instrument was acknowledged before me on 12-9-10 by Dominic J Nolan.

K. BAILEY
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 96-2919-1
My Appt. Expires May 6, 2012

K Bailey
Signature of Notarial Officer.

My commission expires: _____

EXHIBIT "C" TO GRANT, BARGAIN, SALE DEED

DEED RESTRICTION
OCCUPANCY PERIOD AND USE AS PRINCIPAL RESIDENCE
AND ANTI-SPECULATION AGREEMENT

As a material consideration inducing the grantor under the attached deed ("Seller") to sell to the grantee under such deed ("Buyer") that certain real property described in this Deed (the "Property"), Buyer has represented to Seller that Buyer intends to and will, for a period of twelve (12) months from the Buyer's closing (the "Occupancy Period"), limit Buyer's use of the Property as follows:

- ☒ Occupy the Property as Buyer's Primary Residence (i.e. the principal residence where Buyer resides and which is Buyer's homestead) and not rent the Property;
- ☐ Have the Property occupied by Buyer's family member as the family member's Primary Residence and not rent the Property;
- ☐ Occupy the Property as Buyer's Secondary Residence (i.e. use the property as a part-time personal use residence not held for investment or speculation);
- ☐ Occupy the Property as Buyer's Secondary Residence (i.e. use the property as a part-time personal use residence not held for investment or speculation), but when not being occupied by Buyer, Buyer may rent the home in accordance with any neighborhood specific rules and regulations; or
- ☐ Own the Property during the Occupancy period, but rent the home in accordance with any neighborhood specific rules and regulations.

Seller and Buyer have entered into a separate unrecorded agreement (the "Agreement") whereby Buyer agreed to the foregoing limitations and further agreed to not sell the Property for the duration of the Occupancy Period. This Deed Restriction is to put third parties on notice of such commitments by Buyer, and Seller's rights upon a breach of such commitments by Buyer, as provided in the Agreement and nothing contained in this Deed Restriction shall, or shall be deemed to, modify or amend the Agreement in any respect. In the event of any conflict between the provisions of the Agreement and the provisions of this Deed Restriction, the provisions of the Agreement shall prevail. Notwithstanding the foregoing, this Deed Restriction includes certain mortgagee protections which shall be in addition to, and shall not be superseded by, the mortgagee protections in the Agreement.

Buyer acknowledges that Seller, as a developer and builder of single family and multi-family residences, has an interest in ensuring that such residences, and the communities in which they are built, including the Property and the community which the Property is a part (such community being referred to herein as the "Community" or the "Benefited Property") are purchased and occupied only by persons who will actually occupy them as a primary or secondary residence, to obtain a stabilized community of owner-occupied homes, and to mitigate a shortage of available homes for permanent residents.

1. **Occupancy Covenants.**

Buyer, on behalf of itself and its successors and assigns, hereby covenants to and for the benefit of the Seller that, during the Occupancy Period; (a) Buyer will limit its use of the Property as set forth in the election identified above and as otherwise set forth in the Agreement; and (b) except as permitted in Paragraph 2 below, Buyer shall not enter into any agreement for the sale or other transfer of the Property which would result in Buyer's failure to hold title thereto in fee simple for the duration of the Occupancy Period.

2. **Hardship Situations.**
Seller recognizes that a sale, rental or transfer of the Property in certain circumstances would not be inconsistent with the intent of the Occupancy Period and Anti-Speculation Agreement Addendum (the "Addendum") entered into between Buyer and Seller. Seller may, in its sole and absolute discretion decided on a case-by-case basis, consent to a sale, rental or transfer of the Property during the Occupancy Period. Furthermore, Seller shall not unreasonably withhold its consent to a rental or transfer in the following instances (each a "Hardship Situation"):

2.1 A rental or transfer resulting from the death of Buyer;

2.2 A trasfer by Buyer where the spouse of Buyer becomes the only co-owner of the Property with Buyer;

2.3 A transfer resulting from a decree of dissolution of marriage or legal seperation or from a property settlement agreement incident to such decree;

2.4 A transfer by Buyer into a revocable inter vivos trust in which Buyer is a beneficiary;

2.5 A transfer, conveyance, pledge, assignment or other hypothecation of the Property to secure the performance of an obligation, which transfer, conveyance, pledge, assignment or hypothecation will be released or reconveyed upon the completion of such performance;

Buyer _____ Buyer _____

2.6 A rental or transfer by Buyer (where Buyer is not self-employed) necessary to accommodate a mandatory job transfer required by Buyer's employer;

2.7 A rental or transfer necessitated by a medical or financial emergency, proof of which emergency has been delivered to Seller, and has been approved by Seller in its reasonable discretion;

2.8 A rental or transfer which, in the reasonable judgment of Seller, constitutes a "hardship" situation consistent with the intentions of this Deed Restriction.

3. **Automatic Termination of Deed Restriction.**
The covenants set forth above, and the restrictions on rental or transfer of the Property set forth herein, shall automatically terminate and be of no further force and effect on the date which is twelve (12) months after the date of recordation of this Deed.

4. **Remedies for Breach.**
If Buyer or Buyer's successors and/or assigns, breaches, violates or fails to perform or satisfy any of the covenants set forth in the Agreement, Seller, and Seller's successors and/or assigns, may enforce the remedies set forth in the Agreement including, without limitation, the right and option to recover Liquidated Damages from Buyer upon a sale of the Property in violation of the Agreement, determined as provided in the Agreement, and Buyer's obligation to pay the Liquidated Damages shall constitute a lien on the Property which shall run with the land and shall be binding on the successors and/or assigns of Buyer.

5. **No Duty to Enforce.**
Seller makes no representation or warranty to Buyer or any other party that the Seller (i) will impose these requirements on other buyers of homes in the Community, or (ii) is obligated to or will enforce the requirements set forth in this Deed Restriction against other owners in the Community. Buyer specifically acknowledges and agrees that Seller is not guaranteeing Buyer or assuring Buyer in any way that the Community will now or in the future be occupied only or primarily by owner occupants and/or that there will not be buyers in the Community who are purchasing homes in the Community for rentals or as an investment, with no intention of living in the home.

6. **Survival of Covenant on Transfer.**

Except as provided in Paragraph 9 below, Buyer's obligations, and Seller's rights hereunder and under the Agreement shall survive any transfer of the Property by Buyer.

7. **No Unreasonable Restraint.**

Buyer acknowledges that the purpose of this Deed Restriction is (i) to comply with Seller's intention to sell homes only to persons who will actually occupy them as a principal residence or will rent the homes in accordance with neighborhood specific rules and regulations relating to such rentals, (ii) to obtain a stabilized community of owner-occupied homes, and (iii) to prevent a shortage of available homes for permanent residents. Buyer agrees that the provisions and restrictions set forth in this Deed Restriction do not constitute an unreasonable restraint upon alienation of the Property.

8. **Survival; Severability.**

All of the covenants contained herein shall survive the delivery and recordation of the deed conveying the Property from Seller to Buyer. The provisions of this Deed Restriction shall be independent and severable, and a determination of invalidity or partial invalidity or enforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision of this Deed Restriction or the Agreement.

9. **Mortgagee Protection Provisions.**

9.1 Permitted Financing.

Notwithstanding anything to the contrary in this Deed Restriction or in the Agreement, Buyer may encumber the Property as security for a loan made by an institutional lender.

9.2 Subordination.

Seller hereby acknowledges and agrees that a violation of this Deed Restriction by Buyer shall not defeat or render invalid the lien of any first or secondary priority mortgage or deed of trust in favor of an institutional lender or investor and made in good faith and for value by Buyer, and that the covenants and provisions of this Deed Restriction shall be inferior and subordinate to the lien of any such first or second mortgage or deed of trust made by an institutional lender or investor, whether recorded concurrently with or subsequent to the deed conveying the Property to Buyer.

9.3 Termination on Foreclosure.

This Deed Restriction and the Agreement are subject and subordinate to any first or second priority deed of trust or mortgage on the Property made by or held by an institutional lender or investor. Any party and its successors and assigns, receiving title to the Property pursuant to a judicial or non-judicial foreclosure, or by any conveyance in lieu of such foreclosure, under the power of sale contained in such a first or second priority mortgage or deed of trust recorded against the Property in the Office of Recorder of the County in which the Property is located shall take title free and clear of the provisions of this Deed Restriction and the Agreement.

9.4 HUD or VA Insured or Guaranteed Mortgages.

If Buyer has acquired the Property by a mortgage insured by the Secretary of the United States Department of Housing and Urban Development (the "Secretary"), or guaranteed by the United States Department of Veteran's Affairs, then this Deed Restriction and the Agreement, shall automatically terminate if title to the Property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the insured or guaranteed mortgage is assigned to the Secretary or the VA.

9.5 Insurance Proceeds and Condemnation Award.

In the event the Property is damaged or destroyed, on in the event of condemnation, Seller shall have no claim or right to any proceeds thereof.

Buyer _____ Buyer _____

10. **Covenant Running with the Land.**

The Property shall be held and conveyed subject to the terms set forth in this Deed Restriction. The covenants contained herein are intended and shall be construed as covenants and conditions running with and binding the Property and equitable servitudes upon the Property and every part thereof; and subject to the next paragraph in this Paragraph 10, are for the benefit of the Benefited Property. Furthermore, all and each term hereunder shall be binding upon and burden all persons having or acquiring any right, title or interest in the Property (during their ownership of such interest), or any part thereof, and their successors and assigns; and subject to the next paragraph in this Paragraph 10, shall inure to the benefit of the Benefited Property and all persons having or acquiring any right, title or interest in the Benefited Property, or any part thereof, which shall be deemed to dominant tenement for purposes of this Instrument. This Instrument is intended to bind and benefit said persons only and is not intended to be, nor shall it be construed as being, for the benefit of the adjoining property owners or any other third party.

In the event that fee title to any portion of the Benefited Property is or has been conveyed by Seller to a third party (a "Transferred Parcel"), the terms of this Instrument shall cease to benefit said Transferred Parcel (but shall continue to benefit the remainder of the Benefited Property) unless Seller expressly assigns to the transferee of the Transferred Parcel the benefits of all or a portion of the covenants contained herein, either concurrently with conveyance of the Transferred Parcel or at any time thereafter, in either case by recorded assignment document executed by Seller and specifically referencing this Instrument (general references to appurtenances or rights related to the acquired land will not suffice). Seller and, upon recordation of any such assignment executed by Seller in favor of a specific successor to the benefits hereof (a "Benefits Successor"), the Benefits Successors alone shall have the right to enforce the terms of this Deed Restriction and the Agreement and to recover for violations by Seller hereunder. Any merger of Seller or Seller's parent company with or into another entity or any acquisition of all or a portion of the stock or equity of Seller or Seller's parent company by a third party will not be deemed a conveyance of the Benefited Property triggering the applicability of this paragraph.

In witness whereof, Buyer has entered into this Deed Restriction as of the day and year this Deed is recorded.

Dominic J Nolan

State of Nevada

County of Clark

On this 9th day of December, 2010, personally appeared Dominic J Nolan who proved to me on the basis of satisfactory evidence to be the persons who executed the within instrument freely and voluntarily in and for the uses and purposes therein mentioned.

K. BAILEY
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 96-2919-1
My Appt. Expires May 6, 2012

Notary Public

GREYSTONE NEVADA LLC., a Delaware Limited Liability Company
BY: Greystone Homes of Nevada, Inc., a Delaware Corporation

by: Jeremy Parness, Authorized Agent

Jeremy Parness

State of Nevada
County of Clark

On 12-9-10 before me, the undersigned, a Notary Public in and for said County and State, personally appeared JEREMY PARNESS, AUTHORIZED AGENT FOR GREYSTONE HOMES OF NEVADA, INC. A DELAWARE CORPORATION personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that be his/her/their signature (s) on the instrument the person (s), or WITNESS my and official seal.

(Notary Public)

My Commission Expires: _____

LYNN MENESES WITTER
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 97-0701-1
My Appt. Expires Aug. 13, 2012

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a. 176-34-114-031
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page: _____
Date of Recording: _____
Notes:

3. a. Total Value/Sales Price of Property $ 160,580.00
   b. Deed in Lieu of Foreclosure Only (value of property) (.00)
   c. Transfer Tax Value: $ 160,580.00
   d. Real Property Transfer Tax Due $ 821.10
4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____
5. Partial Interest: Percentage being transferred: 100.00 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity Grantor

Signature _____ Capacity Grantor

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Greystone Nevada, LLC	Print Name: Dominic J. Nolan
Address: 2490 Paseo Verde Parkway, Suite 120	Address: 7510 Peria Del Mar Ave
City: Henderson	City: LV
State: Nevada Zip: 89074	State: NV Zip: 89179-2500

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: North American Title Company Escrow #: 45002-10-12984
Address: 3571 E. Sunset Road
City: Las Vegas State: Nevada Zip: 89120

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT B

EXHIBIT B

Inst #: 201012100002325
Fees: $37.00
N/C Fee: $0.00
12/10/2010 02:05:11 PM
Receipt #: 608447
Requestor:
NORTH AMERICAN TITLE MAIN
Recorded By: OSA Pgs: 24
DEBBIE CONWAY
CLARK COUNTY RECORDER

Assessor's Parcel Number:
176-34-114-031
After Recording Return To:

Recon Trust Co./TX2-979-01-0
P.O. Box 619003
Dallas, TX 75261-9003
Prepared By:
LING TING
~~Recording Requested By:~~
M. WARNER

KBA Mortgage, LLC

7660 DEAN MARTIN DR, STE
201A
LAS VEGAS
NV 89139

[Space Above This Line For Recording Data]

LAP454562778322 [Case #] | 45002-10-12984 [Escrow/Closing #] | 00023324334312010 [Doc ID #]

Lender affirms that this instrument does not contain Personal Information as that term is defined in Nevada Revised Statues §603A.040.

DEED OF TRUST

MIN 1001337-0003726029-9

NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.

NEVADA--Single Family--**Fannie Mae/Freddie Mac**
UNIFORM INSTRUMENT (MERS) **Form 3029 1/01**

23991

233243343000001006A

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated DECEMBER 09, 2010 , together with all Riders to this document.

(B) "Borrower" is

DOMINIC J NOLAN, A SINGLE MAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

KBA Mortgage, LLC

Lender is a

CORPORATION

organized and existing under the laws of DELAWARE

Lender's address is

27001 Agoura Road, Suite 200
Calabasas Hills, CA 91301

(D) "Trustee" is

NORTH AMERICAN TITLE COMPANY

3571 E SUNSET ROAD
LAS VEGAS, NV 89120

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated DECEMBER 09, 2010 . The Note states that Borrower owes Lender

ONE HUNDRED SIXTY FOUR THOUSAND THIRTY TWO and 00/100

Dollars (U.S. $ 164,032.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 01, 2041 .

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☒ Planned Unit Development Rider	☐ 1-4 Family Rider
☒ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following

CASE #: LAP454562778322 DOC ID #: 00023324334312010

described property located in the

COUNTY of

[Type of Recording Jurisdiction]

CLARK :

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of

7510 PERLA DEL MAR AVE, LAS VEGAS

[Street/City]

Nevada 89179-2500 ("Property Address"):

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands,

subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all

insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by,

or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for

public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing

in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest

in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a

substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity;

or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance

affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ 300.00 .

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

_____ (Seal)
DOMINIC J. NOLAN -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

CASE #: LAP454562778322 DOC ID #: 00023324334312010

STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on 12-9-10 by Dominic J. Nolan.

K Bailey

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065

K. BAILEY
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 96-2919-1
My Appt. Expires May 6, 2012

CASE #: LAP454562778322 DOC ID #: 00023324334312010

LEGAL DESCRIPTION EXHIBIT A

Parcel One(1): Lot Sixty-Three(63) of Mandolin Phase 3 at Mountains Edge (A Planned Unit Development and Common Interest Community) as shown by may thereof on file in Book 134 of Plats, Page 21, in the Office of the County Recorder of Clark County, Nevada. Parcel Two(2): Non-exclusive easements for vehicular and pedestrian traffic as provided for and subject to the terms and conditions as set forth in that certain "Master Declaration of Covenants, Conditions and Restrictions and Reservation of easements for Mountains Edge," Recorded April 14, 2003 in Book 20030414 as Document No. 2089, of Official Records. Parcel Three(3): Non-Exclusive easements for ingress, egress and utility purposes as set forth in that certain "Declaration of Covenants, Conditions and Restrictions for Mandolin," Recorded July 6, 2006 in Book 20060706 as Document No. 2647, of Official Records.

VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER

LAP454562778322	45002-10-12984	00023324334312010
[Case #]	[Escrow/Closing #]	[Doc ID #]

NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.

THIS VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER is made this NINTH day of DECEMBER, 2010 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Deed to Secure Debt (herein "Security Instrument") dated of even date herewith, given by the undersigned (herein "Borrower") to secure Borrower's Note to
KBA Mortgage, LLC

(herein "Lender") and covering the Property described in the Security Instrument and located at
7510 PERLA DEL MAR AVE, LAS VEGAS, NV 89179-2500

[Property Address]

VA GUARANTEED LOAN COVENANT: In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

If the indebtedness secured hereby be guaranteed or insured under Title 38, United States Code, such Title and Regulations issued thereunder and in effect on the date hereof shall govern the rights, duties and liabilities of Borrower and Lender. Any provisions of the Security Instrument or other instruments executed in connection with said indebtedness which are inconsistent with said Title or Regulations, including, but not limited to, the provision for payment of any sum in connection with prepayment of the secured indebtedness and the provision that the Lender may accelerate payment of the secured indebtedness pursuant to Covenant 18 of the Security Instrument, are hereby amended or negated to the extent necessary to conform such instruments to said Title or Regulations.

23991

233243343000001539R

LATE CHARGE: At Lender's option, Borrower will pay a "late charge" not exceeding four per centum (4%) of the overdue payment when paid more than fifteen (15) days after the due date thereof to cover the extra expense involved in handling delinquent payments, but such "late charge" shall not be payable out of the proceeds of any sale made to satisfy the indebtedness secured hereby, unless such proceeds are sufficient to discharge the entire indebtedness and all proper costs and expenses secured hereby.

TRANSFER OF THE PROPERTY: This loan may be declared immediately due and payable upon transfer of the Property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to Section 3714 of Chapter 37, Title 38, United States Code.

An authorized transfer ("assumption") of the Property shall also be subject to additional covenants and agreements as set forth below:

(a) ASSUMPTION FUNDING FEE: A fee equal to one half of one percent (0.50 %) of the balance of this loan as of the date of transfer of the Property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the Department of Veterans Affairs. If the assumer fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to that already secured by this instrument, shall bear interest at the rate herein provided, and, at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the assumer is exempt under the provisions of 38 U.S.C. 3729 (c).

(b) ASSUMPTION PROCESSING CHARGE: Upon application for approval to allow assumption of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the creditworthiness of the assumer and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by the Department of Veterans Affairs for a loan to which Section 3714 of Chapter 37, Title 38, United States Code applies.

(c) ASSUMPTION INDEMNITY LIABILITY: If this obligation is assumed, then the assumer hereby agrees to assume all of the obligations of the veteran under the terms of the instruments creating and securing the

loan. The assumer further agrees to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty or insurance of the indebtedness created by this instrument.

IN WITNESS WHEREOF, Borrower(s) has executed this VA Guaranteed Loan and Assumption Policy Rider.

DOMINIC J. NOLAN - Borrower

_____ - Borrower

_____ - Borrower

_____ - Borrower

PLANNED UNIT DEVELOPMENT RIDER

LAP454562778322 [Case #] 45002-10-12984 [Escrow/Closing #] 00023324334312010 [Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this NINTH day of DECEMBER, 2010 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

KBA Mortgage, LLC

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

7510 PERLA DEL MAR AVE
LAS VEGAS, NV 89179-2500
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as

MANDOLIN

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to ensure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

_____ (Seal)
DOMINIC J. NOLAN - Borrower

_____ (Seal)
- Borrower

_____ (Seal)
- Borrower

_____ (Seal)
- Borrower

CASE #: LAP454562778322 LOAN #: 233243343

LEGAL DESCRIPTION EXHIBIT A

Parcel One(1): Lot Sixty-Three(63) of Mandolin Phase 3 at Mountains Edge (A Planned Unit Development and Common Interest Community) as shown by may thereof on file in Book 134 of Plats, Page 21, in the Office of the County Recorder of Clark County, Nevada. Parcel Two(2): Non-exclusive easements for vehicular and pedestrian traffic as provided for and subject to the terms and conditions as set forth in that certain "Master Declaration of Covenants, Conditions and Restrictions and Reservation of easements for Mountains Edge," Recorded April 14, 2003 in Book 20030414 as Document No. 2089, of Official Records. Parcel Three(3): Non-Exclusive easements for ingress, egress and utility purposes as set forth in that certain "Declaration of Covenants, Conditions and Restrictions for Mandolin," Recorded July 6, 2006 in Book 20060706 as Document No. 2647, of Official Records.

EXHIBIT C

EXHIBIT C

Inst #: 201201060000225
Fees: $18.00
N/C Fee: $0.00
01/06/2012 08:01:36 AM
Receipt #: 1028277
Requestor:
CORELOGIC
Recorded By: MSH Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Recording Requested By:
Bank of America
Prepared By: **Aida Duenas**
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

DocID# **12223324334310733**
Tax ID: **176-34-114-031**
Property Address:
7510 Perla Del Mar Ave
Las Vegas, NV 89179-2500
NV0-ADT 16687097 1/3/2012

This space for Recorder's use

MIN #: 1001337-0003726029-9 MERS Phone #: 888-679-6377

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is **1901 E Voorhees Street, Suite C, Danville, IL 61834** does hereby grant, sell, assign, transfer and convey unto **BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP** whose address is **451 7TH ST.SW #B-133, WASHINGTON DC 20410** all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: **KBA MORTGAGE, LLC**
Made By: **DOMINIC J NOLAN, A SINGLE MAN**
Trustee: **NORTH AMERICAN TITLE COMPANY**
Date of Deed of Trust: **12/9/2010** Original Loan Amount: **$164,032.00**

Recorded in **Clark County**, NV on: **12/10/2010**, book **20101210**, page **0002325** and instrument number **N/A**

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on 1·3·2012

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: _____
Cynthia Santos Assistant Secretary

State of **California**
County of **Ventura**

On JAN 03 2012 before me, Barbara J. Gibbs, Notary Public, personally appeared Cynthia Santos, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity (~~ies~~), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public: Barbara J. Gibbs
My Commission Expires: September 9, 2013

(Seal)

BARBARA J. GIBBS
Commission # 1864186
Notary Public - California
Los Angeles County
My Comm. Expires Sep 9, 2013

DocID# 12223324334310733

EXHIBIT D

EXHIBIT D

(2)

Inst #: 201307100000782
Fees: $18.00
N/C Fee: $0.00
07/10/2013 10:37:08 AM
Receipt #: 1686126
Requestor:
CORELOGIC
Recorded By: GILKS Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Recording Requested By:
Bank of America, N.A.
Prepared By: **Noor Sadruddin**

When recorded mail to:
CoreLogic
Mail Stop: ASGN
1 CoreLogic Drive
Westlake, TX 76262-9823

DocID# **14923324334355665**
Tax ID: **176-34-114-031**
Property Address:
7510 Perla Del Mar Ave
Las Vegas, NV 89179-2500
NVG-ADT 25639807 6/19/2013 NS0603E

This space for Recorder's use

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is **1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063** does hereby grant, sell, assign, transfer and convey unto **NATIONSTAR MORTGAGE, LLC** whose address is **350 HIGHLAND DRIVE, LEWISVILLE, TX 75067** all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender:	**MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR KBA MORTGAGE, LLC**
Made By:	**DOMINIC J NOLAN, A SINGLE MAN**
Trustee:	**NORTH AMERICAN TITLE COMPANY**

Date of Deed of Trust: **12/9/2010** Original Loan Amount: **$164,032.00**

Recorded in **Clark County, NV** on: **12/10/2010**, book **20101210**, page **0002325** and instrument number **N/A**

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on
JUN 20 2013

Bank of America, N.A.

By: Suhala Beg
Suhala Begum
Assistant Vice President

State of **TX**, County of Dallas

On 06·20·13, before me, Kemeshia L. Durham, a Notary Public, personally appeared Suhala Begum, Assistant Vice President of **Bank of America, N.A.** personally known to me to be the person(s) whose name(s) is/are subscribed to the within document and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the document the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public: Kemeshia L. Durham
My Commission Expires: 04.01.14

KEMESHIA L. DURHAM
Notary Public, State of Texas
My Commission Expires
April 01, 2014

DocID# **14923324334355665**

EXHIBIT E

EXHIBIT E

Inst #: 201201040001123
Fees: $17.00
N/C Fee: $0.00
01/04/2012 09:18:22 AM
Receipt #: 1025708
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: SOL Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

Accommodation

APN # 176-34-114-031
N69603

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on July 6, 2006, as instrument number 000347 BK 20060706, of the official records of Clark County, Nevada, the Mandolin has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 7510 Perla Del Mar Ave Las Vegas, NV 89179 particularly legally described as: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
Dominic J Nolan

Mailing address(es):
7510 Perla Del Mar Ave Las Vegas, NV 89179

*Total amount due as of today's date is $987.44.

This amount includes late fees, collection fees and interest in the amount of $648.34

* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: December 29, 2011

By Shea Watkins, of Nevada Association Services, Inc., as agent for Mandolin

When Recorded Mail To:
Nevada Association Services
TS # N69603
6224 W. Desert Inn Rd, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885 Toll Free: (888) 627-5544

EXHIBIT F

EXHIBIT F

Inst #: 201202270002448
Fees: $18.00
N/C Fee: $0.00
02/27/2012 02:41:00 PM
Receipt #: 1078502
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: LEX Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN # 176-34-114-031
NAS # N69603
North American Title # 36179
Property Address: 7510 Perla Del Mar Ave

Accommodation

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

IMPORTANT NOTICE

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in good standing by paying all your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is $1,992.87 as of February 23, 2012 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions, Mandolin (the Association) may insist that you do so in order to reinstate your account in good standing. In addition, the Association may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Association may mutually agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Mandolin, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of assessment on your property.

NAS # N69603

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION SERVICES, INC.

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Dominic J Nolan, dated December 29, 2011, and recorded on 1/4/2012 as instrument number 0001123 Book 20120104 in the official records of Clark County, Nevada, executed by Mandolin, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on July 6, 2006, as instrument number 000347 BK 20060706, as security has occurred in that the payments have not been made of homeowner's assessments due from 8/1/2011 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal_Description: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63 in the County of Clark

Dated: February 23, 2012

Autumn Fesel

By: Autumn Fesel, of Nevada Association Services, Inc.
on behalf of Mandolin

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
(702) 804-8885
(888) 627-5544

EXHIBIT G

EXHIBIT G

(2)

Inst #: 201211150002280
Fees: $18.00
N/C Fee: $0.00
11/15/2012 09:36:24 AM
Receipt #: 1383723
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: KGP Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING COVER PAGE

Must be typed or printed clearly in black ink only.

APN# 176-34-114-031
11 digit Assessor's Parcel Number may be obtained at:
http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx

TITLE OF DOCUMENT (DO NOT Abbreviate)

NOTICE OF FORECLOSURE SALE

Title of the Document on cover page must be EXACTLY as it appears on the first page of the document to be recorded.

Recording requested by:

NORTH AMERICAN TITLE COMPANY

Return to:

Name NORTH AMERICAN TITLE COMPANY

Address 8485 W. SUNSET ROAD #111

City/State/Zip LAS VEGAS, NV 89113

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of $1.00 will apply.

To print this document properly—do not use page scaling.

P:\Recorder\Forms 12_2010

APN # 176-34-114-031
Mandolin

NAS # N69603

Accommodation **NOTICE OF FORECLOSURE SALE**

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 NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, December 29, 2011. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 12/14/2012 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on July 6, 2006 as instrument number 000347 BK 20060706 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on January 4, 2012 as document number 0001123 Book 20120104 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 7510 Perla Del Mar Ave, Las Vegas, NV 89179. Said property is legally described as: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63, official records of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: Dominic J Nolan

The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $3,954.62. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 2/27/2012 as instrument number 0002448 Book 20120227 in the official records of Clark County.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

November 12, 2012

Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

By: Elissa Hollander, Agent for Association and employee of Nevada Association Services, Inc.

EXHIBIT H

EXHIBIT H

Inst #: 201302070001210
Fees: $18.00 N/C Fee: $0.00
RPTT: $76.50 Ex: #
02/07/2013 09:34:04 AM
Receipt #: 1489157
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: RNS Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

(3-1

Please mail tax statement and
when recorded mail to:
7510 Perla Del Mar Ave Trust
PO Box 36208
Las Vegas, NV 89133

FORECLOSURE DEED

APN # 176-34-114-031
North American Title #45010-12-36179

NAS # N69603

The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Mandolin), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded January 4, 2012 as instrument number 0001123 Book 20120104, in Clark County. The previous owner as reflected on said lien is Dominic J Nolan. Nevada Association Services, Inc. as agent for Mandolin does hereby grant and convey, but without warranty expressed or implied to: 7510 Perla Del Mar Ave Trust (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63 Clark County

AGENT STATES THAT:
This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Mandolin governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 2/27/2012 as instrument # 0002448 Book 20120227 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Mandolin at public auction on 2/1/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid $14,600.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: February 2, 2013

Elissa Hollander

By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA)
COUNTY OF CLARK)

On February 2, 2013, before me, M. Blanchard, personally appeared Elissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

(Seal) (Signature)

M. BLANCHARD
Notary Public, State of Nevada
Appointment No. 09-11646-1
My Appt. Expires Nov. 5, 2013

M. Blanchard

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 176-34-114-031
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 14,600.00
b. Deed in Lieu of Foreclosure Only (value of property) (_____)
c. Transfer Tax Value: $ 14,600.00
d. Real Property Transfer Tax Due $ 76.50

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section_____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Agent

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Nevada Association Services	Print Name: 7510 Perla Del Mar Ave Trust
Address: 6224 W. Desert Inn Rd.	Address: PO Box 36208
City: Las Vegas	City: Las Vegas
State: NV Zip: 89146	State: NV Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

North American Title Company
8485 W. Sunset Road, Suite 111
Las Vegas, Nevada 89113

Escrow # 36179 / NC9603
State: Zip:

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT I

EXHIBIT I

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).

Chairman Anderson:
Mr. Gustavson, I think this was part of the concerns you raised. You wanted to see the specific prohibited materials. With that, Mr. Carpenter, I think we are going to start with your bill. Let me open the hearing on Assembly Bill 207.

Assembly Bill 207: Makes various changes concerning common-interest communities. (BDR 10-694)

Assemblyman John C. Carpenter, Assembly District No. 33:
Thank you, Mr. Chairman and members of the Committee.

[Read from prepared text, Exhibit D.]

Chairman Anderson:
The amendment (Exhibit E) is part of the copy of Mr. Carpenter's prepared testimony. Are there any questions on the amendment? No? Is there anyone else to speak on A.B. 207?

Pam Borda, President and General Manager, Spring Creek Association, Spring Creek, Nevada:
Thank you, Mr. Chairman and members of the Committee. I am the President and General Manager of the Spring Creek Association (SCA). We have existed for about 38 years, long before the Ombudsman Office was even thought about. When it was created in 1997 and then broadened in 1999, we were exempted from that office and from its fees. In 2005, there was a change to legislation, which compelled us to pay fees, but still exempted us from the services of the Ombudsman Office. We are here today to ask you to change it back and exempt us from paying those fees because we do not utilize their services. We have been taking care of our own problems in Spring Creek for 38 years, and we are pretty good at it. We do not believe we need the services of the Ombudsman Office, and therefore should not be paying fees to them. I have provided you with a handout with a lot of information about the history of Spring Creek. The biggest issue I would like to portray today is that, while this may not seem like a lot of money, our deed restrictions limit the amount that our assessments can be raised, unlike a lot of other homeowners' associations (HOA). Any raise in cost to us generally means we need to cut something out of our budget. If you can imagine, we have 158 miles of road that we are responsible for maintaining, which costs hundreds of thousands of dollars a year. We are not even doing the job that we need to do. This year, for example, we had to cut $500,000 out of our budget because of a 110 percent increase in our water rates and other utilities. The impact of the Ombudsman fees means that, if we have to pay those fees, we will be cutting out some other service to our homeowners.

Chairman Anderson:
Ms. Borda, you do not use the Ombudsman, at least you have not to date? You are precluded from using the Ombudsman?

Pam Borda:
We are exempt from it, yes.

Chairman Anderson:
That is because you have chosen not to avail yourself of the use of that office?

Pam Borda:
Yes, we have been exempt from it since the office was created.

Assemblywoman Dondero Loop:
I have actually been to Spring Creek many times visiting your schools. You mentioned 5,420 lots. Is this how many homes are actually up there, or simply lots?

Pam Borda:
That is referring to the number of lots. We are at 74 percent capacity.

Stephanie Licht, Private Citizen, Spring Creek, Nevada:
I have been a resident of Spring Creek HOA since September 1987. My first husband was Chairman of the Board for quite a few years in the early 1990s. I have been through eight different general managers, so I have some history of the particular problems that are related to the Association. All of those have been solved by things that are in place in our board—the way they conduct themselves, and the way the Committee of Architecture conducts themselves. Basically, we have taken care of our own problems for 38 years. If you look on the Ombudsman's page on the website, most of the things they deal with are arbitration and disputes between a homeowner and an overzealous board. We do not feel that we should fall under the Ombudsman, primarily because we are quite different from other HOAs. Mr. Chairman, I have brought with me a low-tech visual. If you will allow me to show a map, I would appreciate it.

This map is on loan from the Nevada Department of Transportation. In the upper left hand corner is just part of the mobile home section. The line transecting most of the center of that is Lamoille Highway. You can see that the lots are quite spread out. In fact, we abut a rancher's place on the right. All of our lots are over an acre, and are spread out all over. I think that part of Chapter 116 of *Nevada Revised Statutes* (NRS) at one time requested gated communities. The only way we could do that is by blocking off the state route with a toll gate, I guess. We are spread over most of 25 to 30 square miles.

We cover 19,000 acres that are interspersed with a lot of different kinds of things, some common and some private or federal. You can see some of the common elements in that, but there is quite a bit of Bureau of Land Management (BLM) property that surrounds us. There are some private areas in between. Some of what you see on the map are other small developments. We are just not like the other HOA properties, which are so close to one another.

Pam Borda:
We have four different housing tracts of land in the Spring Creek Association. It covers 30 square miles, and we have 158 miles of road.

Stephanie Licht:
I would be happy to answer any questions.

Assemblyman Horne:
What is to stop other associations from coming to the Legislature and asking to be exempted because they are not like others? Is this not a slippery slope? You say it is different because you are rural and, I think you said, "we take care of ourselves," and you are spread out over 30 square miles. Next time it could be another association with other dynamics who will want to be excluded.

Pam Borda:
That is a good question. The answer would be that our Conditions, Covenants and Restrictions (CC&Rs) are not restrictive like the typical HOA. We do not care what color someone paints his house, or what kind of fence he puts in. It is truly a rural environment where we do not make a lot of rules about how people live. They move out there to be left alone and to live as they choose. You will find that the typical HOA is extremely restrictive and makes more rules for homeowners and how they live. That is one of the primary differences between a rural agricultural HOA and an urban HOA.

Warren Russell, Commissioner, Board of Commissioners, Elko County, Nevada:
Thank you, Mr. Chairman. Two-thirds of my district, which is the Fifth District, is part of the Spring Creek HOA. I try to attend at least half the meetings by the SCA Board, both as a commissioner and as official liaison from the Elko County Commission. We continue to have a very close working relationship with this group. I support this bill, and everything that has been said before.

Chairman Anderson:
Commissioner Russell, are there services that the county provides in that area in which the HOA is treated differently than other organizations? Is that the only HOA you have in the county?

Warren Russell:
No, sir, that is not the only HOA in the county. We subsidize the road program throughout the HOA. The HOA is subject to codes and resolutions that we have established. Many of the issues that might arise for the residents who live in isolated areas would probably have no other recourse for resolution except through the HOA. There might be limited options for recourse pertaining to the laws of the county.

Chairman Anderson:
Do you have a similar relationship with other HOAs in the county in that you maintain their roads?

Warren Russell:
We do not maintain the roads of other HOAs. We do not maintain the roads in the Spring Creek HOA, either. We provide a subsidy.

Chairman Anderson:
Do you have any influence in deciding infrastructural questions such as the upkeep and development of roads, inasmuch as your budget is affected?

Warren Russell:
As a county, our budget would not be affected by this bill. The SCA would be affected. Our primary relationship would revolve around the use of the right-of-ways. All the roads have already been established in SCA, so we are not looking to develop new roads. That would be an exception rather than the rule.

Chairman Anderson:
You are misinterpreting the question. Obviously, this is going to be an economic advantage to SCA. Given the peculiar nature of this relationship between the county and SCA, is there any time when the SCA can place upon the county an economic demand without the input of the county? If the SCA wanted to build additional roads, would they not have to come to the county to gain approval since it is an additional cost to the county?

Warren Russell:
I think that it would be a voluntary decision if there were additional fiscal costs to the county associated with building new roads in Spring Creek. For example,

there are additional units that have decided to connect to utilities and roads that are outside of Spring Creek. That issue is handled by the SCA in a satisfactory manner in coordination with Elko County. I would say there is no impact to the county, but rather it falls upon the residents of Spring Creek, and the tax base in a general way.

Chairman Anderson:
I see no other questions. Thank you very much.

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:
The Commission has no objection to the bill that would take these associations out of paying the ombudsman's fee.

Chairman Anderson:
Has the Commission taken a position regarding the loss of revenue that would stem from passage of A.B. 207?

Michael Buckley:
At the Commission meeting on March 2, 2009, we were advised that the compliance department of the Division had not ever had problems with Spring Creek. In that sense, there was never a use of the ombudsman facilities. We did not discuss the loss of revenue.

Chairman Anderson:
That is the heart of the bill. They have always been exempt from your oversight. Now, what they are saying is, "we should not be paying for it."

Michael Buckley:
Mr. Chairman, I think that is right. They have not been paying it in the past. They paid it only one year, I think. The loss would not affect the Ombudsman office.

Chairman Anderson:
Thank you, Mr. Buckley. Are there any questions? Thank you, sir. Is there anyone else compelled to speak in support of A.B. 207?

Robert Robey, Private Citizen, Las Vegas, Nevada:
I am supporting A.B. 207. I found the most interest in the idea of the open meeting law being applied. I wish that applied to all HOAs. I feel that HOAs are taxing authorities. We put assessments on people that they have to pay.

Chairman Anderson:
We are distributing the amendment that was faxed here just before we started today (Exhibit F). Did you have an opportunity to discuss this with Mr. Carpenter, Mr. Robey?

Robert Robey:
No, sir, I did not.

Assemblyman Carpenter:
I am aware that there are some people who want all associations to be under the open meeting law, but I think that would need discussion with all the people involved. All I know is that it works well at Spring Creek. Whether it would work with all the other associations, I am not in a position to say at this time.

Chairman Anderson:
It sounds as if the maker of the bill does not perceive this as a friendly amendment, Mr. Robey. The question of open meeting may require a longer discussion. The Chair will be placing several bills dealing with common-interest communities in a subcommittee. There are several bills that deal with that, and all of those will be worked out. If you would like, I will add your amendment to their responsibilities to include in the general law, rather than the specific law in this particular piece of legislation. If you would like to pursue it, I would be happy to put it in the work session and put it in front of the Committee. Your choice, sir.

Robert Robey:
I appreciate the time that you took to respond to me. Whatever you think is the wisest and best. I think that the open meetings are very important.

Chairman Anderson:
I do not disagree with you. It would be one of the recommendations that we would want to make to this piece of legislation to deal with all the common-interest communities. I do not disagree with the concept of having an open meeting law. Thank you.

We will not hold it for the work session on this particular piece of legislation unless a member of the Committee wants me to put it into the work session document. Two people have indicated to me a desire to serve on the common-interest community subcommittee. It is my intention to put in the recommendation for open meetings.

Anybody else feel compelled to speak on A.B. 207? Anyone in opposition?

Barbara Holland, Private Citizen, Las Vegas, Nevada:
Looking at number one, which exempts HOAs from paying the $3, you ask if there would be an impact on the Ombudsman Office. I can tell you right now, it would probably not have an impact. The Ombudsman Office has never had an audit. The $3 per unit per year is substantially more than what they actually need, so if we are going to exempt people from paying the $3, maybe we should look at reducing the $3 for everybody to a different number. I think it is about time the Legislature does something as far as auditing the Ombudsman Office. Number two, the last legislative session, the Legislature approved electronic mail. We can use the computer age electronic mail, which is still available for rural areas, to facilitate open meetings and to reduce scheduling costs. The law allows HOAs to create one newsletter, which they can create at the very beginning of the year, and list every single meeting time, thereby avoiding additional costs associated with the mailing of notices of their meetings.

Let us talk about the reserves. Assembly Bill No. 396 of the 74th Session, for which the Governor's veto was upheld, also had a section that talked about the reserve study. It talked about the counties with fewer than a certain number of people should be exempt from paying fees. I think the slippery slope is a very dangerous situation with many inequities. We have many small HOAs, and right now in southern Nevada, where we have a lot of foreclosures, they would love to be exempt from paying $3 to the Real Estate Division. As to reserve studies, I will let you know that these reserve studies cost an average of about $1,200 a year.

Chairman Anderson:
Ms. Holland, I do not believe the issue of reserve studies is in this bill.

Barbara Holland:
I am reading where they would be exempt from conducting a reserve study, as per item number 3.

Chairman Anderson:
So, you are speaking against this particular group.

Barbara Holland:
That is exactly correct, sir. I am against the exemption of HOAs from paying $3 for the ombudsman fee because: One, I think you can argue that there are many other types of properties that should be exempt. There is a need for an audit, because I think that $3 is too much. Two, the electronic mail that I mentioned would facilitate the open meeting laws. Three, HOAs should notify homeowners once a year about meetings. Because they do not have many of

the improvements that we have here in the urban areas, whether they are high-rises, condominiums, townhomes, and so forth, the average reserve study costs $1,200. That reserve study is done once every five years. There is absolutely no reason why they cannot budget for this. One of the Assembly members said something to the effect that, if we allow this exemption, there are many other associations that can come back with their own idiosyncrasies. I agree with this sentiment. Though Spring Creek may have 5,000 lots, there are some large associations in southern Nevada, in the thousands already, that could certainly look for having a reduction in their costs. We have a lot of planned urban developments (PUD) that are single-family homes. There are many associations that are not over-regulated, especially the PUDs. I certainly have many associations that have never been before the Ombudsman Office. We have a very clean record; we try to resolve all of our problems, too. The whole concept of NRS Chapter 116 was to be able to protect the members of the public. I am very glad they do not have any troubles today. People from the county areas other than Clark County have written letters to me about their issues for the column I write in southern Nevada on HOAs.

Chairman Anderson:
Thank you, Ms. Holland. Is there anyone else who wishes to speak in opposition? Is there anyone who is neutral? Let me close the hearing on A.B. 207. We will now turn to Assembly Bill 189.

Assembly Bill 189: Revises provisions governing the eviction of tenants from property. (BDR 3-655)

I will turn the Chair over to Vice Chair Segerblom.

Vice Chair Segerblom:
Is the sponsor for A.B. 189 ready? I will open the hearing on A.B. 189.

Assemblyman Joseph M. Hogan, Clark County Assembly District No. 10:
Good morning, Vice Chair Segerblom. Good to see you this morning.
[Read from prepared testimony (Exhibit G); submitted (Exhibit H) and (Exhibit I).]

Vice Chair Segerblom:
Thank you, Mr. Hogan. Mr. Sasser?

Jon L. Sasser, representing Washoe Legal Services, Reno, Nevada:
I appear today in support of A.B. 189. By way of background, I have been involved in the Nevada Legislature since 1983. I have testified on each landlord-tenant bill that has come before this body since that time. This is the third time I have been involved in an attempt to expand the time frames in this

process. The first time was in 1983, when Congresswoman Shelley Berkley (then Assemblywoman, 1983-1984) sponsored a bill that we got through the Assembly, but died in the final days of the session in the Senate. It would have wiped out our summary eviction process entirely, and created a normal summons and complaint process. Then, in 1995, I was involved with a bill to expand the time frame again. I am back today, and my hope is that the applicable cliché is "the third time is a charm," rather than "three strikes and you're out." I represent two legal services organizations that represent tenants in this eviction process. Rarely do we have the luxury of representing tenants in court. Most of the time, we provide advice and brief service, and help with some pro se forms.

The number of evictions in Nevada is staggering. I have given you some statistics in my written testimony (Exhibit J). For example, in a Las Vegas Justice Court, they have 23,000 evictions filed each year. As you know, there are many good tenants, and some bad tenants. There are also many good landlords and a few bad ones. There are some transient tenants that have little contact with our state, and there are some huge apartment complexes owned by out-of-state landlords who also care little about Nevada. There is much mud that can be thrown in both directions. You will probably hear some of that mud today, unfortunately. However, I ask you to stay above the fray and look at the process dispassionately and try to decide if the process is fair or if it needs change.

Nevada's eviction procedures, as Assemblyman Hogan mentioned, are among the fastest in the country. You have been given a wonderful chart prepared by the Legislative Counsel Bureau (LCB) research staff showing the process in the western states around us. You will see that there are three stages in the process. The first is, prior to any court action, there is a notice that must be given from a landlord to a tenant telling him to do something: pay rent, get out, to cure a lease violation, or to be out after a certain period of time if there is an alleged nuisance. Our time frames are in-line with other states there. Some are actually a little bit shorter. California was mentioned with 3 days for nonpayment of rent, whereas we have 5 days.

The next stage is the court process. That is where Nevada is truly unique. As mentioned in a nonpayment of rent case, you get a five-day notice to pay or quit, or, if you are going to contest the matter, file an affidavit with the court. If you file an affidavit, a hearing is scheduled the next day. If you do not file an affidavit, then on noon of the fifth day, the landlord can go down and get an order removing the tenant within 24 hours. If you lose that hearing the day after you file your affidavit, you again can be evicted within 24 hours. That, too, is unique in Nevada. If you look at the chart provided to you, in all of the

other states, there are somewhere between 2 to 7 days that the sheriff has to put you out at the end of the process, instead of within 24 hours as it is in Nevada. Also, in every other state, there is a regular lawsuit filed, a summons and complaint, where the defendant can either file an answer within a certain period of time, or the summons and complaint contains a court date, which is usually 7 days or more until there is an actual hearing. So the speed in our process is in step two and in step three. Because the summary eviction process is well-rooted in Nevada, we have not proposed changing that. Instead, we ask you to add some time on the front end. We think that would be very helpful in a number of cases. It might even avoid eviction. If a tenant has 10 days instead of 5 days to try and raise the rent, and they pay it, then the landlord is better off and the court system is better off. An eviction has been avoided, and the rent has been paid. Nowadays, with people who had a job two months ago and are now trying to live on unemployment compensation, for example, juggling those bills, that extra time can often make a crucial difference. Also, we have a few programs around the state that offer some rental assistance to tenants in this situation. Unfortunately, those are few and far between. Their processes take some time to go through, and frequently the programs do not have enough money. For example, calls to the Catholic Community Services in Reno indicate they get 300 applications a month, and they have only enough money to help about 10 to 12 families each month. The rest are out of luck.

Let me walk you through the bill. First, in section 1, we are expanding the nonpayment of rent notice from 5 to 10 days. In section 2, we are expanding from 3 to 5 days the notice for waste or nuisance. Section 3 talks about a breach of lease. Today, you get a 5-day notice. You have 3 days to cure that breach, and then you have to be out 2 days later. We would change that from 7 to 10, and I have provided in my testimony some comparison to other states in our region and around the country. Section 4 goes into the eviction process itself in the statute. It repeats the change from 5 to 10 days for nonpayment of rent, expands from the eviction within 24 hours to 5 days. Then there is another section, for which I have received a number of calls. It might inadvertently create a problem, if the Committee chooses to process this bill. It might need to be looked at and some issues resolved. There is an unusual problem sometimes in the courts where a 5-day notice is given. A tenant goes down the next day and files his answer. Then, he gets a hearing 1 day later. If he loses, he is out within 24 hours. He is out before the rent is actually due under the 5-day notice to pay or quit. The way this bill is drafted, it would propose to give the tenant up to the end of the 5-day period to actually pay the rent. I have received some concern from the constables' offices in southern Nevada, that this may create a problem with them if they have a notice in hand. How do they know the rent was paid? There are complications contacting the constable and stopping them in their tracks. Court clerks have expressed some

concern. How do they know this receipt for the rent that the tenant brings is a legitimate receipt? I think that does create some logistical complications. I have some ideas about how that might be solved, and would like an opportunity, if you go forward, to meet with the parties, and we can resolve that one.

On the next two sections of the bill, the bill drafter went a little further and gave the tenants a little more than we had originally contemplated. I am glad to have that, of course, but I would say upfront that it gave us more than what we contemplated. It amends *Nevada Revised Statutes* (NRS) 40.254, which deals with evictions that are from other than nonpayment of rent. Now the time frame is, at the end of their notice period, say a 30-day notice for a no-fault eviction. The landlord then gives a 5-day notice to tell the tenant to be out or to file an affidavit with the court. The bill extends that to 10 days. That is wonderful, but it is not what we had asked for originally. I am not pressing that at this time. You have already had your 30 days, you have already had your 5 days, and it is stretching it a little bit to ask for 10 days instead.

Also there is an amendment in the bill to NRS 40.255 that deals with evictions, post-foreclosure sale. That is the subject of another bill in the Commerce Committee, Assembly Bill 140 that expands the time frame for single-family dwellings to 60 days. This bill, as drafted, would change it from 3 to 5 days. Again, that would affect those who are in a sale situation or in a foreclosure sale situation. That would be nice, but it is not something that we specifically asked for. We have also been approached by Jim Endres, who has called our attention to the fact that the way the bill is drafted, it may affect commercial property as well as residential property. It was certainly not our intention to change the law as to commercial property. I believe he has offered an amendment that I believe the sponsor of the bill has seen. I do not want to speak for him, but I have no problem with it. Finally, we believe the time has come to level the playing field. This is a value difference between my friends, the realtors, and me. Normally, we can work things out over the years, but I think things are out of balance and in favor of the landlords in Nevada. The playing field needs to be leveled, as compared to these other states. They do not feel this is the case. I ask you again to rise above the fray and look at the fairness of the process to decide, and I ask you to pass A.B. 189 as may be amended in work session. Thank you, Mr. Vice Chair.

Vice Chair Segerblom:
Thank you, Mr. Sasser. Could you briefly walk through the typical time frame of eviction? Say I have rent due the first of the month, and I do not pay it. These dates get a little confusing. Please go through the different stages.

Jon Sasser:
I would be happy to, Mr. Vice Chair. If my rent is due on the first of the month, and I do not pay on the first, and it is now the second of the month, the landlord has the legal right to give me a 5-day notice to pay or quit my rent by noon of the fifth day after the receipt of that notice.

Vice Chair Segerblom:
Let me stop you there. The law seems to say 3-day notice. Is that a different 3 days?

Jon Sasser:
For nonpayment of rent, the notice is 5 days. There are other notices that we are affecting as well: notice for breach of lease, and notice for nuisance and waste. But for nonpayment of rent, we propose to change the current 5-day limit to 10 days. Again, going back to the current law, at noon on the fifth day, if the tenant has not filed an affidavit, paid the rent, or left, then the landlord can go to the court and apply for an order of removal. He can get it that day, and the tenant can be evicted within 24 hours. If the tenant files the affidavit by noon of the fifth day, the court schedules a hearing as soon as possible—at least in Reno, that is typically the very next day—and if the tenant loses, he can be evicted within 24 hours. I would note, these are judicial days and not calendar days. When you start adding in the weekends, it does lengthen it out a bit. That is the way it works for nonpayment of rent. For something that is not a rent case, it is a little different. You get a 30-day notice for no cause (we are not trying to change that), then at the end of that 30 days, if the tenant is still there, the landlord gives that 5-day notice that says be out within 5 days or file an affidavit with the court, or we can go to court and seek relief.

Vice Chair Segerblom:
So, right now, I do not pay the rent on the first of the month. The second, they give me a notice to quit. I have 5 days to go to court and file an affidavit. You are requesting that it be changed to 10 days?

Jon Sasser:
That is correct.

Vice Chair Segerblom:
Right now, if I file an affidavit and go to court, and I lose, I get evicted the next day. Are you extending that time?

Jon Sasser:
We are asking for that to be extend to 5 days.

Vice Chair Segerblom:
Okay. Any questions? Mr. Hambrick.

Assemblyman Hambrick:
Thank you, Mr. Vice Chair. Mr. Sasser, the bill, as it is presented right now, appears to throw out the baby with the bathwater. I think things have to be worked over. There are so many consequences that I do not think we really realize what is coming down the pipeline. Who is this bill really meant to protect? When we start talking about large conglomerates, we have one mind-set. But when we are talking about individuals, I think we have a different mind-set. We need to address those issues. I am cognizant of the possible unintended consequences. I hope we can address those issues.

Vice Chair Segerblom:
Are there any questions? I see none. Assemblyman Hogan, do you have anyone else you wish to speak on your behalf?

Assemblyman Hogan:
Yes, Mr. Vice Chair. In Las Vegas, we have Rhea Gerkten of Nevada Legal Services who is familiar with the process in that locale and could add a little something and also answer questions that might be on the minds of some of your members who are from Las Vegas.

Rhea Gerkten, Directing Attorney, Nevada Legal Services, Las Vegas, Nevada:
I am testifying in support of A.B. 189 (Exhibit K). We at Nevada Legal Services at the Las Vegas office represent clients who receive a federal subsidy or a county subsidy for their rent. We have a tenants' rights center that assists individuals who are in private landlord situations that do not receive a subsidy. We are primarily going to court only on tenants in subsidized apartments because the need is so great for eviction defense work. Because of that, we see a lot of disabled, elderly, and single mothers with small children as our clients. It is extremely difficult at times for our clients, especially in these difficult economic times, to come up with the money, for various reasons, within the 5-day time frame. Some of our disabled clients might, for one reason or another, not have received their social security benefits on the third of the month, as they had hoped, and are therefore unable to pay by the fifth day of the month. Some of our clients are individuals who are applying for unemployment benefits. The unemployment rate, as per my written testimony, is 9.1 percent; however, it may be higher than that now in Nevada. It takes at least three months to get a hearing if someone is initially denied unemployment benefits. The actual claims process can take some time, so even someone who applies for unemployment benefits is not necessarily going to be approved right away. Dealing with unemployment benefits and trying to find a job makes it

difficult to juggle bills. Some of our clients have to choose whether they are going to buy food for their children or pay rent, late fees, and utilities. Again, some of our clients are single mothers with small children who rely on child support payments. If, for some reason, they do not get their child support checks that month, they are going to have a difficult time coming up with the money to pay. This is not designed to get rid of late fees; these tenants are still required to pay late fees. Late fees are designed to protect the landlords against some financial loss. Certainly, this is not going to do away with any late fee provisions in a lease agreement.

I think Mr. Sasser mentioned social services and tenants applying for rental assistance. That also is not a quick process. Even if money is available, it can take time for tenants to receive financial assistance. The landlords first have to agree to accept the money from the social services agency, so it is not like the tenant can just walk in, say "I need help," get the money, and go pay the rent. There is a back and forth with landlords and with the tenants before they are even eligible to receive the financial assistance, and it does take quite a bit of time in some instances. We would also support the lengthening of time from 24 hours to 5 days after a family receives the order for summary eviction. It is very difficult for a disabled or elderly tenant to pick up and move within 24 hours after a judge tells him that he is going to be evicted. Giving someone a little additional time might mean he gets to remove his property out of the landlord's house or apartment prior to the constable coming to lock him out, which should save the landlords a lot of headaches in the long run. If former tenants remove all their property, landlords would not be required to store and keep the property for 30 days, as per Nevada law. With these changes, the Nevada eviction law would still be one of the fastest in the country. In most other states, it takes quite a bit longer to see an eviction through. We just ask that tenants be given a little bit of extra time in these difficult economic times in which to pay their rent or cure lease violations.

Vice Chair Segerblom:
Because of the tough economic environment, have you seen an increase in evictions in the past year or six months?

Rhea Gerkten:
What we have seen is a huge increase in the number of denials of unemployment benefits. Eviction cases have been increasing, especially with the foreclosure crisis. We are seeing a lot more tenants come in that are being evicted after foreclosure. So, yes, in the general sense, evictions have been increasing, but I cannot give you any numbers.

Assemblyman Ohrenschall:
I was looking at the flow chart, and looking at our neighboring states that have the more generous time periods. Do you think if we did process this bill and extend the time periods that either your office, or the other parts of the social services network, might be able to help evicted tenants avoid falling into homelessness? Do you think that is realistic?

Rhea Gerkten:
In a lot of cases, it would be realistic. Some of the things that we have actually seen are tenants who received the 5-day notice, cannot get the money together in 5 days, file the affidavit, and get a hearing set. In Las Vegas it used to be that you would get a hearing set within 3 days, now most of the courts have changed the process a little bit, so the quickest hearing might be 5 days. But for tenants, a lot of the time what they needed was either that extra time to come up with the money, to borrow the money, or to get a social services agency to approve their applications. There are a lot of times where we have seen tenants who come up with the money prior to their court hearings, which is within the 10-day time frame that is in the bill.

Assemblyman Hogan:
Assemblyman Hambrick raised a good question about who would benefit. I kept hearing that question as I was listening to the last witness. I think our witness has indicated that the most severe need may be those who are disabled or elderly. We would certainly concur that those are the people for whom we are trying to level the playing field. We think they would benefit.

Vice Chair Segerblom:
This would also be the single mothers with small children. Anyone else wish to come forward to testify?

James T. Endres, representing McDonald, Carano & Wilson; and the Southern Nevada Chapter of the National Association of Industrial and Office Properties, Reno, Nevada:
This bill came to our attention in the past week, and after studying it, we realize that it does apply to commercial real estate. As Mr. Hogan and Mr. Sasser pointed out this morning, it was not the intent of A.B. 189 to apply to commercial real estate. Real estate transactions in the commercial sector are very complex, and the leasing negotiations are very detailed. Some of the underpinnings that go through those lease agreements are grounded in part in the current statute.

Vice Chair Segerblom:
Have you offered an amendment?

James T. Endres:
Yes, we have (Exhibit L).

Vice Chair Segerblom:
Have you shown it to Mr. Hogan?

James T. Endres:
Yes, we reviewed it this morning with him and Mr. Sasser. We believe that the amendment we offer this morning may be a solution to distinguish between residential and commercial properties. We suggest that, in *Nevada Revised Statutes* (NRS) Chapter 118, the solution has already been found by referring to residential properties or residential dwellings as "dwellings" to distinguish them from commercial. Whether or not that is the most appropriate solution in this instance, we are not totally clear. But we think, without any question, there is a solution to distinguish between commercial and residential and allow the bill to move forward in its normal progress.

Paula Berkley, representing the Nevada Network Against Domestic Violence, Reno, Nevada:
I think we are a group of people to which Assemblyman Hambrick has been referring. As you know, domestic violence is about control. Quite often, a key sector of control is controlling the money. With so many women that are victims of domestic violence, their partners either take the money or they do not pay the child support and women find themselves unable to pay their rent. This is certainly not due to any problem on her part, but rather her money has been taken. She finds herself potentially evicted. Especially with kids; that is a tremendous pressure and a concern for her sense of security if she gets kicked out of her house. An additional five days, if she can get that money together, certainly protects her children as well as herself. We would urge support of this bill. Thank you.

Vice Chair Segerblom:
Are there resources that woman could go to in order to get the money to help pay the rent?

Paula Berkley:
There are limited resources. For example, the network has the Jan Evans Foundation. We collect money for just such emergencies, but, unfortunately, it is not anywhere near what it needs to be.

Jan Gilbert, representing the Progressive Leadership Alliance of Nevada, Carson City, Nevada:
One of our main goals is to create more humane solutions to problems in Nevada. We support this bill. Years ago, I sat in the welfare office to interview women who were applying for food stamps and health care. A hundred percent of the people I interviewed said the unreliability of their child support was the reason they were there. It was an amazing experience to hear about the amount of money they were owed in unpaid child support. Most of these people want to stay in their homes and keep their children protected, and without child support, they struggle. I would urge you to think about Nevada's laws and try to make them more consistent with our surrounding states.

Assemblyman Cobb:
For purposes of disclosure, Ms. Gilbert is one of my constituents. Whatever response she gives, she is correct. We are talking about the humaneness of all the things we are dealing with here. It is a very laudable goal to help people and give them enough time to move, or to give them whatever they need to aid the individual. I think my colleague from the south referenced the other side of the coin. A lot of people that I know own homes and rent them out. They are not huge corporations, they are just individuals. In Nevada, we are seeing people who cannot afford these homes anymore with 9 percent unemployment. A lot of times they are renting out their homes and living in much smaller ones so that they can pay the mortgage on their homes. I worry about the unintended consequences here for that individual who cannot afford to pay a mortgage and another rent. Are we tying the hands of the individuals who are also hurting right now in this economy, and who would not be able to cover a renter for an extra 10 days?

Jan Gilbert:
That is a very good question. I know we are very sensitive, because you are right. A lot of people I know have rentals. I think the example that Mr. Sasser gave of all the neighboring states contrasts the severity of our laws. It seems unrealistic to me. According to Ms. Gerkten's comments, she actually had tenants get the money before the end of the 5-day period. I know my husband gets his social security check deposited into our account, and it is quite frequently late. I do not know if that is just the way our situation works, but you have to know that these people are living very close. They want to pay the rent; they just need a little extra time. This is not an extreme bill. As Assemblyman Hogan said, we would still have the most severe laws in the country. I am sympathetic to both sides, but I really feel that we want these people to pay the rent. Let us give them that extra time to do so.

Assemblyman Cobb:
I think there is a lot of common ground. Many people are agreeing on all sides of this issue. The people I know who rent out their homes do not, on day 5 or whenever they are allowed to, walk into the court and start paying fees to have people evicted. They want to give them that extra time, and oftentimes just do give them extra time. There might be a slight late fee or something to encourage prompt payment. Nevertheless, I hope we have a good examination of where we are in this economy with the people who are going to be hurt on both sides, while also realizing that common sense oftentimes prevails and allows these people that extra time anyway. Thank you.

David L. Howard, representing the National Association of Industrial and Office Properties, Northern Nevada Chapter, Reno, Nevada:
We are here to go on record that we are in support of the amendment that would make the distinction between commercial property and residential property. Thank you.

Ernie Nielsen, representing Washoe County Senior Law Project, Reno, Nevada:
We support this bill. We assist and represent hundreds of seniors in eviction cases each year. A great percentage of our clients are disabled and are extremely frail. Many of these evictions are very avoidable. As Ms. Gerkten points out, some of the reasons for having the nonpayment is very unique to that month; otherwise, the rent is very affordable to that person and sustainable. There are remedies. There are emergency funds, such as the 15 percent from the Low-Income Housing Trust Fund that is available for emergency housing. However, you must have sustainability with respect to your ability to pay your rent thereafter. There are also representative payee programs for seniors who are beginning to lose their ability to ably manage their funds. However, we need time to be able to engage these systems to be able to save the tenancy. We think that there is a win-win approach here. Both the tenant and the landlord win when we can get involved and have time to work these things out. The cost associated with getting people out of homelessness is far greater than the cost of keeping them from becoming homeless.

Assemblyman Hambrick:
Mr. Nielsen, I appreciate when you say you need the time to be effective. You are representing many seniors and disabled people. This might be a rhetorical question, but how many of your clients find out on the first or second of the month that they cannot pay that month's rent. Can they not backtrack to the middle of the previous month and foresee something coming down the pipeline and say, "Uh oh, I have got a problem. I better let somebody know about this situation?" Can they not do this, instead of waiting until the last minute, which puts the landlord into a difficult situation? As my colleague from the north

states, we do have individuals owning these homes who also have to meet their obligations. Where is the middle?

Chairman Anderson:
Mr. Nielsen, what other material would you like add to the discussion?

Ernie Nielsen:
Our clients are generally less able as they grow older. We find that many of our clients need our assistance to work themselves out of the issue. Certainly, even I would prefer to stave off a problem when we see that it is going to occur. But many of our clients do not have that capability, and they may not feel that they have any options. They try to do the best they can.

Shawn Griffin, Director, Community Chest, Virginia City, Nevada:
I am in favor of A.B. 189. I have been working in a nonprofit organization called Community Chest in Virginia City for the past 20 years. I see these individuals after they are evicted. We do not have this discussion; this discussion is over. The discussion we have is, "where am I going to stay tonight," "how am I going to eat," "how am I going to feed my kids," and "how am I going to get my job?" It is absent housing and it is just not the right thing to do. We do not have the luxury of putting more people out on the street. All of you know this. Every single social system we have is overrun right now; every single one. There is not another place to turn to. I will tell you where they go. They go back to the endlessness of living without shelter. Every person working on this problem would tell you that it is going to take much more time, energy, and taxpayer resources to find them shelter than it takes to evict them. If this were health care, they would say "do not send them to the emergency room to get fixed." They would say, "treat them before the problem occurs." We can do better. We need to do better. Let us give them a few more days and enable them to find the resources they need to stay in their shelter. That is all I have.

Chairman Anderson:
Mr. Griffin, thank you for your testimony and your service to the folks up in Virginia City through Community Chest. Let us now hear from those who are opposed to A.B. 189.

Charles "Tony" Chinnici, representing Corazon Real Estate, Reno, Nevada:
I am opposed to A.B. 189 (Exhibit M). Overall, the effect of this legislation would be minimal to negative for good tenants, fantastic for bad tenants, and bad for landlords. Going back to the analogy of throwing out the baby with the bathwater, this bill would create a huge benefit for people who are abusing the eviction process. When seniors particularly have a problem making their rent, I

always hear from them long before there is an issue. For instance, in the previous month, I would get a phone call from them. Because I represent landlords who recognize that it costs a great deal more to make a property ready for the next tenant, they are supportive of my efforts to negotiate the best possible outcome for both the tenant and the landlord. That means working out some sort of payment arrangement. Any of the community groups who spoke today, if they are working with a tenant who is having financial difficulty, they contact me and I work with them. In the owner's best interest, if there is an opportunity to receive funds from someone who is helping the tenant, that is just as good for the landlord. Some practical aspects of extending the periods involved in eviction would be that it shifts the risk of renting to a marginal tenant to the landlord. The landlord is going to have to compensate for that. Some ways in which that would happen are in a rental agreement where you would typically see a grace period 5 days like our rental agreement has in it. A tenant has 5 days already written into the agreement where no notice is filed, in which they could come in and pay the rent. That way they are covered for things like weekends when they get paid. They can also call me and say, "I am going to be in on the seventh of the month to pay my rent." The first thing that is going to happen is we are going to have to get rid of the grace period of our evictions. Then, we are going to have to file eviction notice for nonpayment on the second day of the month.

Over ten years of managing properties, I have rented to thousands and thousands of tenants. A lot of those tenants were people who, on paper and on their applications, had some things on their credit report that would make me concerned. But, looking at their application as a whole, they were worth taking a risk on to rent them a property. Now, if we were to pass this bill, the majority of those people I would have been willing to take a risk with in the past are people I would no longer be able to afford to take that risk with. Again, we are hurting a lot of good tenants who would be worth renting to but who maybe had some hardships in the past and they do not look so great when they apply to rent your property.

Finally, another way in which we would have to adjust for the risk involved in the extended eviction process is that we would have to increase the security deposit that we charge tenants up front. Or, we would ask for prepaid rent to cover this period. In practical terms, it is about once in a blue moon that it is an actual 5-day process for nonpayment, or for breach of lease, or an actual 3-day period for a nuisance eviction, due to the court restrictions based on whether a tenant received a notice in person or had it mailed to them, due to holidays, and due to weekends. What effectively winds up happening is that it is about a three-week to one-month process already to evict a tenant. So, it does not really make sense to create this extension when, in Nevada, regardless

of what is happening in regional states, this bill would result in more than one month to remove tenants from property. That is why this law is bad for landlords.

The corporate landlords that were mentioned earlier make business decisions, so typically they are going to work with tenants in the first place. But, what they are going to start doing as a matter of procedure is that they are going to be filing eviction notices on everybody. So, you are going to see the number of notices processed start to go way up. For practical reasons, I ask that you vote against A.B. 189. This bill would only serve the interests of bad tenants, people who do not do what they promise to do, and those who exploit the system that is in place.

Jennifer Chandler, Co-Chair, Northern Nevada Apartment Association, Reno, Nevada:
I am speaking in opposition to A.B. 189. [Read from prepared text (Exhibit N).]

A lot of properties we are seeing with Section 8, Section 42, and the Department of Housing and Urban Development (HUD) housing, are those where people are paying portions of people's rent and trying to assist in that. A lot of those programs are tax credit properties where, if they do not maintain a certain occupancy rate, they are in jeopardy of losing their tax credit. We are not getting eviction-happy. The only ones who are not being worked with are the ones who seem to be predominately doing the same repetitive thing over and over again. [Continued to read from prepared text (Exhibit N).]

All in all, we have the laws we have because we are Nevada. We are not California, Massachusetts, Oregon, Vermont, Washington, or Arizona; we are Nevada. We are proud of our state and our abilities. That is what makes Nevada worth investing in. To model ourselves after other states makes us no more enticing for investors than any other state to invest in. How the law is now is an economic benefit to investors. If you take that away, investors will just go somewhere else. Thank you.

Chairman Anderson:
We have two handouts from you that will be entered into the record (Exhibit N) (Exhibit O). We appreciate you putting forth the information. Are there any questions for Ms. Chandler? Mr. Manendo.

Assemblyman Manendo:
Thank you, Mr. Chairman. What is the average rent in northern Nevada?

Jennifer Chandler:
The average rent as far as the cost?

Assemblyman Manendo:
Rent for your units or apartments. You are with the Northern Nevada Apartment Association. Am I wrong? What are the rents?

Jennifer Chandler:
Right. I am on the legislative committee. They range anywhere from about $675 to $1,200, depending on the area you are in.

Assemblyman Manendo:
You had mentioned something about a tax credit. Can you explain that to me? What is the tax credit based on occupancy that you get?

Jennifer Chandler:
There are programs that investors can partake in, with regards to their purchasing of a property. If they were to make their property—and each program is different, that is why you have Section 8 and Section 42, they all have different levels of qualifications—partake in those programs for the complex, it renders them a tax credit. To be able to partake in the tax credit, they have to maintain a certain percentage of occupancy. They have to be above 82 percent, 88 percent, or 89 percent, depending upon how many units there are in the complex or on the property. If they go below that, they do not get the tax credit because they are not conforming to the guidelines of the program, which is to maintain a certain amount of occupancy. If they go below that, they do not get the tax credit, there is no benefit for them to have that complex as a Section 8 or Section 42 complex.

Assemblyman Manendo:
So, keeping a high occupancy and keeping people in their homes is a benefit to you.

Jennifer Chandler:
It is key.

Assemblyman Manendo:
I just wanted to get that into the record. Thank you, Mr. Chairman.

Assemblyman Hambrick:
Ms. Chandler, from your expertise in the area, would the effect of this bill, one way or the other, directly impact the number of investors that would step up to the plate to offer their properties for Section 8?

Jennifer Chandler:
I think, right now, where our law states having the time frame that we have, we are in the middle of the road. To increase the time frame is going to be consequential. To lower the time frame would not make a difference. We have neighboring states: Wyoming, Arizona, and other states that have a 3-day, pay or quit notices. We have 5-day pay or quit notices. California and other states have even higher time frames. As we sit right now, we are in the middle of the road. I like to think of us as being pretty neutral. We are not pro-tenant, and we are not pro-landlord. The landlords are not beyond working with people, especially in these hard economic times. It is just as hard on the investors. They are having a hard time making their payments and mortgages when people cannot afford to pay their rent. It is hard for everybody. So I think, for the investor side, if we were to go with A.B. 189, they would be less likely to invest in our areas of Nevada where we are steadily growing exponentially. It is going to be detrimental. It is not going to be worth it to them to have somebody in their units for a month without paying rent when they cannot turn around and receive the same time extension to pay their debts and bills.

Rhonda L. Cain, Private Citizen, Reno, Nevada:
I am speaking in opposition to A.B. 189. I am a property owner and investor in Nevada. I am also on the Northern Nevada Apartment Association board. I have been an investor in Nevada for about 20 years. I came here from California; I was an investor in California as a property owner. It is beyond me why we would want to mirror California at this point. Last I looked, they are not doing so well. The laws were so prohibitive for property owners there that I got out. I can speak firsthand to investors wanting to come to Nevada because I have several investors right now from California who are looking to invest and have done so in the last six months. When this bill came on the radar screen, the investors backed off to wait to see what happened. They do not want to invest here if they could have the same laws and invest in California.

I am a property owner and I have been for 15 years. I work with tenants. I do not file a 5-day notice on day 2. We do not do that; we do not want vacancies. With this new legislation, I will change the way I do business. I will probably eliminate my 5-day grace period, and I will start filing those notices on day 2. So, it is just prohibitive. We have mortgages to pay and vendors to pay; we have taxes, sewer bills, water bills, and with all of that, we still have to pay them. The reality is right now, even with the 5-day notice, it takes about

30 days to get someone out. When we extend that to 10 days, it is going to extend that far beyond another 5 days. So the reality is we do not want vacancies, and we work with tenants at this point. As was testified to before, it is the bad tenants that this law will protect, because we try to protect the good tenants at this point. We want good tenants. My investors from California want to come to Nevada, and they want me to manage and oversee these properties. They do not want me evicting good tenants. They want me to work with them. But, when they see the laws going down the slippery slope as California is going, where they are not investing, they are not going to bring their investment dollars here and provide rental housing in Nevada.

Assemblyman Manendo:
Your investors have invested in northern Nevada before?

Rhonda L. Cain:
They have invested extensively in the last six months. We have made several purchases.

Assemblyman Manendo:
Are they interested in converting the apartments into condominiums? That happened a lot in southern Nevada, where we had a lot of apartment units reconfigured and made into condominiums.

Rhonda L. Cain:
That was happening at the beginning of 2007. We invested in many properties with the intent of conversion. Now, what is happening is what is called a reversion. They are going back from the condominiums to rentals. The mindset of most investors right now is to find a safe place to park their money. They are not comfortable with the stock market, and they are not comfortable with 1 percent interest in the banks. So, if they do have a little bit of funds, they want to invest it in a place where it can sit for two to three years.

Assemblyman Manendo:
Thank you, I appreciate that. I am sure that they will invest, build some apartments, or invest in some apartments, flip those over and make some more money later on when the economy changes. Maybe that is why you see many places where people are struggling to find a place to live, because a lot of these units have gone over into single family dwellings. I am sorry your investors were not making as much as they thought they were going to at the time. Thank you, Mr. Chairman.

Assemblyman Cobb:
You made an interesting point about automatically filing for evictions if the law is changed. My question has to do with the costs involved on the rental property side. I know, in Carson City, it is $69 to file for eviction, and then another $69 to lock out a tenant. I am assuming that, if we are changing the law and you are going to automatically file for eviction on day 2, that action would raise your costs: Rental rates would go up for people throughout Nevada; therefore, it is going to be more costly to have a place to live. Finally, there is going to be less opportunity for people who do not make a lot of money to find apartment spaces to live in. Is this correct?

Rhonda L. Cain:
Correct. The costs will go up considerably when we have to change the way we do business. I thought about how I will run my business should this legislation pass, because it is an enormous impact. It sounds like 5 days, but it is much more than that. I will probably raise my security deposit on those tenants that are a little iffy on their application because I am taking a risk. It is more money out-of-pocket for them. It does not help anyone in the long run.

Kellie Fox, Crime Prevention Officer, Community Affairs, Reno Police Department, Reno, Nevada:
Good morning, Mr. Chairman and members of the Committee. [Read prepared testimony (Exhibit P).]

Assemblyman Gustavson:
You brought up the point of illegal activities. I know we are having a lot of problems with homes being foreclosed on and people removing appliances and fixtures in the home. Are they having the same problem with rental properties too? If time would be extended, would they have more time to remove these items from the homes?

Kellie Fox:
I am familiar with a specific house in my cul-de-sac that was foreclosed on. The people living there moved out and took everything, including the kitchen sink. All my neighbors came to me because of what I do, and we referred that to code enforcement. We, as a police department, did supervise it as far as making sure there were no kid parties, it did not get broken into, or other criminal activity until it was repaired. We had a neighborhood watch.

As far as rentals and apartments, I have not seen that happen. I do not think that would come to the police department per se; however, I do not know.

Chairman Anderson:
Let us turn our attention to the people in the south. Is there anyone who wishes to speak in opposition to A.B. 189?

Barbara Holland, Private Citizen, Las Vegas, Nevada:
I would like to comment on some of the other comments that have been made. If anyone thinks that a landlord, owner, or manager wants to put people out on the streets, that is absolutely incorrect. Our job is to have apartments rented; occupied with paying renters. There are very few residents who are evicted because they are waiting for social security checks. I do not even know anybody in southern Nevada that would do that. Most of the management companies in southern Nevada all have grace periods of anywhere from three to five days. If a person has not paid his rent on the first, he would not even see a 5-day notice until either the fourth or sixth of the month. Also, I want to talk about the timeline. Here in southern Nevada, the 5-day period is not a 5-day period. You cannot serve a 24-hour notice until after eight days. We already have an extended time period that has been done here locally. For all of southern Nevada, if you serve a 5-day notice, you will actually wait eight days. It does not count the day that it was served, weekends, or holidays. In addition, we cannot bring any more than five evictions per property per day because the courts cannot process the notices. Right now, if this law were to pass, it would complicate the situation even more. A statistic was made by another person showing there were about 23,000 evictions a year. Do you know what that means in southern Nevada? That means less than one person evicted per year per apartment property.

One of the things that has not been stated is that we go out of our way to talk to the residents about what is happening. Most of us will knock on doors and say, "Please, talk to us. Give us an idea. Are you going to pay rent or not pay rent? Should we put you in a promissory note? Are you changing jobs and waiting for another two-week period before you get paid?" These are things that are not being mentioned by the people that spoke in favor of the bill. We will even talk to people who have lost their roommates and offer them cheaper accommodations.

As far as damage to property, there is a tremendous relationship between the people that do not talk to us and those who we are forced to evict, that abuse the system and damage the property. I can show you multiple units in southern Nevada over the years that have that relationship. Also, I want to distinguish on foreclosures. If a foreclosure was happening in a single family home, and there was a tenant who was elderly or handicapped, there is already a state law that states you can go to the courts and ask for an additional 30 or 60 days.

Those who have started the legal aid services can certainly help tenants who are elderly and handicapped, and who are affected by bank foreclosures.

As far as giving people an extra five days for nonpayment of rent, I doubt whether they are going to be able to come up with any money. There are very few government programs left right now for people to have additional money. The other thing that people have misstated is that a lot of times tenants will say, "my rent money is sitting at the craps table at one of the local casinos." That makes us different from other states in the United States. I am from Connecticut and Massachusetts, where the eviction process was difficult. Obviously, we do not have a 24-hour town that offers a lot of vices. I tell my friends, if you move to this state, do not come here if you have a vice, because it will kill you.

Our industry creates jobs. We spent over $16 million dollars in southern Nevada in goods and services last year on all the properties that we managed. When we have vacancies caused by evictions because people are not paying their rent, two things happen. Number one, we stop doing maintenance, or the maintenance gets slower, because we have to pay our mortgages. Also, not everybody that owns an apartment complex is a corporation. We have many retired people that own over a hundred units as well as many that own 50 units or less. These units are their retirements. Obviously, between everything else that is happening in our country right now, they are not seeing very much money.

It was mentioned before about the single-family homes. Many homeowners, in trying to prevent losing their single-family homes, have moved into apartment communities and then have asked property managers to help lease those homes. They are willing to subsidize, so if I can find a tenant to pay $1,200 a month towards the mortgage and the homeowner that does not want to lose his home can contribute $300, which enables the homeowner to keep that home. This bill has a horrible effect for the individual homeowner with a single-family home.

Chairman Anderson:
Thank you. I see no questions for you, Ms. Holland.

Bret Holmes, President, Southern Nevada Multi-Housing Association, Las Vegas, Nevada:
I want to reiterate a few of the points and point out that the Southern Nevada Multi-Housing Association represents hundreds of property managers and owners in the Las Vegas area that are all opposed to A.B. 189.

The good landlords do work with the tenants. The way that this was presented in the beginning was like we were following the letter of the law. Generally, landlords do not do that, especially the good ones. People will not get their notice to pay rent or quit until the fourth, fifth or sixth day. Then it turns into a lengthy process. When you talk about the current process being approximately three to four weeks, extending that out to six to eight weeks and having a landlord or owner go through that period of time with no income on that unit really hurts a number of people. The decrease in income would have to be made up by an increase in rent, security deposits, and tightening up the credit. The other side that this affects is the employment side and the problem of employing a full staff to keep up the property and maintain tenant relations. There are an extensive number of reasons why this bill should be tabled and put down, some of which you have heard today.

Chairman Anderson:
Mr. Holmes, you also sent up by fax your position statement. I will make sure it is entered into the record (Exhibit Q).

Zelda Ellis, Director of Operations, City of Las Vegas Housing Authority, Las Vegas, Nevada:
We would like to go on record opposing section 2 of A.B. 189 in regard to the nuisance extension to serve a notice. The housing authority rarely serves 3-day notices, but in the event that we do, it is because there is a serious situation on the property. Because we are the owners of low-income public housing property, numerous times we have illegal activity occurring on our property. We are working with our local police department. When we have a situation where there is gun violence, illegal drugs being sold, search warrants being served, the housing authority absolutely needs the ability to get those residents out of our property as soon as possible in order to maintain the quality of life for the law-abiding citizens that are living in our units. When you extend the time frame from three to five days, including the time these residents have to go through due process within the Housing Authority with the grievance procedure, it extends that time for them to continue to damage the property that they are living in. By the time we eventually evict them, many lives have been affected by the continued illegal activity. To increase the time frame from three to five days would be a disservice to the population that we serve, especially those who are law-abiding citizens.

Jenny Reese, representing the Nevada Association of Realtors, Reno, Nevada:
The realtors are in opposition to A.B. 189.

Chairman Anderson:
Mr. Kitchen, do you have written documentation that you want to submit to the Committee? We will have that submitted for the record (Exhibit R). Is there anyone else who feels compelled to speak, whose position has not been fairly represented, in opposition to A.B. 189?

Roberta A. Ross, Private Citizen, Reno, Nevada:
I am here against A.B. 189. I own a 162-unit weekly/monthly apartment building in downtown Reno. I am the President of the Motel Association. We have an unintended consequence here with the majority of the people who are in extreme poverty, living in motels. In 2001, I came in front of this Committee to try to pass legislation that people who lived in weekly motels did not have to pay room tax. At that time, I think it was around an 11 percent tax. Now it is up to 13.5 percent tax. That started in 2001. Since that time, I was very politely told here that this was a local issue, not a state issue. I went back locally. I became President of the Motel Association, and then I was on the board of the Reno-Sparks Convention and Visitors Authority (RSCVA) and worked diligently to get this passed. Those people who live in weekly motels do not have to pay the room tax if they can pay 10 days all at one time. The other thing that is in place and stays there is that if a person pays weekly, they will be charged room tax until the 28th day. So, in Washoe County, that will be 12.5 and 13.5 percent. If this bill passes, I would say that it will probably happen that those people who live in weekly motels are going to be hit hard. The landlords of those motels will no longer let them go in ten days because you can usually weed out your bad tenants in 28 days. They will be charged 13.5 percent room tax. If they leave in under 28 days, we as the landlords have to pay the 13.5 percent tax. So, now the people in weekly motels will probably be charged that 13.5 percent for the landlords to protect themselves.

The other issue is that, in the 28-day stay, those people who sign a contract stating that they will live there for 28 days do not have to pay the room tax. If they get knocked out prior to that, they will have to pay the room tax. My point is that the people who are barely scraping by and living at weekly rentals will be affected by this because landlords will not take them in for 30 days, keep them at the weekly rental rates, and absorb the 13.5 percent tax. They will probably begin raising their deposits up from the $35 or $50 deposits to $100 or more. I would ask that you do not pass A.B. 189.

Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association, Las Vegas, Nevada:
Normally, the bankers would not care about a bill like this; however, due to foreclosures and the progress of Assembly Bill 140, which is over in the Commerce and Labor Committee, we may well become landlords for a period of

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.

EXHIBIT J

EXHIBIT J

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

EXHIBIT K

EXHIBIT K

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

Minutes ID: 1248

CM1248

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.

Chairman Ohrenschall:
I believe the Committee members received an email from Senator Copening about the crime insurance issue.

Assemblyman Carrillo:
I received a copy also.

Senator Allison Copening, Clark County Senatorial District No. 6:
I did not post the email to Nevada Electronic Legislative Information System (NELIS). It was information that backs up the need for HOAs to carry crime insurance as it is the association's money that needs to be protected. I do not think it stops an independent community association manager (CAM) from carrying whatever insurance he or she would like to carry, but because it is the responsibility of the association to protect its funds, it is a recommendation in the Uniform Common-Interest Ownership Act that crime insurance be carried. I believe there was a supplemental email from Mark Coolman to discuss the fees, which are considered to be very nominal for the type of coverage.

Chairman Ohrenschall:
Do you have any comments on the amendment proposed by Mr. Friedrich?

Senator Copening:
I would need to defer to Michael Buckley on that. I do not have the amendment here. I think it stated the manager should carry the insurance and not the association.

Gary Lein, representing the Commission for Common-Interest Communities and Condominium Hotels:
I feel that insurance is a coverage that should remain at the association level. It is those funds that need to be protected and we need to make sure the insurance is there. We also need to ensure the crime insurance has the appropriate endorsements extending to the employees of the association, its agents, directors, volunteers, and community manager. For coverage up to $5 million of crime insurance with the appropriate endorsements, the cost would be approximately $3,200 per year for an association. That is $6.40 per $10,000. For a very small association with $250,000 of protection, the annual cost would be $582 per year, or $23.28 per $10,000. We feel that is a reasonable price to pay to know that the funds of the association are protected. As it relates to the cap, we had proposed this language so that it would be in sequence with the mortgage guidelines from Fannie Mae and Freddie Mac, in that there is currently no cap in those federal mortgage guidelines.

As a Commission, we had heard a case in Las Vegas this year where a board member got onto the association's executive board and within a few months started embezzling. In that particular case, that person embezzled about $64,000 over several months. This association is out those funds and had no coverage. Had the association had this coverage in place, it would have received that money back from the insurance company.

Another provision in this section is dealing with a no conviction requirement. We know that the Las Vegas Metropolitan Police Department is stretched in resources and in some cases the district attorney's office is as well, so it is important not to have a conviction requirement on the crime policy. I would support no cap, or at minimum a cap at $5 million.

Chairman Ohrenschall:
Mr. Ziegler, the cap Mr. Friedrich proposed was how much?

Dave Ziegler:
$500,000.

Chairman Ohrenschall:
Mr. Lein, you would propose a cap no lower than $5 million, correct?

Gary Lein:
That is correct. You must realize there are some associations that have reserve funds up to $10 million. I do not believe $500,000 is adequate. The cost of $3,200 for $5 million in coverage, when you are dealing with an association with $5 million to $10 million in reserves, is a minimal fee. They have a multimillion dollar budget and to protect those funds, I believe, is absolutely worthwhile.

Chairman Ohrenschall:
Any questions?

Assemblyman McArthur:
Is this where we decided to go with the $500,000 or the three months? There are some very small HOAs, if we kept it at $500,000 or three months' revenue, whichever is less, which would cover the larger HOAs that have a large amount of money coming in and the smaller HOAs would only have to go to $500,000.

Chairman Ohrenschall:
The text of the original bill states, "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." There is no mention of $5 million.

Assemblyman McArthur:
I am not sure what three months of aggregate assessments is for some of the larger HOAs, but I believe it is a pretty substantial amount.

Garrett Gordon, representing Southern Highlands Homeowners Association:
In the case of Southern Highlands, there is $4 million to $5 million in reserves. Per month assessments for three months is another $2 million to $3 million. That is why our concern is when you start adding up reserve funds and three months of aggregated assessments, the premiums on those amounts would be quite substantial. If it got too high, we would have to increase the assessments of the homeowners. On behalf of Southern Highlands, we would ask that a reasonable amount would be three months of assessments or $500,000, whichever is less. There would be a cap of $500,000 and three months assessments for smaller associations.

Chairman Ohrenschall:
Would that be less than the $5 million that Mr. Lein proposed?

Garrett Gordon:
Yes, it is significantly less. I think Mr. Lein is proposing $5 million; Southern Highlands is proposing $500,000 or three months of assessments, whichever is less.

Assemblyman McArthur:
Approximately what are those three months worth?

Garrett Gordon:
Around $2 million worth of assessments for three months.

Assemblyman McArthur:
So that is still under the $5 million mark?

Garrett Gordon:
Correct. However, with the language I am recommending, "whichever is lower," then it would go to the $500,000 cap.

Assemblyman McArthur:
I am talking about the larger HOAs.

Chairman Ohrenschall:
Would you be comfortable with the three months aggregate assessments or $500,000?

Gary Lein:
I think that is too little for the larger HOAs. I think for an association that has $10 million in reserves and monthly expenses of approximately $700,000 per month, overall, $5 million at a cost of $3,200 per year, with all the proper endorsements is a very small price to pay to have that type of insurance and that type of protection. I think $500,000 for larger HOAs is just too small, especially with the incremental value to obtain the greater coverage. I show that for a policy for $1 million, the annual premium would be $1,160.

Assemblyman McArthur:
Basically we are talking about roughly $1,100 per $1 million?

Gary Lein:
Yes, at $25,000 worth of coverage, the annual premium would be $145. For $250,000 worth of coverage, the cost would be $582; $1 million costs $1,160; and the price for $5 million is $3,200. Again, I think the important thing is to be in line with the guidelines of Fannie Mae and Freddie Mac.

Assemblyman McArthur:
You said for $5 million the annual premium is $3,200?

Gary Lein:
Correct.

Assemblyman McArthur:
Initially I think you said it was around $1,100 for $1 million. So the premium drops as the coverage goes up?

Gary Lein:
Correct. The price per $10,000 of coverage on a $1 million policy is $11.60. The price per $10,000 of coverage on a $5 million policy is $6.40. So, for the smaller HOA that is trying to cover $250,000, it is $23.28 per $10,000.

Chairman Ohrenschall:
Do we want to decide on this section now, or wait until we go through the rest of the sections?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
The way the law is written, this is a two-step process. I have never objected to the three months of the aggregate assessment. I have been told that Sun City Summerlin, which has 7,781 homes, receives monthly dues of approximately $30,000. My concern was that all the reserves be covered under the crime insurance policy. I believe Sun City Summerlin has about $13 million in its reserve fund. Before someone could embezzle that huge amount of money, I would think that flares would be going up, but they could take $10,000 to $50,000. That is why I came up with the $500,000. Most of the HOAs in the state are small and have nowhere near what Sun City Summerlin or Sun City Anthem have. Also, why should the HOA be forced to pay for the crime insurance that the CAM should pay? It is a cost of doing business on behalf of the CAM, just as they pay their own workers' compensation, rent, and office supplies. The HOA should not have to pay for a business expense.

Gary Lein:
I do not want to rebut Mr. Friedrich, but the problem is that not all HOAs are professionally managed. There are a number of self-managed HOAs. The CAM would have to have coverage, but that coverage is not going to cover the executive board, the volunteers, or the directors. The CAM cannot have an endorsement to cover the executive board for fraud or embezzlement. We feel that the coverage has to be at the level of the HOA protecting and insuring the executive board, the employees, the directors, the agents, the management company, and the CAM.

Assemblyman McArthur:
I might offer a compromise here. If we keep the wording as it currently is, three months of aggregate assessments plus reserve funds up to a maximum of $5 million. That way all the smaller HOAs can use the three months aggregate assessments and the larger HOAs will not have to go higher than $5 million.

Gary Lein:
I would not have an objection to that compromise.

Assemblyman McArthur:
As far as covering everyone else, I think most of these policies actually cover everyone including the managers. I do not think that is a problem.

Chairman Ohrenschall:
I have gotten a nod from both Mr. Gordon and Mr. Friedrich on this compromise.

Dave Ziegler:
Section 48 amends provisions relating to common expenses benefitting fewer than all of the units or caused by a unit owner, a tenant, or an invitee.

Chairman Ohrenschall:
There is an exception for when someone has a delivery; if the delivery driver hits a common area, the person receiving the delivery is not liable.

Assemblyman McArthur:
I have no problem with section 48.

Assemblyman Carrillo:
I am good with this one also.

Assemblyman McArthur:
I did not know what the intent of this was. But, it is a benefit, so I agree with it.

Chairman Ohrenschall:
I believe the intent was to exempt the unit owner from liability for willful misconduct or gross negligence of the invitee, the driver.

Dave Ziegler:
Section 49 provides that reasonable attorney's fees and costs and sums due to an HOA under the declaration, *Nevada Revised Statutes* (NRS) Chapter 116, or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments.

[Continued to read from work session document (Exhibit C).]

Chairman Ohrenschall:
Ms. Schuman's amendment seems reasonable to me.

Jonathan Friedrich:
I have a copy of the amendment, it is five pages long.

Chairman Ohrenschall:
Thank you. We have it up here.

Dave Ziegler:
This amendment is in your packet.

Chairman Ohrenschall:
Page 4, line 20 of the amendment states: "Following the trustee's sale or foreclosure sale of a security interest described in paragraph (b) of subsection 2 of NRS 116.3116, upon payment to the association of the amounts described in subsection 3, any unpaid amounts of the lien accruing before such sale remain the personal obligation of the owner of the unit as of the time the amount became due, but no longer constitute a lien upon the unit." That is quite a change from current law.

Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels:
I was involved in writing that amendment. The idea we were addressing is at the bottom of page 3. We think this would have a positive effect, and that is the way the law is currently written. The HOA's super priority lien dates from when the HOA starts the foreclosure. There is a statutory reason for an HOA to start the foreclosure. This amendment will measure the super priority lien, not just from the HOA starting the foreclosure, but also from the first mortgagee's foreclosure sale. In that respect there is not an incentive for the HOA to start the foreclosure if it knows it will get its super priority lien when the first lender forecloses. We took that language from the Colorado Uniform Common Interest Ownership Act. The language that you read on page 4 of the amendment was intended to address the idea that when there is a foreclosure sale and the super priority lien is paid off, there is no more lien. It remains of record because liens remain of record, but the HOA no longer has a lien for any unpaid amounts. Once the foreclosure of the first mortgage has occurred, someone cannot try to enforce the HOA lien for the old owner, who is gone. The amount that a homeowner owes when he buys a unit is not only a lien, it is a personal obligation, so the fact that there has been a foreclosure does not wipe out the fact that the money is owed. We have never heard of an HOA suing anyone, but it is like a utility bill; there may be a lien, but there is also a personal obligation. The intent of the law is if there is a foreclosure of the first mortgage, the HOA receives a super priority payment. Once that super priority payment is made, the lien is gone, and the unit is free from any lien from the prior owner.

Chairman Ohrenschall:
Currently, are HOAs going after the prior owners?

Michael Buckley:
We have heard of instances where an HOA files a lien for $5,000 and the super priority lien is $1,000. When the foreclosure of the first mortgage occurs, $1,000 is all that gets paid. There is a $5,000 lien of record. We have heard of situations where a collection agency or an HOA might try and assert a lien

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

months about timing of collections, costs of collections, and as this body knows, we have been in discussions about coming up with a reasonable compromise. This language was introduced by the investors in order to make this a collection bill. I would object to putting this language into a State Bar Real Property Section bill. We are trying to go through the uniform changes and not make this a controversial collection bill. Secondly, Senator Copening handed out an amendment to this section which adds three words, "Chapter 116 regulations" (Exhibit D). I just wanted to ensure that is on the record.

Chairman Ohrenschall:
Senator Copening's amendment has been posted on NELIS.

Assemblyman McArthur:
I guess there is a difference between the statutes and regulations in NRS Chapter 116.

Chairman Ohrenschall:
This amendment states, ". . . any other sums due to the association under the declaration, this chapter, Chapter 116 regulations, or as a result of an administrative, arbitration, mediation or judicial decision are enforceable in the same manner as unpaid assessments . . . ." Are we broadening the scope of fines that could be due?

Garrett Gordon:
I believe the intent was not to broaden the scope, but as we all know, NRS is the umbrella. Underneath it are regulations approved by the Commission on Common-Interest Communities and Condominium Hotels (CICCH). The Commission has delegated authority to cap, limit, and create costs and fines. I believe this would tighten this section up for the purpose of regulations that the NRS delegates to the Commission.

Chairman Ohrenschall:
So you do see any broadening of things that people may be liable for in terms of fines?

Garrett Gordon:
This is from Senator Copening, and I do not know whether it broadens it or not. There are regulations that deal with fines, costs, and charges. I think Senator Copening's intent was to encourage those regulations to be called out here in this Chapter and with the declaration. One could interpret this as broadening and one could interpret this as narrowing.

Chairman Ohrenschall:
Any other questions? [There were none.] Mr. Friedrich, would you like to address that amendment?

Jonathan Friedrich:
Only 15 percent of the homes that are sold in foreclosure are sold to investors. Those investors are risking their capital. They are paying cash. They are making the associations viable in that they are restoring the homes, paying the fees to the association, paying taxes, and giving employment to the contractors who are restoring these homes. They are allowing brokers to make a commission on the resale of the property. I see it as a win-win situation.

Regarding the amendment, I was concerned with the wording on section 49, page 47, lines 27 to 33. It would hold a unit owner responsible for all the attorney's fees and costs. "Other fees and charges" is very vague. It puts a unit owner at a disadvantage by making him susceptible to huge attorney fees. You gentlemen have seen some of the documentation that I supplied earlier where the attorney's fees and costs are hurled at homeowners. If you are chasing after the homeowner for anything beyond the nine-month super priority lien, the homeowner would be forced to file bankruptcy. In that case the association gets nothing; the attorney would be the winner. The other issue is on page 49, lines 19 to 28, which talks about a receiver. I have heard some horror stories about how much receivers charge for their services. I would suggest some sort of a percentage of the costs that are involved for the receivers. In essence, there should be a cap on the fees for the receivers' services.

Chairman Ohrenschall:
Your comment about the bankruptcy and the association not getting anything, can you go over that again?

Jonathan Friedrich:
It is section 49, page 47, lines 27 to 33. If someone is walking away from his property and is being foreclosed on, I read this that the individual would then be subject to all of the additional costs. Line 33 states ". . . in the same manner as unpaid assessments . . . ." Mr. Buckley advised me that the amendment by Ms. Schulman would remove that burden on a foreclosed homeowner.

Michael Buckley:
Just to remind you where this all started, which was a Uniform Act proposal. The comment from the Uniform Law Commission on subsection 1 states: "Subsection 1 is amended to add the cost of the association's reasonable attorney's fees and court costs to the total value of the association's existing

super lien. The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state." That was referring to Connecticut. I think it goes back to Mr. Carrillo's point that associations need the ability to recover the costs incurred to collect unpaid assessments. If the association cannot recover these costs from the defaulting owner, it will be forced to pass those expenses on to the paying owners. To put it into perspective, our proposal was just to add the language which was adopted by the Uniform Law Commission.

Chairman Ohrenschall:
We definitely have some concerns with this section and the amendments. We will come back to them later. Mr. Ziegler, can we backtrack to Mr. Segerblom's amendment?

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:
When I was here last week, I was seeking to remove a phrase that said "except for . . . ." Mr. Anthony convinced me that I did not need to remove it. In retrospect, I think it would be wise if we could remove that phrase.

Chairman Ohrenschall:
I think we have a mock-up of your proposed amendment.

Dave Ziegler:
That is correct. There is a mock-up prepared by the Legal Division, dated May 9, 2011. It is part of your packet. Section 34 shows what Mr. Segerblom is referring to on lines 32 and 33. What Mr. Segerblom is proposing is also the same that others are proposing. This is one case where all those who seek an amendment in this section are saying the same thing.

Chairman Ohrenschall:
Mr. Segerblom's proposal amends sections 21, 30, and 34 of the bill.

Assemblyman Segerblom:
The Committee agreed to support sections 21 and 30 amendments. Section 34 is the only one left.

Chairman Ohrenschall:
Any feelings from the Committee?

Assemblyman Segerblom:
My amendment to section 34 deals with not allowing the board to amend the declaration, and that it must be done at the vote of the members.

Michael Buckley:
I would just like to note for the record that we have no objection to this amendment.

Assemblyman McArthur:
I am okay with this amendment.

Assemblyman Carrillo:
I am okay with the amendment as written.

Chairman Ohrenschall:
So as a recommendation for the full Committee, we are all in agreement with the proposed amendment by Mr. Segerblom.

Dave Ziegler:
It is my understanding that you will take section 49 under advisement and move on to section 50?

Chairman Ohrenschall:
Correct. I think we need a little more time to reach a comfort level.

Dave Ziegler:
Section 50 provides that a judgment for money against an HOA is a lien on real property of the association. To expand further, this is a lien on property of the association, in addition to the common elements. The idea is that the HOA may have real property that is not part of the common elements.

Chairman Ohrenschall:
As I recall this could be a lien on real property not within the association. Mr. Buckley, is this language from the Uniform Law Commissioners?

Michael Buckley:
Yes, that language is from the Uniform Act. Earlier in the bill there is language that makes it clear that an association could own other real property, such as a parking lot or a golf course. Obviously if the association owes money, the lien is on that property as well.

Chairman Ohrenschall:
So this exempts all common elements within the association, but other real property both within the state or outside the state could be subject to that judgment lien.

Michael Buckley:
That is correct.

Chairman Ohrenschall:
I am all right with this section. I do not recall any testimony against this. Currently, without this change, the judgment lienholder may still be able to go against real property if it is outside the association, correct?

Michael Buckley:
I think that is correct, and this is more of a clarification.

Chairman Ohrenschall:
I agree this is more of a clarification. If someone has a judgment against you, he or she could put a lien on your real property, regardless of where it is.

Assemblyman McArthur:
I do not know whether this is just clarification, but I can go with it and move on.

Chairman Ohrenschall:
I assume this is language from the Uniform Act to just clarify things. Mr. Carrillo are you okay with this? Let the record show that Mr. Carrillo nodded his head that he is okay with section 50.

Dave Ziegler:
Sections 51 and 60 contain provisions that are virtually identical to sections 2 and 3 of Senate Bill 30 (1st Reprint), which this subcommittee approved at the last work session and which the full Assembly Committee on Judiciary approved in the work session yesterday. That point may be moot. We could either amend this out of the bill, or leave it in and ensure it conforms with S.B. 30 (R1). I would make the same comment on the proposed amendment from Yvonne Schuman because I think we covered that in the amendment for S.B. 30 (R1). The only thing that would remain on the table is a proposed amendment from Mr. Friedrich to add a $25 per day penalty if the HOA does not produce books and records within 14 days.

Chairman Ohrenschall:
So we could delete sections 51 and 60 or keep them in because they are identical to sections 2 and 3 of S.B. 30 (R1). The amendment that Yvonne Schuman has proposed seems identical to something we proposed earlier.

Dave Ziegler:
It is identical to the action we took on S.B. 30 (R1).

Chairman Ohrenschall:
Mr. Friedrich's amendment is new, having a penalty to the HOA for not producing books and records after 14 days.

Jonathan Friedrich:
There have been many instances where boards and their management companies refused to turn over the books and records even though it is already in statute. The statute calls for 14 days. This gives that part of the statute some teeth to ensure these books and records, when requested, are turned over to the individual.

Chairman Ohrenschall:
I would like to remind Mr. Friedrich and Mr. Buckley that we are in a work session, and while we appreciate everyone's knowledge and input, please leave it to us to call on you when we need information.

We have other provisions like this currently, correct? If an HOA is not complying, there are different kinds of fines or penalties that can be imposed. This is not something out of the ordinary for the amendment to go forward.

Michael Buckley:
I do not believe there is a specific penalty. I think the process is that if the request is not honored, the requester would go to the Ombudsman who would then request the information. If the HOA failed to comply, the Commission has the authority to impose a penalty or a fine on an HOA, or anyone who violates NRS Chapter 116. It is in the process, but there is no dollar amount. It would have to go through the Real Estate Division in the Department of Business and Industry.

Chairman Ohrenschall:
So, an aggrieved homeowner who did not receive the records that he requested could go through the process with the Ombudsman and potentially get a fine against the HOA right now.

Michael Buckley:
I think that is correct. The Commission focuses more on getting the documents rather than on fining, since if there is a fine, all the owners have to pay.

Jonathan Friedrich:
The process that Mr. Buckley just mentioned can take upwards of one to two years. In the meantime, the homeowner has been deprived of those records. It is a very costly process for the Office of the Ombudsman for Owners in

Common-Interest Communities and Condominium Hotels and for the Commission.

Chairman Ohrenschall:
So you envision this amendment to be swiftly enforced?

Jonathan Friedrich:
That is correct. This gives the existing statute some teeth that are currently missing.

Chairman Ohrenschall:
I see the intent, but I am thinking it may not actually work. The fines may not be imposed for some time, and a determination may need to be made whether there is some type of willful desire to withhold those records.

Garrett Gordon:
I concur with your comments, Mr. Chairman. It would be very difficult to enforce. As Mr. Buckley indicated, if you start assessing arbitrary fines, who pays that? All the other homeowners would have to pay that cost. I would submit to you that there is already a process, as indicated, for a remedy for an aggrieved homeowner.

Chairman Ohrenschall:
Any questions regarding the proposed amendment?

Assemblyman Carrillo:
I am okay with the amendment.

Chairman Ohrenschall:
Mr. McArthur?

Assemblyman McArthur:
I have the same concern; once you start charging these fees, the other homeowners are paying for it.

Chairman Ohrenschall:
Perhaps there is a way to draft this so it can be at the discretion . . .

Assemblyman McArthur:
I think $25 per day is a little steep, also.

Chairman Ohrenschall:
Perhaps it can be at the discretion of the Ombudsman?

Assemblyman McArthur:
I think we already have that process. We need to either put teeth in it with some money or leave it like it is without the amendment.

Chairman Ohrenschall:
Mr. Carrillo, are you okay with the $25 per day for not releasing the documents in 14 days? Is this a problem you see often that HOAs are not releasing the requested documents?

Assemblyman Carrillo:
Personally, in the dealings I have had with HOAs, they seem to be pretty compliant. I am not saying other experiences are not valid, but it may be on a case-by-case basis. Anytime you hit someone in the pocketbook, regardless whether it is an HOA or anyone else, they will respond to it.

Assemblyman McArthur:
I think $25 is a big hit.

Chairman Ohrenschall:
Although the HOA would have had 14 days to comply, but then if it went another 10 days, that would be $250. For a small association, that is a big hit. I recall in another bill we gave homeowners three weeks to remedy a situation.

Assemblyman McArthur:
Would this penalty be enough to sting an association? As a compromise, we could keep the penalty at $25 per day, but give the HOA four weeks to produce the records.

Assemblyman Carrillo:
I am okay with the three weeks.

Chairman Ohrenschall:
That would be consistent with our other bill where we gave the homeowner three weeks to comply.

Chairman Ohrenschall:
I would propose for us to report to the full Committee that we will accept sections 51 and 60. They are duplicative of sections 2 and 3 of S.B. 30 (R1). We will accept Yvonne Schuman's amendment and we will accept Mr. Friedrich's amendment. However, we will amend it to 21 days instead of 14 days.

Dave Ziegler:
Section 52 exempts the disposition of a unit restricted to nonresidential purposes from the requirement to provide a public offering statement or certificate of resale. It also deletes a provision applicable to small HOAs that is covered in NRS 116.1203.

[Chairman Ohrenschall left the room. Assemblyman Carrillo assumed the Chair.]

Acting Chairman Carrillo:
Mr. McArthur, do you have any concerns with section 52?

Dave Ziegler:
I think that there can be nonresidential common-interest communities and nonresidential components within residential common-interest communities.

Acting Chairman Carrillo:
This appears to be adding to the disposition of a unit restricted to nonresidential purposes; it struck out planned communities.

Assemblyman McArthur:
I am okay with this section.

Acting Chairman Carrillo:
Mr. Ziegler, we are okay with section 52.

Dave Ziegler:
Section 53 amends the information required to be included in the public offering statement provided to an initial purchaser of a unit, including any restraints or alienation on the common-interest community (CIC) and the HOA's budget information.

Assemblyman McArthur:
Does this exempt the nonresidential use? I am okay with this section.

Acting Chairman Carrillo:
Okay. Mr. Ziegler.

Dave Ziegler:
Section 55 requires an HOA to charge a unit owner not more than 10 cents per page after the first 10 pages for the cost of copying documents furnished in a resale package. It also provides that the purchaser, rather than the seller, is not liable for a delinquent assessment if the HOA fails to furnish documents required in a resale package within the 10 days allowed by this section. There is a

proposed amendment from Yvonne Schuman to provide that if the documents exist in electronic format, they must be provided, upon request, by email and at no charge.

Acting Chairman Carrillo:
Mr. McArthur?

Assemblyman McArthur:
I may have missed something. Were there three points to this section?

Dave Ziegler:
There is the cost per page, the substitution of purchaser for seller, and a proposed amendment from Yvonne Schuman regarding if the documents exist in an electronic format, they must be provided by email upon request at no charge.

Assemblyman McArthur:
I am okay with this.

Acting Chairman Carrillo:
I am okay with the proposed amendment. At that point the homeowner can provide an email address and it can be sent free.

Assemblyman McArthur:
I agree.

[Chairman Ohrenschall reassumed the Chair.]

Assemblyman Carrillo:
We are discussing the proposed amendment from Yvonne Schuman on section 55.

Chairman Ohrenschall:
I am okay with that also.

Dave Ziegler:
Section 56 addresses warranties made to a purchaser of a unit and provides that such warranties are made by a declarant, rather than any seller. There is a proposed amendment from the Nevada Justice Association to retain the language of the existing statute.

Assemblyman McArthur:
Does that mean we are putting seller back in instead of taking it out, and we have to do that by amendment?

Chairman Ohrenschall:
I believe so. I believe Ms. Dennison had no problem with that.

Dave Ziegler:
I do not recall. The proposal from the Nevada Justice Association is to retain the existing statute.

Alisa Nave, representing the Nevada Justice Association:
Regarding section 56, we are asking for a return to the original language, replacing "declarant" with "seller." The declarant is a master plan developer, and typically is responsible for the larger development of the parks, roads, amenities, a country club, and those things that go with a larger community. The builders will then build out the individual units, and sell them to the buyer. The warranties with regard to the specific unit should be placed on the seller and not the declarant. We think that makes more sense within the context of this section.

Chairman Ohrenschall:
Is my recollection correct that Ms. Dennison had no problem with this?

Alisa Nave:
That is correct.

Chairman Ohrenschall:
This is something I am supportive of. Mr. McArthur?

Assemblyman McArthur:
Yes, I am okay with it.

Chairman Ohrenschall:
I think we can proceed.

Dave Ziegler:
Section 58 authorizes an HOA board to create an independent committee of the board to evaluate, enforce, and compromise warranty claims, and provides rules for such a committee. There is a proposed amendment by Mr. Friedrich to delete the word "compromise" at page 60, line 21.

Chairman Ohrenschall:
Mr. Carrillo, while you stepped out of the room, we reviewed section 56 and the proposed amendment. Are you okay with that?

Assemblyman Carrillo:
I am okay with section 56.

Chairman Ohrenschall:
We are now reviewing section 58 and the proposed amendment.

Assemblyman McArthur:
Perhaps as a compromise, we could use the word "address" in place of "compromise."

Chairman Ohrenschall:
I think you and Nick Anthony are legal geniuses. I am surprised that was not caught earlier. I support that. Mr. Carillo?

Assemblyman Carrillo:
I am fine with that.

Chairman Ohrenschall:
Mr. Friedrich, are you okay with changing "compromise" to "address"?

Jonathan Friedrich:
I am ecstatic.

Chairman Ohrenschall:
We are all in agreement and propose to accept the amendment, but instead of deleting "compromise," we will replace it with the word "address."

Dave Ziegler:
I would like to point out that what I am about to say is current law. Section 59 provides that members of an HOA board are not personally liable to victims of crimes occurring on the property, and provides that punitive damages may not be awarded against an HOA or its board or officers under certain circumstances. Those two things are in current law. The new provision is that the CICCH is not prohibited from taking disciplinary action against a member of an HOA board.

Assemblyman McArthur:
I am okay with this section.

Chairman Ohrenschall:
This section is duplicative of everything except for subsection 8 on page 61. Subsection 8 states, "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."

Assemblyman McArthur:
I do not have a problem with that.

Assemblyman Carrillo:
I am fine with subsection 8 of section 59.

Chairman Ohrenschall:
All three of us are fine with subsection 8 of section 59, and the rest of it is duplicative.

Dave Ziegler:
Section 59.5 deletes the requirement that a community manager must post a bond.

Chairman Ohrenschall:
I am trying to remember what the testimony was in support of removing the requirement for a manager posting a bond.

Michael Buckley:
This is the flip side of requiring the HOA to have crime insurance. This was passed in 2009 with the thought that this was the best way to protect the HOA. When the Commission held hearings on this issue, the Commission heard testimony from the insurance experts that crime insurance was the best way to provide security. It also found that to require a manager—and a manager is the individual, not the company—to post the bond would be mostly cost prohibitive to that individual. An example was given of a young person starting out who did not have a super credit rating. The cost for the bond would be very expensive. The bond would also be very low and would not protect the HOA. The Commission feels that the best way to protect the HOA is through crime insurance, not the bonds for the managers.

Chairman Ohrenschall:
Currently, do the managers have to be bonded?

Michael Buckley:
The statute required the Commission to come up with regulations on what these bonds would look like. Frankly, we were unable to find anyone who could tell us what these bonds were. They are required to have a bond, but there is really no such thing that is available.

Assemblyman McArthur:
Basically I think we are covered by the other part of this bill with the crime insurance.

Assemblyman Carrillo:
I am fine with this.

Chairman Ohrenschall:
We are all in agreement with deleting the requirement of bonding the managers.

Dave Ziegler:
That concludes the printed portion of the bill. There are a few things still on the table. There are three amendments that have been proposed that would be added to the bill. We also have said at the outset that we need to go back and review a couple of sections. The first additional amendment was proposed by Jonathan Friedrich. It would add a new section. It is copied in the work session document. It begins with, "The fee for a mediator or arbitrator selected or appointed pursuant to this section must not exceed $1,000, unless a greater fee is authorized for good cause shown."

Chairman Ohrenschall:
Is this new language being proposed? This is duplicative language that was also in Assembly Bill 448.

Assemblyman McArthur:
It appears as though this would put a cap of $1,000 and each party will split the fees.

Chairman Ohrenschall:
As I recall, this was to be in line with the Nevada Supreme Court Rule 24, which caps arbitrator fees at $1,000 with exceptions for good cause.

Jonathan Friedrich:
The reason for this amendment is that even though A.B. 448 passed through the Assembly 42 to 0, someone added a fiscal note to the bill. It has been sent to die over in the Senate Committee on Finance. If that happens, then this provision, which was approved in A.B. 448, would not be included.

Chairman Ohrenschall:
We are all hopeful that your prognosis is premature; while the patient is on life support, it will pull through and walk out of that hospital, and receive a clean bill of health. I have a "probably okay" from Mr. McArthur. Mr. Carrillo?

Michael Buckley:
For clarification, this is a bill dealing with the Uniform Common-Interest Ownership Act. The next bill on your agenda deals with arbitration and alternative dispute resolution, and that is probably the best place for this amendment.

Chairman Ohrenschall:
I think that is a valid point and perhaps we should consider adding this to Senate Bill 254 (1st Reprint).

Dave Ziegler:
The next proposed additional amendment was from Trudy Lytle. It would amend NRS 116.12065, which is entitled, "Notice of changes to governing documents," to make it applicable to small planned communities also.

Chairman Ohrenschall:
I believe this was covered by Mr. Segerblom's amendment. We have already approved this. It is in Mr. Segerblom's mock-up.

Dave Ziegler:
The next proposed new amendment was submitted by Garrett Gordon. It would amend NRS 116.310305, relating to construction penalties. A copy of this amendment is in your packet.

Garrett Gordon:
This amendment is to clarify NRS 116.310305, which gives the power to the executive board to impose penalties for failure of a unit's owner to adhere to certain schedules relating to design, construction, occupancy, or use of an improvement. The intent behind this section was to mitigate inconvenience to other unit owners, for instance, noise, dust, and construction traffic, giving the board the ability to impose penalties. This amendment will clarify the 2003 legislation regarding where the maximum amount of the penalty should be set forth. In brief, the new language is, "The right to assess and collect a construction penalty is set forth in: (1) The declaration; (2) another document . . . ." Again, where "the maximum allowable penalty" set forth should be made available in a notice and "as part of the resale package that is required under NRS 116.4109 (a)." In summary, this amendment clarifies exactly where the maximum amount of the penalty needs to be, given the declarations that existed prior to 2003. We are adding a provision that this notice of a schedule and notice of what construction penalties may be imposed are, in fact, part of the resale package so all buyers, which includes custom and speculation home builders, are aware of what remedy is available to the HOA.

Again, the intent of this section is to mitigate inconvenience to neighbors regarding noise, dust, construction traffic, et cetera.

Chairman Ohrenschall:
Are there any questions?

Assemblyman McArthur:
For clarification, when you talk about construction penalty, I think about some sort of building, but what we really are talking about is the scheduling. Is this wording clear enough?

Garrett Gordon:
Yes, this does deal with the schedule. You will see the amendment discusses completion and commencement to mitigate any impact on the neighbors. The term construction penalty is used in this section, so I think it is clear that it does deal with a schedule.

Assemblyman McArthur:
In that case, I am fine with this amendment.

Chairman Ohrenschall:
Mr. Gordon can you elaborate on what the confusion was after the passage of the statute in 2003? Has there been litigation with these penalties?

Garrett Gordon:
In 2003, this legislative body added this language regarding that the maximum amount of the penalty must be set forth in the declaration, in a recorded document, or in a contract between the unit owner and the HOA. There has been confusion and questions in the industry regarding declarations existing prior to 2003. It is clear that in order to collect and assess a construction penalty, it must be set forth in the declaration. Regarding the maximum amount of the penalty, from my understanding, in many HOAs, this information is in the rules and regulations, or another document approved by the board, which can be amended very easily by the board. This amendment would say the right to assess and collect a construction penalty must be codified in the declaration. To ensure all buyers are on notice of what this penalty could be, it must be in the resale package.

Chairman Ohrenschall:
So the confusion is within the industry. Has there been litigation?

Garrett Gordon:
To my knowledge there has been no litigation. This has been dealt with through arbitration or mediation. I have heard there is some question regarding declarations prior to 2003. My understanding is the intent was not to affect those declarations, but make this provision prospective in 2003. I hope this clarifies that the declaration must give the right to assess a construction penalty, but that the maximum allowed penalty could be set forth in another document approved by the board.

Chairman Ohrenschall:
Any questions or concerns? [There were none.] I do not remember any testimony in opposition. Was there any, Mr. Ziegler?

Dave Ziegler:
This is a new amendment.

Chairman Ohrenschall:
Right.

Garrett Gordon:
I have spoken with Ms. Dennison and Senator Copening. Neither of them were opposed to this amendment.

Jonathan Friedrich:
In A.B. 448 there was an exclusion for delays and penalties beyond the control of the owner. For example, if bank financing had fallen through and was retracted, or if the contractor went broke, that would be beyond the control of the owner.

Chairman Ohrenschall:
I do recall that. This is not contrary to A.B. 448, if it passes.

Jonathan Friedrich:
If A.B. 448 does not pass, then I would like to see the language from A.B. 448 included in this amendment.

Chairman Ohrenschall:
Mr. Friedrich, there does not seem to be much appetite for that, but thank you for your comments. We will accept this amendment.

Dave Ziegler:
There are a couple of things that we agreed we would revisit. One has to do with section 7. At the last work session, I read from my abstract that the

definitions in NRS Chapter 116 do not apply to the bylaws and declarations of HOAs. After the work session, Ms. Dennison and I discussed that. It was her concern that the intent was exactly the opposite; that the wish was that the definitions in NRS Chapter 116 actually do control. If there are contrary definitions in bylaws and declarations, the definition in NRS Chapter 116 would be the dominant definition. There is a conceptual amendment to satisfy those concerns. Section 7 would be amended to read, "As used in this chapter and in the declarations and bylaws of an association, the words and terms defined in NRS 116.005 to 116.095, inclusive, have the meanings ascribed to them in those sections."

Assemblyman McArthur:
It appears that we are taking one part out and putting another part back in, is that correct?

Dave Ziegler:
One way to describe this is that it takes section 7 and flips it. The way that section 7 is now, it says that NRS Chapter 116 does not control the bylaws and declarations. The intent was that it would control.

Michael Buckley:
The intent of the bill was just as Mr. Ziegler states. The statutory definitions would always trump what the parties provided in the documents.

Chairman Ohrenschall:
I am inclined to support this amendment. It provides uniformity throughout the state. One way to get that uniformity is if the definitions in NRS Chapter 116 are the definitions, and we will not have different definitions with different HOAs.

Assemblyman Carrillo:
This appears to be putting it back to what it was intended to be. I am okay with it.

Chairman Ohrenschall:
We are all in agreement to support this amendment.

Dave Ziegler:
Section 33 has to do with the idea that an HOA board has discretion whether to take enforcement action for a violation of the bylaws, declarations, or rules and provides that a board does not have a duty to take enforcement action in certain circumstances. Yvonne Schuman had suggested an amendment that persons in similar situations must be treated similarly. In other words, there should be a

fairness doctrine attached to this. I do not think we reached closure on that during the last work session.

Michael Buckley:
For clarification, NRS 116.31036, section 3, already requires that the association uniformly enforce the rules and regulations.

Assemblyman McArthur:
Did Mr. Friedrich have an amendment in there? I recall he wanted everything to be fair.

Chairman Ohrenschall:
Mr. Friedrich, did you have an amendment to this section?

Jonathan Friedrich:
I do not see anything.

Michael Buckley:
My previous reference should be NRS 116.31065, subsection 5, which states: the rules ". . . must be uniformly enforced under the same or similar circumstances against all units' owners. Any rule that is not so uniformly enforced may not be enforced against any unit's owner."

Assemblyman McArthur:
There are a couple of other places in statute that address this also.

Chairman Ohrenschall:
Are you all right with this, Mr. Carrillo? All right, we can proceed.

Dave Ziegler:
I do not have anything else on S.B. 204 (R1).

Chairman Ohrenschall:
Is there anyone else who would like to express themselves on this bill?

Jonathan Friedrich:
I believe there are still a couple of sections that have not been resolved.

Chairman Ohrenschall:
Do you know what sections those are?

Jonathan Friedrich:
Section 49. I believe section 45 has been done.

Dave Ziegler:
We have that in our notes. It is the same wording as in the bill, up to a maximum of $5 million.

Garrett Gordon:
I appreciate the compromise, and we are fine with this section. I got a clarification in my amendment regarding the construction penalties. For the record, when I added the language regarding the maximum allowable penalty and schedule as part of the resale package, it should also include the language "or part of the public offering statement." Obviously, we want full notice and disclosure to new buyers and to subsequent buyers. This would provide another layer of transparency.

Chairman Ohrenschall:
So your proposal is to change your amendment to read, "The association has made available a notice of the maximum allowable penalty and schedule as part of the resale package or part of the public offering statement." Is that correct?

Garrett Gordon:
I would suggest that sentence read, "The association has made available a notice of the maximum allowable penalty and schedule as part of the public offering statement or resale package that is required under NRS 116.4109 (a)." I think that is broader and provides more notice to prospective buyers.

Dave Ziegler:
To recap section 49, it provides reasonable attorney's fees and costs and sums due to an HOA under the declaration, or as a result of an administrative, arbitration, mediation, or judicial decision, are enforceable in the same manner as unpaid assessments. This section also authorizes a court to appoint a receiver to collect all rents or other income from a unit owner in an action to collect assessments or foreclose a lien. There are two amendments proposed. One is by Yvonne Schuman, which is attached to the work session document (Exhibit C). Another is proposed by Jonathan Friedrich to delete the language regarding items that are enforceable in the same manner as unpaid assessments. He also suggests that all fees should be capped and that a cap should be placed on the amount a receiver may charge for his or her services.

Chairman Ohrenschall:
There was an amendment having to do with the fines adopted by NRS Chapter 116. That was to which section?

Garrett Gordon:
It was section 49.

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

hearing these cases are as qualified as possible. We have seen the complexity of *Nevada Revised Statutes* (NRS) Chapter 116 and the way these rules operate. In order for this process to work, you must ensure that you have qualified people who are hearing these matters. While I agree there should be some limitation on these costs, because I do agree with many of the people who have spoken, that there are in many cases an excessive amount of bills that are being promulgated by these arbitrators. I think the method to handle this is partly by what has been proposed by Senator Copening's conceptual amendment. I am also aware that Gail Anderson is in the process of addressing these issues. In addition to limiting the dollar amount, perhaps incorporating something along the lines of budgets and establishing the kinds of things that arbitrators do would limit the total cost of these arbitrations.

Chairman Ohrenschall:
Why would the $1,000 cap work under the Supreme Court rule but not work here?

Eleissa Lavelle:
The $1,000 cap has been implemented in the mandatory arbitration process in the district court. Those kinds of cases under NRS Chapter 38 are very limited in their scope. They deal with matters where under $50,000 is at stake. But the statutes exclude a number of kinds of disputes, notably, matters relating to title to real estate, matters dealing with equitable claims, matters dealing with appeals from courts of limited jurisdiction, and actions for declaratory relief. Basically those types of cases limit the scope and complexity of what arbitrators are hearing. That is not the case with these kinds of arbitrations. Here you have very complex issues, and in many cases, arbitrators are given packets of documents of all the board minutes, all the correspondence, perhaps plans and specifications, and architectural guidelines. It takes a great amount of time for arbitrators to do a decent job of understanding the issues and giving adequate opportunity for these people to be heard. At $1,000, you are going to be requiring people to volunteer their time, and I do not know whether you will find quality arbitrators to do this for $1,000.

Chairman Ohrenschall:
When you talked about the district court cases under arbitration being limited to less than $50,000, does that mean you anticipate that most of these disputes would be more than that?

Eleissa Lavelle:
In many cases with homeowners' associations (HOAs), the dollar amount is not significant with respect to each individual case. More particularly, this is an enforcement issue. It could have a dollar figure, but more often it may deal

with interpretations of declarations or interpretations of other governing documents, where a dollar amount really is not the significant part of it. There may be fines imposed, but the most significant part is not only how that declaration or other governing document is enforced with respect to a single homeowner, but the impact it may have on an entire community. Consistency of enforcement is really what is critical with all of these. We want to ensure that these enforcements are being fairly and evenly applied. Whereas, one person may not consider a fine to be a huge amount of money, the impact across the board to the way that community operates and the value of the homes that this enforcement proceeding might have can be very significant.

Chairman Ohrenschall:
Any questions? [There were none.]

Assemblyman McArthur:
Are we going to review the bill, starting with page 1?

Chairman Ohrenschall:
Regarding the arbitrator's fees, if you do not think the $1,000 cap would work, do you think some other cap would work, and is that something that should be put in statute?

Eleissa Lavelle:
There are provisions in the bill that would provide a fast-track type of arbitration where the Real Estate Division Administrator in the Department of Business and Industry would develop regulations that would limit the scope of what these arbitrations would require. It is provided that is what the Administrator would be doing. I think that it may best be handled by the Administrator with clear direction within the statute. That is the goal. The reason for that is if this statute is to last for as long as we all would like it to last, we want it to be responsive to changing events in the community and changing needs and requirements of the people that are utilizing the statute. The Administrator may be in a better position to find out what is going on and develop in a very quick manner the kinds of regulations that would implement a limitation on these fees.

Chairman Ohrenschall:
What is the reason the bill only provides for capping the fast-track arbitration fees as opposed to all arbitration fees?

Eleissa Lavelle:
I believe the proposal is that all fees would be reviewed and limited. The fast-track is a special form of arbitration that could be utilized where the issues are not complex and would require very limited or no discovery and very short

arbitrations. Some of these arbitrations can go days at a time. Others, where the issues are fairly limited, can be limited by regulation to one or two hours. That alone will limit the cost for everybody. All of those are included within the concept this bill encompasses.

Chairman Ohrenschall:
Where within the bill are the arbitrator fees?

Eleissa Lavelle:
They are on page 21, line 19, which deals with rules for speedy arbitration. I may also have been thinking of the proposal that Senator Copening has made to attempt to lift all fees across the board. Not just for fast-track, but for other types of arbitration.

Chairman Ohrenschall:
That is in her amendment, correct?

Eleissa Lavelle:
Correct.

Chairman Ohrenschall:
If Senator Copening's amendment is approved, how long would it take to adopt those regulations?

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry:
I actually have a regulation file started. I had a workshop proposing a number of things concerning the arbitrators and mediators under NRS Chapter 38, which is under the Real Estate Division Administrator's jurisdiction. This is very doable. I have spoken with Senator Copening regarding this. I will have to request that I be allowed to proceed with the regulation, but this is an important public policy that I am fairly certain we can get approval for. There would be some changes; I had some good input from the workshop. I do need to review and incorporate the referenced speedy arbitration fast-track process.

Chairman Ohrenschall:
Your caps would apply to all arbitrators under Senator Copening's amendment, correct?

Gail Anderson:
That is correct. My proposed regulation is concerning all arbitrations.

Chairman Ohrenschall:
Any questions? [There were none.] Ms. Lavelle, would you mind walking us through this bill?

Eleissa Lavelle:
Section 1 deals with the mediation portion of this bill and provides that no later than five days after receipt of the written response—the complaint process is initiated through the Division; when a written response is prepared and received, within 5 days after that—the Division is required to provide a copy of the response to the claimant so that everyone knows what the claims are, what the defenses are, and to provide a list of the mediators that is maintained by the Division. The mediators are to be selected, approved, and trained by the Administrator so that it is clear that they have adequate training in mediation process and an adequate understanding of NRS Chapter 116 and general HOA law. That is the purpose of having the panel of mediators maintained by the Administrator.

The mediator is required to provide an informational statement as set forth in subsection 3, within a very short time period. The mediation is supposed to take place within 60 days after the selection and appointment of the mediator. The purpose is to assure that this process does not unduly delay ultimate decision making if the case cannot be settled.

Subsection 5 states that if the parties reach an agreement, that agreement is to be reduced to writing. This is absolutely standard mediation practice and is something that Mr. Friedrich had proposed as well. The idea is that once the parties have agreed to a settlement, it becomes a binding contract between the parties. It will not be sent out to everyone; the agreement is going to be confidential, and it will not be published unless it will be enforced in some way.

There is a provision for the payment of fees of mediation. The plan is that there would be funds available to some extent through the account referenced in subsection 6. The Account for Common-Interest Communities and Condominium Hotels (CICCH) created in NRS 116.630 had funds set aside for the mediation process. The idea was that this money would be available for payment of these mediators. It is true that the statute does not state that it will be free mediation. It is calculated that given the anticipated number of mediations, if the cost per hour was limited, there would be adequate funds from which these mediators would be paid, not requiring any additional funding by the individuals.

Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels:
We did have, at the Commission, $150,000 for several years that was available to subsidize arbitration that was never used. Finally the amount was taken out of the budget. The fund for CICCH has a surplus in the budget that is not being used. There are funds available through that which could be allocated to provide for the free mediation.

Eleissa Lavelle:
The bill provides that the Commission will have the ability to regulate the fees and charges that would be assessed in section 1, subsection 5. It states, "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." We are cognizant of the fact that this should not be a more expensive process, but in fact a tool to perhaps limit the ultimate costs that are going to be incurred in resolving these disputes.

Section 1, subsection 7, provides that if either party fails to participate in the mediation, or if the parties are unable, with the assistance of the mediator, to resolve the issues, then the mediator would, within five days, certify to the Ombudsman that the mediation was unsuccessful and recommend that the claim be referred either to arbitration pursuant to NRS 38.330, if the claim relates to any governing documents, or to the Division for proceedings pursuant to NRS 116.745 through 116.795 if the claim relates to an alleged violation of a provision of NRS Chapter 116.

In order for the mediations to be successful, the communications that take place are required to be confidential. The next provision of that section says the mediator may not provide any other information relating to the mediation to the Division. The Division, the Commission, and a hearing panel may not request from the mediator any other information relating to the mediation. This is a very important part of this statute because it ensures that the people will be able to freely and frankly discuss their positions without fear of having their words come back to them if the case does not settle. That is also included within subsection 8, essentially the same language.

Subsection 9 is a definitional subsection, dealing with where the mediators are going to be taken from and where the mediations will be conducted.

Assemblyman McArthur:
You mentioned a time limit of five days after receipt, is that enough time?

Eleissa Lavelle:
That is a very legitimate concern. We certainly do not want to create any problems in getting this information out. The intent was to ensure the process moved along quickly. I would defer to Gail Anderson as to whether or not that is a sufficient response time.

Assemblyman McArthur:
I am not trying to fix it or change it; I am just wondering whether it is doable.

Gail Anderson:
The five days is the time the Division has once we have received the written response. That is certainly doable; it would be helpful to make it five business days.

Assemblyman McArthur:
The bill states that the Ombudsman must be available within the geographic area. Is that possible in some of the rural areas? We might want to change that to "should be available" instead of "must be available."

Eleissa Lavelle:
That is a very legitimate concern and I think any modification that would make that easier to accommodate is fine. I think within the large metropolitan areas it should be very simple to find someone within the geographical area.

Assemblyman McArthur:
Also, it states in section 1, subsection 2, "Upon appointing a mediator, the Ombudsman shall provide the name of the mediator to the parties." There is not a time frame for that. Do we need one?

Eleissa Lavelle:
I think the time frame for providing the mediators is within five days of the date of the response. We can take a look at that.

Assemblyman McArthur:
I think we need to tighten up who pays and how much they pay. It does not state what funds will be used.

Chairman Ohrenschall:
Any other questions? [There were none.]

Eleissa Lavelle:
Section 4, page 5, is the confidentiality provisions that have already been addressed. Section 5, subsection 5, deals with bad faith filings and states, "If

the Commission finds that an appeal from a final order of a hearing panel is filed in bad faith or without reasonable cause for the purpose of delay or harassment, the Commission may impose any of the sanctions set forth . . . ."

Michael Buckley:
This is a Commission process rather than an arbitration process. This is where there is a hearing panel, which is a subset of the Commissioners that would hear a complaint that the Real Estate Division brought against someone. It is not the typical homeowner dispute.

Chairman Ohrenschall:
Would this be after the mediation has run its course, or independent of any mediation?

Michael Buckley:
This is completely independent. This is after mediation, after it has been directed to the Division, after the Division has filed a complaint, after a hearing panel has held a hearing, then someone can file an appeal to the Commission.

Chairman Ohrenschall:
Is there a sense that many appeals are filed in bad faith, or for the purpose of delay?

Michael Buckley:
Currently we do not have hearing panels. This section will add a little more weight to what the hearing panel can do.

Chairman Ohrenschall:
Any questions on section 5? [There were none.]

Eleissa Lavelle:
I will skip over some of the sections; they are essentially cleanup sections and language modifications. Section 9, subsection 2, allows for the Division to disclose a claim and response filed with the Division and other documents to the mediator and to the arbitrator. This is a procedural process so that the parties will have an idea of what the claims are about and what the defenses are as they are preparing to either conduct a mediation or an arbitration.

Chairman Ohrenschall:
These are claims filed with the Division prior to the mediation process going forward, correct?

Eleissa Lavelle:
Correct.

Assemblyman McArthur:
It states the Division "may" disclose. Is there a reason for "may"?

Michael Buckley:
The reason this is necessary is because all the records of the Division, at the initial start of the claim, are confidential. It was not intended to say they should not disclose. They do need to disclose to the parties what the problem is; so there may need to be some language clarification.

Eleissa Lavelle:
The intent of section 10 is to consolidate all of the claims that a party has to the extent that they are aware of them within one proceeding. When any given claim is made, everything that the individual or HOA knows about that claim needs to be included so that we are not hitting homeowners with multiple claims on multiple occasions and the homeowners do not have to continue to defend themselves claim after claim. Similarly, if a homeowner has a claim against the association, those are consolidated to the best of their knowledge; so the association is not defending claim after claim. This effort is an attempt to limit the cost that homeowners and associations are paying to go through the arbitration process. It does provide that if these claims are not addressed, if known, that they may be limited and there may not be any ability to proceed with the claims. This is very similar to a statute of limitation that you will find in normal adjudicative law in a district court.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 10, subsection 3, provides and details what needs to be included within the claims. This is essentially a due process provision. Due process requires that the person be told what the claim is about and have an adequate opportunity to be heard. This provision sets forth what will be required in the claim: a statement of whether all administrative procedures have been satisfied and a statement of the nature of the claim and the facts supporting it. Section 10, subsection 3, paragraph (e), states that all claims of which the claimant is aware or reasonably should be aware, including any claims that relate to a violation of the governing documents, need to be included within the complaint that is being filed.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 10, subsection 4, says, "Upon the filing of a claim that satisfies the requirements of this section, the Division shall serve a copy of the claim on the respondent by certified mail, return receipt requested, to his or her last known address." Again, this is a due process provision, so that the respondent knows exactly what the claim is and has all of the information available to him to be able to adequately respond.

Subsection 5 requires that a written response be made by the respondent and sets forth the content of what that response is going to be.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 10, subsection 6, provides that the claims may be consolidated. Subsection 7 states that by filing a claim or response, the claim or response is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of proceedings and that the claims have evidentiary support. The purpose of this is so that people are not filing false or fraudulent claims. There is a substantial amount of support for this in other provisions of the law. Rule 11, under the Nevada Rules of Civil Procedure, requires that if an attorney files a claim on behalf of a party, or if a party signs a pleading, the attorney has to do so with knowledge that there is evidentiary support and that the claim is not filed for improper purposes. There are sanctions applicable if that rule is violated. There are similar provisions within mechanics' lien law and general litigation.

Chairman Ohrenschall:
So will most of the homeowners who are filing these claims be doing it on their own without representation?

Eleissa Lavelle:
An attorney is not required to file these claims. Sometimes attorneys are there, and sometimes they are not. The homeowners who are filing individual claims would be reminded that they must file these claims with a legitimate and good faith purpose for doing so.

Chairman Ohrenschall:
Is there a penalty if they are found not to have met that standard?

Eleissa Lavelle:
There is. In section 18, subsection 9, it says that if a person files a frivolous claim with the Division pursuant to this section or NRS 38.320, the Commission may issue an order directing the person who filed the frivolous claim to pay the costs incurred by the Division as a result of that filing. This cost may be assessed not only against homeowners but also against HOAs. It has equal applicability. Nobody is entitled to file a false, fraudulent, or frivolous claim. There is a penalty involved, but it is a discretionary provision.

Chairman Ohrenschall:
If someone is found to have filed a false or fraudulent claim, can he or she appeal to a court if he or she feels the Commission is wrong?

Eleissa Lavelle:
Under normal administrative law, if a party is aggrieved by an administrative proceeding, there are limited rights of review by a district court. Those rights of review are based on whether the Commission has acted in an arbitrary or capricious manner.

Chairman Ohrenschall:
That provision, allowing an appeal to a district court and ultimately the Supreme Court, comes through the State Administrative Procedures Act as applicable to the Nevada Real Estate Division?

Eleissa Lavelle:
That is correct.

The balance of section 11 deals with false and fraudulent claims and the manner in which these are going to be handled. Subsection 1, page 12, commencing at line 2, states:

> "If, after investigating the alleged violation, the Division determines that the allegations in the claim are not frivolous, false, or fraudulent and that good cause exists to proceed with a hearing on the alleged violation, the Administrator shall:
>
> (a) File a formal complaint with the Commission, with the Division as complainant, and schedule a hearing . . . ."

I believe this is essentially the intervention process that currently exists. We have the analysis period to determine whether or not it is a false or fraudulent filing.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 11, subsection 4, states, "No admission, representation or statement made in the course of the Ombudsman's efforts to assist the parties . . . is admissible as evidence . . . ." There are provisions in NRS Chapter 116 that give the Ombudsman an additional attempt to resolve these disputes. This simply clarifies the confidentiality of those conversations.

Chairman Ohrenschall:
Does this protection currently exist when someone speaks with the Ombudsman, or is this reclarifying?

Eleissa Lavelle:
I have never heard of a situation where an Ombudsman has ever revealed anything inappropriately. I am aware that there is some feeling among people who participate in this process that they want to have this very clear so that when they speak to the Ombudsman, because he is part of the process, that whatever is said is confidential. It is really a clarification.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
The balance of page 13 is clarification. Section 15 basically mirrors earlier parts of this bill. This section provides that not later than five days after receipt of the response, the claimant gets a copy and the parties get a list of the mediators. The changes we have discussed in terms of business days for the five-day time frame would be appropriate here as well.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Continuing on, page 15 is also a mirror image of what we have discussed with respect to the method by which mediators and arbitrators are selected.

Assemblyman McArthur:
Also, section 15, subsection 6, paragraphs (a) and (b), discuss the payment of fees. This area also needs to be tightened up.

Chairman Ohrenschall:
What line is that on?

Assemblyman McArthur:
Page 15, line 18, "The Division may provide for the payment of the fees . . . ."

Chairman Ohrenschall:
I thought the "may" had to do with the fact that there was enough funding right now and no one will be charged for awhile.

Assemblyman McArthur:
I do not think so; a little lower it says "The Commission approves the payment; and . . . ," so there are a lot of questions about who pays and for how long.

Chairman Ohrenschall:
Maybe we can ask Legal to look at that tomorrow. Do you think there is some conflict in the language?

Assemblyman McArthur:
No, I just think it needs to be tightened up regarding whether or not the Division is going to pay, whether there are funds available, or will we need to get funds somewhere else if those funds get used up?

Chairman Ohrenschall:
Ms. Lavelle, do you think there is a problem in that language?

Eleissa Lavelle:
It is the same issue that was raised earlier; the question is, how do you limit the costs of these arbitrations? How do you set fees? Perhaps put parameters around the kinds of things that arbitrators might be doing that exceed the reasonable costs. I agree there are issues with respect to how much arbitrators are charging and what these costs should be. I think the very same issues and concerns that were expressed in the earlier part of this bill apply equally here.

Chairman Ohrenschall:
Thank you. Please proceed.

Eleissa Lavelle:
Regarding section 16, line 21, the term "assessment" had been included within NRS 38.300 regarding the types of things that need to be defined. Instead of the word "assessment," the word "charges" is used. Essentially, this provides a definitional section for use in the statute. It does not impose any additional charges or fees; it is purely definitional.

Chairman Ohrenschall:
I know that Mr. Friedrich had some concerns with that definition. I have talked it over with our legal counsel, and we do not feel that his concerns are correct. I am okay with this section now.

Eleissa Lavelle:
Subsection 3 is also part of the definitional section. It simply adds and clarifies what kinds of things are going to be included and excluded within the arbitration provisions, and also defines more carefully what "irreparable harm" means. These are more clarifications rather than changing anything substantive.

Subsection 4 defines "Commission" so that we know what we are talking about in the course of this statute.

Subsection 6 is a clarification that links the definition of "governing documents" to the meaning that is already defined in the statute.

Chairman Ohrenschall:
On page 16, lines 38 through 41, is the definition of "irreparable harm." Is that from somewhere else in the revised statutes, or did it come from the Uniform Law Commissioners?

Eleissa Lavelle:
Under normal injunctive relief within the NRS and the Rules of Civil Procedure, whenever you have a potential for an immediate risk of irreparable harm, you have a right for injunctive relief. In drafting this statute, the intent was to preserve that right so that if someone has an immediate issue or concern that there is a huge risk, that has to be addressed immediately, and that if you do not go through the arbitration process or the mediation process, you can go straight to court and get a judge to issue an injunction. The question is what does "irreparable harm" mean? This provision is an attempt to define that more carefully by meaning a harm or injury for which the remedy of damages or monetary compensation is inadequate and does not exist solely because a claim involves real estate. It is really a clarification of this. Under normal real estate law, or injunctive relief law, a change to the way in which real estate is held is normally sufficient grounds for getting into court. This is clarification that I believe comports with other provisions of Nevada law.

Chairman Ohrenschall:
If this passes, will it be harder for someone to get injunctive relief for something involving real estate?

Eleissa Lavelle:
I think this will give the court some guidance as to what kinds of cases they can hear and should be hearing for injunctive relief as opposed to what kinds of cases go through the arbitration process. The idea is not to limit either an HOA or a homeowner's right to get immediate access to injunctive relief. It is simply to define that right as carefully as possible.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 17 is cleanup language. Section 18, page 17, provides that a claim may not be filed if a claimant has previously filed a claim with the Division and at the time the claimant filed the previous claim the claimant was aware or reasonably should have been aware of the facts and circumstances underlying the current claim. This is similar to the earlier provisions that I discussed that talk about a requirement that a claimant cannot keep filing the same claim over and over again, or if he or she has facts that he or she knows justify bringing a claim at a certain point in time, he or she has to consolidate those claims at the same time. This creates a more streamlined and less costly approach to dispute resolution.

Assemblyman McArthur:
For clarification, on page 17, line 36, it says "The claimant previously filed a claim . . . ." Should there be something about the same claim again?

Eleissa Lavelle:
If a claimant files a claim, and at the time he filed the claim, he knew of facts that gave rise to a second claim, that second claim will be barred.

Assemblyman McArthur:
I understand that. I am just not sure about the wording. I do not believe the intent is clear.

Eleissa Lavelle:
Both portions of that statute have to be satisfied. So paragraph (a) and paragraph (b) are both necessary. It is both that the claimant filed previously, and at the time the claimant filed, the claimant was aware or should have been aware of facts and circumstances underlying the current claim.

Chairman Ohrenschall:
So there is no requirement that this latter claim arose out of the same nucleus. It could be something unrelated; there just has to be knowledge of it?

Eleissa Lavelle:
That is the way it is currently drafted. It could be the HOA or the claimant.

Chairman Ohrenschall:
It is not like the civil procedure rule, requiring the same transaction or occurrence. In this situation, knowledge would be enough to bar a second claim?

Eleissa Lavelle:
Actually, there is a provision within the doctrine of *res judicata* that if you file a complaint against someone, and at the time you file that complaint you had actual knowledge of other claims that could be filed, even unrelated, you may be barred.

Chairman Ohrenschall:
Any questions? [There were none.] Thank you, please proceed.

Eleissa Lavelle:
Section 18, subsection 2, paragraph (a) is a due process provision, which says that the claimant must provide the respondent by certified mail, with written notice of the claim which specifies in reasonable detail the nature of the claim. These are provisions that ensure that everybody against whom a claim has been filed has full understanding of what the claim is about. Paragraph (b) provides that "If the claim concerns real estate within a common-interest community subject to the provisions of Chapter 116 of NRS . . . all administrative procedures specified in the governing documents . . ." must be exhausted. It requires that each of these parties, before filing a claim, has exhausted whatever hearing processes exist, and they have to certify that has occurred before they can file a claim with the Division. The rest of this section is procedural. It talks about what the claim forms will include and again, a reasonable detail of the violations. The rest of the section deals with the requirements to be included in the claim so that when these claims come before the Division, it will be clear that the parties have thought through all of their claims and supporting information and the fact that they have tried to resolve this through their administrative processes. If they do not do this, there is no penalty, but it is a requirement in the way the forms are set up.

Chairman Ohrenschall:
Any questions? [There were none.] Please proceed.

Eleissa Lavelle:
Page 19 deals with the consolidation of claims and the way the answers are prepared. Section 18, subsection 8, certifies that the claim is being filed with a

reasonable belief formed after reasonable inquiry that the claim is adequately supported and is not being filed for improper purposes. Subsection 9 provides that if a person files a claim which he or she knows to be false or fraudulent, the Commission or a hearing panel may impose penalties.

Chairman Ohrenschall:
Normally, if someone were to appeal from a hearing panel, he or she goes to the Commission?

Michael Buckley:
That is correct. From a hearing panel you would appeal to the Commission.

Chairman Ohrenschall:
Here either one would have the power to impose a penalty. If it is the Commission that imposes the penalty, the only avenue of appeal would be to district court through the State Administrative Procedure Act?

Michael Buckley:
This is referring to a claim and the fact that if a claim filed with the Real Estate Division turns out to be false or fraudulent, then the Commission and hearing panel can impose a penalty. I believe this is existing law.

Chairman Ohrenschall:
Is that something that has never happened in terms of the Commission or hearing panel imposing a penalty for a false or fraudulent claim in bad faith or without reasonable cause?

Gail Anderson:
There is a provision in law although it is not this exact language, where if the Division believes there is evidence to substantiate a knowing, willful filing of false and fraudulent claims that the state would bring a complaint to the Commission against the person who filed it. The Commission has the ability to impose a penalty. The Division has not done that as yet. We continue to try to work this program on getting things resolved, but we have the ability to do that and we may be doing that. Part of the clarifications in the proposed legislation will help define more clearly what things are appropriate and inappropriate that we could bring forth. We have not brought a claim against someone who has filed something at this point to the Commission. We have closed claims as unsubstantiated, but have not brought forth the case as being willful and fraudulent.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 19 sets forth the procedure with clarification based on what has happened with the mediation. If the mediation is unsuccessful, the mediator refers the matter to arbitration. This provides that the Division will maintain a list of qualified arbitrators, and that not later than ten days from the receipt of the referral to arbitration, an arbitrator will be identified. The parties will be notified who the arbitrator will be. This is a slight clarification of statute that already exists in order to accommodate the mediation process.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 19, subsection 3, provides that arbitrations conducted are nonbinding unless the parties agree in writing to binding arbitration. This is so that if the arbitrator gets it wrong, the parties have a right to go to court and see whether they can get it right. We do not want this to be binding arbitration unless the parties want it that way.

Subsection 5 states unless all the parties to the arbitration otherwise agree, the arbitration will be conducted in accordance with rules of the American Arbitration Association or other comparable rules for speedy arbitration approved by the Commission or the Division. The intent is that speedy, fast-track arbitration rules will be established for cases. The default will be a speedy arbitration unless the parties want to take it out of the speedy arbitration if the issues are more complex.

Chairman Ohrenschall:
So if the issues are more complex, that will take it out of the speedy arbitration?

Eleissa Lavelle:
Correct, the parties can agree to that.

Chairman Ohrenschall:
Any questions? [There were none.] Please proceed.

Eleissa Lavelle:
Section 19, subsection 6, states that once the arbitration decision award has been issued, the Division receives a copy of that award. It will also provide that the arbitration awards will be indexed and maintained by the Division. The intent is that there needs to be some consistency in these rulings. One way of doing that is for these arbitration decisions to be maintained by the Division.

Chairman Ohrenschall:
This does not specify how long they will be maintained.

Eleissa Lavelle:
That would be determined by regulation.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
I jumped ahead to that because the Division is going to be getting copies of these arbitration decisions and it will maintain them. The arbitrator provides a copy of the arbitration award. Except as otherwise provided and subject to regulations adopted by the Commission, the parties are responsible for payment of all fees and costs of arbitration in the manner provided by the arbitrator. This is the way the statute was originally drafted. I understand that we are in the process, through the earlier testimony and proposed amendment by Senator Copening, of tightening this up so that you have clear and more concise and limited fees for these arbitrations.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 20, subsection 2, provides that upon request of a party to a mediation or arbitration, the Division will provide a statement to the party indicating the amount of the fees the selected mediator or arbitrator would charge. This will be revised through either amendment or regulation as discussed earlier.

Chairman Ohrenschall:
Thank you very much for taking the time to walk us through this bill and answer our questions.

Assemblyman McArthur:
If someone has a complaint, does it automatically go to mediation?

Eleissa Lavelle:
The point is to get people talking to each other quickly. As the statutes currently exist, they either go immediately to arbitration or to the Division for investigation or hearing. There are dispute resolution processes that are adversarial. This statute proposes that before any of those disputes go to an adversarial proceeding, the parties are required to sit down and attempt to mediate and resolve the dispute.

Michael Buckley:
Also, the mediation and arbitration ties in to making a formal complaint. If you call the Ombudsman and ask for some help, he does not have to refer you to arbitration. He can give you help without going through the process of mediation.

Assemblyman McArthur:
If you do file, it is required to go to mediation first.

Chairman Ohrenschall:
We will now recess and reconvene tomorrow upon adjournment of the Assembly Committee of the Judiciary hearing, at approximately 10 a.m.

[Meeting recessed at 10:08 p.m. on May 17, 2011, and reconvened at 10:30 a.m. on May 18, 2011.]

Chairman Ohrenschall:
We had a late night last night, but I think we made a lot of progress on these bills. We will come back to Senate Bill 204 (1st Reprint).

Senate Bill 204 (1st Reprint): Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

We were held up on section 49. We agreed we did not want to consider any of the amendments that were proposed. We agreed that we supported subsection 11. The impasse was on subsections 1 through 10, that I believe are part of the overall negotiations on the collection and super priority lien issue. We have Senator Copening here to discuss section 49.

Senator Allison Copening, Clark County Senatorial District No. 6:
Regarding section 49, the Chair and I are in discussions about how to strengthen the regulations that are currently in place for collection costs. We are going to remove the new language in section 49, lines 22 through 33, leaving existing language that is currently in law and continue to work on the collection proposal.

Chairman Ohrenschall:
Thank you very much. I would like to clarify with Legal, if we were to not amend that part of *Nevada Revised Statutes* (NRS) 116.3116, we also would not have the subsequent small amendments to subsection 2 through 10. Basically that would leave us with subsection 11, correct?

Nick Anthony, Committee Counsel:
Yes, that is correct.

Assemblyman McArthur:
For clarification, lines 22 through 33, and the new language in subsections 1 through 10, correct?

Chairman Ohrenschall:
Correct, we will not change the existing statute at all. We will keep subsection 11 which deals with receivers.

Assemblyman Carrillo:
I agree with the way section 49 is.

Chairman Ohrenschall:
So we will recommend to the Assembly Committee on the Judiciary that section 49, subsection 11, be kept. All the recommendations we made last night will be included. Mr. Ziegler, is there any point in recapping this bill?

Dave Ziegler:
I think you rehashed it to death last night.

Chairman Ohrenschall:
Then I would be willing to hear a motion that we recommend to the full Committee S.B. 204 (R1) with all the amendments we liked and without all the amendments that we did not like, with section 49, subsection 11, surviving, but subsections 1 through 10 not being recommended.

ASSEMBLYMAN MCARTHUR RECOMMENDED AMEND AND DO PASS SENATE BILL 204 (1st REPRINT).

ASSEMBLYMAN CARRILLO SECONDED THE RECOMMENDATION.

THE RECOMMENDATION PASSED UNANIMOUSLY.

Chairman Ohrenschall:
We will now review Senate Bill 254 (1st Reprint).

Senate Bill 254 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-264)

I have a few questions on this bill. Last night we discussed Supreme Court Rule 24 that established a $1,000 cap for arbitrators. I believe Ms. Lavelle answered

that these arbitrations are much more complicated and are often at a value higher than the $50,000 set in the Supreme Court Rule. Even with the proposed cap, how high do you think arbitrator's fees might go, assuming that is promulgated through regulation. My fear is that arbitrator's fees might be too high.

Eleissa Lavelle, Private Citizen, Las Vegas, Nevada:
The issue has to do with the complexity of some of these issues. I understand that there is a lot of frustration. There is frustration on everybody's part, those of us who have these cases before arbitrators and some of us that are arbitrating, and I understand your concern. The difference has to do with what these cases are about. While sometimes the cases can be very simple, they deal with whether there has been a violation, either it happens or it does not happen, or either it is established or it is not established. Those are easy, and I agree that those fees should be minimal. I absolutely share the concern with this. Every case that comes before a court or an arbitrator does not necessarily have a dollar amount that is the most significant part of it. Sometimes the most significant part may be dealing with an interpretation of one of the governing documents, or how the documents work together. As an example, I had a matter as an arbitrator recently where the community documents were very complicated. They set up various neighborhoods and there were some gaps in those documents with respect to the way certain communities were going to be separately assessed, or certain individuals were going to be separately assessed. In order to reach a decision on that case, it was necessary to take testimony from a number of people and to do a very detailed interrelationship between the declaration and statutory intentions. That being said, the dollar amount is not significant, but the ramifications were huge. It was not necessary to do a site visit, and it was not necessary to take days and days of testimony.

The way that you might consider limiting these is not only a cap on the dollar amount of hourly fees that are charged, but some parameters around the kinds of activities that arbitrators should engage in. That way you can control what might be considered padding of bills, or inappropriate, unnecessary work that is sometimes done. I am not saying that arbitrators are doing that, but sometimes I think there might be a feeling that they are.

Another way would be to have an oversight mechanism, by regulation, so that the Commission for Common-Interest Communities and Condominium Hotels, the Real Estate Division of the Department of Business and Industry, or the Real Estate Administrator would have the ability to review an arbitrator's bill if someone thought it was too high and determine whether it exceeded what were reasonable parameters. There are models for this within the state bar. There is

a fee dispute committee. If an aggrieved client feels an attorney's fees are too high, he or she can go before the committee and claim the fees are inappropriate. There are different ways of controlling these costs. An absolute cap is not going to solve the problem. I know some of these arbitrators charge as little as $115 per hour, but their fees are enormous because of what they are doing.

Chairman Ohrenschall:
So with the Supreme Court Rule, which has a cap of $1,000, is there a loophole where the court may award additional damages, or is it the fact that these disputes are under $50,000? I am still having trouble with the fact that under Supreme Court Rule 24, the $1,000 cap works for all of those arbitrations, yet you feel it is not adequate here.

Eleissa Lavelle:
When you are dealing with the arbitration provisions that are conducted through the court systems, a big component of these issues has to do with discovery and perhaps pretrial motions. There is a court-appointed discovery commissioner where parties can go to have those issues briefed and heard. Those are outside the $1,000 cap. They are heard by someone else and the costs incurred by that are not included within the arbitration. The issues are there, the problems are dealt with, but they are not dealt with within the scope of the arbitration. Those costs can be huge. If you look at what those Supreme Court rules and the mandatory arbitration provisions deal with, they limit the scope of what is considered within those cases. It is not just a dollar amount of a claim that is limited; it is also the character and nature of the disputes that are heard. Complicated disputes dealing with title to real property, declaratory relief actions, et cetera, are excluded from those mandatory arbitrations. The reason for that is it is understood that those matters may be more complicated and cannot be simply divided up based upon a dollar amount. Because there is more involved, you cannot stick them with a $1,000 cap.

Chairman Ohrenschall:
Thank you. Do you feel comfortable that if this passes with Senator Copening's amendment, that these caps that will be in regulation will be adequate to ensure that there are not any outrageous or egregious arbitrator fees?

Eleissa Lavelle:
I think there needs to be a combination of things. I think that the limitation in Senator Copening's amendment is a significant part of this. In addition to that, the testimony that you heard last night from Gail Anderson and the regulations that she would propose for adoption are another significant part. You cannot deal with this issue with one bullet. There needs to be a number of different

approaches taken. Together, a limitation on the dollar amount of fees and other types of structures that are imposed, and other oversights that are imposed, are going to be the control. One other idea, the market, to some extent, controls who gets selected. If someone is outrageous in the fees and is constantly overbilling, and there is a pool of good arbitrators, that arbitrator is not going to be doing much work. That is something that is within the structural control of the Administrator.

Chairman Ohrenschall:
Thank you. Any questions?

Assemblyman McArthur:
I just want to clarify that we are looking at the amendment where there is a maximum of $225 per hour, and not the $1,000 hard cap?

Chairman Ohrenschall:
If we process conceptual amendment one by Senator Copening, there would be a conflict with what we passed in Assembly Bill 448, which was a $1,000 cap on arbitration fees.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
Regarding the $225 per hour, is this per side, which would then be $450? I have seen a lot of arbitrators' resumes and they normally put between $100 and $200 per hour, which is for each side. It is very unclear whether this $225 is in total or split each side? As far as oversight is concerned, I am looking at *Nevada Revised Statutes* (NRS) 38.360, which says "The Division shall administer the provisions of NRS 38.300 to 38.360 . . . ." There is no administration. I have written documentation from Mr. Gordon Milden who says that the Real Estate Division only facilitates the process. So as far as oversight is concerned, currently the Division is supposed to be administering this program and it is not. Regarding the statement that if one arbitrator is charging much more than another, how would a homeowner who has never gone through this process know that? There are still a lot of holes in this bill. I am concerned where it says that the Division "may" pay "if" there are funds available and "if" the Commission approves it. If not, then the homeowner is stuck with these outrageous fees.

Chairman Ohrenschall:
What section are you referring to? I found it, section 15, subsection 6, lines 18 through 23, states:

> The Division may provide for the payment of the fees for a mediator selected or appointed pursuant to this section from the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630, to the extent that:
>
> (a) The Commission approves the payment; and
> (b) There is money available in the Account for this purpose.

Jonathan Friedrich:
It is also mentioned earlier in the bill.

Chairman Ohrenschall:
Your question about whether both sides would have to pay, is a question I had not thought of.

Assemblyman McArthur:
I think the intent was $225 per hour total.

Eleissa Lavelle:
That is correct. The hourly rate is the maximum rate, normally to be split between the parties. There have been instances where an arbitrator will award fees to one side or another, but the $225 is the total hourly rate that the arbitrator would charge.

Chairman Ohrenschall:
Is that approximately the fair rate that arbitrators are being paid now?

Eleissa Lavelle:
I think the hourly rates range between $150 to $400 per hour. It depends on what the arbitrator is doing. The parties are entitled to not select an arbitrator if they choose to. The rates have been published, and within the resumes that are submitted to the parties, the hourly rates of the arbitrators are provided so they know ahead of time.

Chairman Ohrenschall:
If this bill passes, would both sides have to agree on the mediator, or would the Division pick the mediator.

Eleissa Lavelle:
I would like to make a distinction between mediators and arbitrators with respect to both of these professionals. The parties would be provided a list from which they could jointly select a mediator or an arbitrator. That list is maintained by the Division. If they could not reach a decision, then the Division

would make the appointment. That is consistent with the way that the district courts handle and administer the arbitration program and it is also consistent with the way other organizations, such as the American Arbitration Association, conduct their selection process.

Chairman Ohrenschall:
Thank you. In looking at the conceptual amendment presented by Senator Copening, it says to mandate the Administrator of the Nevada Division of Real Estate to adopt regulations by August 1, 2011, capping the fees that may be charged for arbitration under NRS 38.300 through 38.360, and put in statute that these charges may not exceed $225 per hour. Was this meant to be a cap on mediator's fees or solely to cap arbitrator's fees?

Eleissa Lavelle:
I cannot speak for Senator Copening, but I believe the idea is that there would be a cap on both arbitrator's fees and mediator's fees.

Chairman Ohrenschall:
Senator Copening, can you address that?

Senator Copening:
Only because I do not know the difference between mediation and arbitration, I had a recommendation and I think that one of the amendments that came through from one of the testifiers mentioned just arbitration, and that is why I had proposed that. I certainly would not object to having both in there. Generally, if a mediator charges less than an arbitrator, then perhaps we should make the cap for the mediator less than the cap for the arbitrator.

Chairman Ohrenschall:
So you would be amenable if we were to also propose a reasonable cap on mediator's fees?

Senator Copening:
I certainly would. I would want the people who work in that industry to speak to what the appropriate cap would be.

Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels:
I think the idea would be that the Real Estate Division would contract with mediators for a flat fee of $500 per mediation. Certainly the idea of a cap on mediation is the intent, and we would not object to putting a cap on it. The Real Estate Division would get resumes and put mediators under contract, and they would agree to mediate these particular problems for a set fee. It would

be much less, and not necessarily on an hourly fee, but it would be a cap per mediation.

Eleissa Lavelle:
I agree with that. I think that is certainly something that can be accomplished for a flat fee. Normally, these mediations are going to go, perhaps, a half a day or a day at the very most. There could be some reasonable way of accommodating a flat number, so that everyone knows what he or she is getting into.

Chairman Ohrenschall:
Would you be averse to our amending Senator Copening's conceptual amendment number one to mandate that the Administrator at the Nevada Division of Real Estate establish a flat fee cap for every mediation?

Eleissa Lavelle:
I do not think that is unreasonable.

Chairman Ohrenschall:
Gail Anderson, would you be okay with that? She is nodding her head yes. Ms. Lavelle, do you do think it would be appropriate to place the cap in statute the way we might with the $225 cap proposed for arbitrators?

Eleissa Lavelle:
I think it is appropriate to do $225 cap for an hourly rate for arbitrators, along with additional regulations governing the structure and the way these arbitrations are going to be conducted, and an oversight by the Division as to fees. You cannot really limit the total number for the arbitration fees because each arbitration is going to be different. The costs will be different based upon the complexity of the issue. With respect to mediations, I believe that a flat fee cap is entirely appropriate.

Assemblyman McArthur:
Are we going to come up with a number for the flat mediation fee?

Chairman Ohrenschall:
That would be up to this subcommittee.

Assemblyman McArthur:
If we set a cap for arbitration, we should set it for mediation also.

Chairman Ohrenschall:
Setting a cap that may not exceed $500 for mediation. Does that seem reasonable?

Eleissa Lavelle:
I think that is a fair number. I also think that is consistent with what the Supreme Court has authorized for its mediation program; so I think there is precedent for that. I also believe that if you do cap it at $500, you will be more likely to be able to accommodate the money that has been set aside for this purpose so that it will not have to come out of the parties' pockets.

Chairman Ohrenschall:
As I read through the bill, there are different provisions for someone who does not show up and participate having to pay all the fees. If both sides participate, then do both sides divide the fee for the mediation, after the available funds have been exhausted?

Eleissa Lavelle:
That is the way it is normally handled, unless through the mediation settlement, occasionally, as a way of settling the case, one side will offer to pay the other side's fees. That can be flexible, but under normal situations, the costs would be split.

Chairman Ohrenschall:
That is in conceptual amendment number three to change section 1, subsection 5, of the bill to state that the parties shall evenly split the costs of mediation should there be a charge. That seems like a good clarification to me.

Assemblyman McArthur:
It looks like we covered number three, so I would be in favor of conceptual amendments one, two, and three.

Chairman Ohrenschall:
You are in favor of conceptual amendments one, two, and three proposed by Senator Copening, including in conceptual amendment one, a direction to the Administrator to promulgate regulations establishing a flat fee for mediation at no more than $500 total? Mr. Carrillo, are you all right with the additional cap on mediation fees?

Assemblyman Carrillo:
Yes, I am good with that.

Chairman Ohrenschall:
I still have some reservations about the $225 versus the $1,000 to cap, although it seems that Ms. Lavelle has expressed the need for this. There was an issue brought up about class action suits and not requiring them to go to mediation. How would this bill affect a potential class action?

Eleissa Lavelle:
Typically, these cases are not heard as a class action, but they can affect a group of people. You may have factions in an association. That is certainly something that happens and is the thorniest of problems to deal with. They are not typically characterized as class actions, and are not certified. I do not see any reason why those types of disputes would not go to mediation. In fact, it seems that those types of disputes are exactly why mediation should be effectuated.

Chairman Ohrenschall:
If they were not happy with the mediation, they could then file a class action, or would they have to go to arbitration under this bill?

Eleissa Lavelle:
If the mediation did not settle, and if they could not reach an accord and resolve their disputes, the mediator would make the recommendation that the case goes to the Division for investigation and go before the Commission. For example, one group of homeowners believes that the board has acted inappropriately and has violated NRS Chapter 116. There may be 50 people in a community who are aggrieved about this. If they cannot reach an agreement, it may go to the Division for investigation and go through that process. That is already in place. If it needs to go to arbitration, the mediator would send it to arbitration instead. The mediator would have the understanding of what the dispute is and be able to direct it in one direction or the other.

Chairman Ohrenschall:
Under S.B. 254 (R1), the mediator determines whether it should go to arbitration or to the Division. There is no opt out for either party, correct?

Eleissa Lavelle:
The mediator makes the recommendation to go either one way or the other. Ultimately, if the parties still do not get satisfaction, if the arbitrator gets it wrong, or they feel the Commission's decision is inappropriate, they can then go to court as an ultimate way of getting another bite at the apple. Presumably, if the mediator sent something to arbitration and the arbitrator felt that it should not be with him, he is not prevented from kicking it back. Similarly, if the Division gets the case, it can also refer it to arbitration.

Chairman Ohrenschall:
If one of the parties in mediation did not want to go to arbitration, would there be anything else he or she could do?

Eleissa Lavelle:
The mediator would recommend where the dispute would be heard because the mediator would have a greater insight as to what these disputes are. Typically, the way the statute exists now, the party files a complaint and the Division makes the decision as to whether it will go to arbitration or to the intervention process. It is somewhat the same. The party can file, but if the Division does not believe it is being conducted where the party wants it to be conducted, the Division can move it to the other process.

Chairman Ohrenschall:
So one of the parties would not have to go the arbitration route if he or she had misgivings about arbitration. We have heard Mr. Friedrich talk about the experiences he has had where the fees are very exorbitant. For clarification, under S.B. 254 (R1), if one of the parties had a fear of arbitration, he or she could choose to go an alternative route. Is that correct?

Eleissa Lavelle:
No, that is not quite accurate. The ultimate objective is to have the dispute decided. The question is who is going to decide it? What this statute does is establish jurisdiction over the dispute, much in the same way as the Nevada statutes establish jurisdiction of justice courts, district courts, and the Supreme Court. This statute establishes jurisdiction between the arbitration process and the intervention process based upon the nature of the dispute. It has to do with how the case is going to be decided, based upon what is being requested to be decided. It is almost a jurisdictional type of allocation.

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry:
I would like to clarify the jurisdiction. The Real Estate Division investigative compliance arm only has jurisdiction, and the Commission over violations of the law. If someone's dispute does not concern a violation of the law, it is not an option. The Real Estate Division compliance section can look at it and make sure, but if it is a governing documents dispute, the Real Estate Division and the Commission will not be able to deal with it, as there is no jurisdiction there. The only option then is arbitration, if a ruling is required. The other dimension here is if someone wants to sue civilly, he or she has to go through arbitration or mediation under NRS Chapter 38. If the ultimate goal is some kind of civil litigation, he or she will have to go to arbitration or mediation. While there is some discretion, it really is a jurisdictional question of who can deal with what

the substance of the problem is. Sometimes there is a combination with some potential violations of the law that the Real Estate Division can deal with, but cannot touch the governing document side of it. Jurisdiction is the bottom line and the Division would be involved in determining and closing a case.

Chairman Ohrenschall:
Currently, no one is forced into arbitration; it is a choice, correct?

Gail Anderson:
That is correct; no one is forced into it, but the party is told that if there is not a violation of law, the Real Estate Division does not have jurisdiction. The other option is to go through arbitration or mediation.

Chairman Ohrenschall:
Eventually, even after arbitration, someone could get to court if he or she wanted to, but he or she would first have to go through the Division, then mediation and arbitration, or am I misunderstanding.

Gail Anderson:
If someone's ultimate goal is to go to court, he or she will do the filing of affidavit, go through mediation, and if not resolve in mediation, then must file for arbitration, administered by the Real Estate Division to get to court.

Chairman Ohrenschall:
Thank you. Any questions? [There were none.]

Eleissa Lavelle:
I was reminded of another issue regarding setting the cap on mediation fees. While a $500 cap is appropriate in most cases, I want to ensure that parties could opt out of the cap if for some reason the matter were more complex and required more time. For example, if there is a complex mediation, the parties may choose to go forward and continue to mediate beyond what is normally expected.

Chairman Ohrenschall:
Would you want that same opt out opportunity on the arbitration cap?

Eleissa Lavelle:
I think if the parties wanted to select an arbitrator that charged at a higher rate, and that arbitrator was acceptable to the Division, if both parties agree to the rate, they should be allowed to select that arbitrator. I would suggest the parties be given the right to make their own decision if it is a greater amount.

Chairman Ohrenschall:
This would be at their own expense, if they chose to waive the cap, correct?

Eleissa Lavelle:
Correct. Either both parties agree, or if one party agrees to pick up the difference, that party should be given the opportunity to do so.

Chairman Ohrenschall:
Thank you. Any questions?

Assemblyman McArthur:
Do we really need to add that into statute? They can do that on their own and pay it out of their own pocket.

Chairman Ohrenschall:
I think we might if we are directing the Administrator of the Real Estate Division to establish a cap for mediators and arbitrators.

Assemblyman McArthur:
That is a cap that is put on the mediators and arbitrators. After that, it is the decision of the parties.

Chairman Ohrenschall:
We may need to check with Legal about that. One concern that was expressed to me last night in an email was that if someone gets behind in paying these mediation or arbitration fees, it could end up as a lien on his property that could be foreclosed upon. Is that a valid concern?

Eleissa Lavelle:
Normally, the declarations will include a provision for an award of attorney's fees to the prevailing party. Attorney's fees and court costs can be awarded by the arbitrator against one side in an arbitration. That becomes part of the arbitration award. It is not a fine; it is a separate issue and I do not know that there is anything in this statute that makes those attorney's fees lienable, except to the extent that there is a judgment ultimately entered on that award. So attorney's fees and arbitrator's fees alone are not a lienable assessment for which a nonjudicial foreclosure can take place. The point of the arbitration awards is that, for example, someone has not landscaped his or her property. The arbitrator may say the association has the right, if not fixed within 30 days, to make repairs to the landscaping at $1,000. That is reduced to a judgment through the district court or the justice court depending on jurisdiction. Now there is a judgment against the individual that is recorded against the property. If the person does not pay the money and any attorney's fees and costs, yes,

through the normal judgment process, he or she could ultimately execute for that. That is no different than any other judgment in court. This arbitration process does not change that. If the parties went directly to court to get that enforced, the right would be the same.

Michael Buckley:
I agree with Ms. Lavelle. Whether or not the association could foreclose for these fees goes to the section we were discussing before, which is NRS 116.3116. That states that the association can have a lien for fines, construction penalties, and assessments. I think that this is not a fine, it is not a construction penalty, and it is not an annual assessment. I suspect that you could make an argument that the association might be able to make a special assessment against someone based on the language in the covenants, conditions, and restrictions (CCRs), but I do not think it is clear one way or the other. This bill does not address that. It goes back to the collection issue in NRS 116.3116. My own preference is that the way these should be enforced would be through the normal judgment process unless, for example, the arbitration award determines that what the person did violated the CCRs, and therefore fits under the normal basis to make a special assessment. There is a provision that says that if an owner ran into the guard gate, it must be fixed. The owner says I did not do it. If you caused the damage to the association, you should be liable as a special assessment. There is a fine line, but this bill does not address that issue.

Chairman Ohrenschall:
Would either of you be averse to some language in the bill that would clarify that arbitrator's fees and mediator's fees could never be considered assessments for foreclosure purposes?

Eleissa Lavelle:
I do not have a problem with saying they are not lienable in the sense that they would be subject to a nonjudicial foreclosure. To the extent that they would be included in a judgment issued by a court, they would be subject to a judicial foreclosure, which carries with it a right of redemption. The assessments in NRS Chapter 116 are nonjudicial. They happen without any right of redemption. I think there needs to be a mechanism for the association to collect these fees. This is money that everybody in the community will have to pay because one person has done something that has been found to be inappropriate.

Chairman Ohrenschall:
So we need some clarifying language saying that the arbitrator's fees and mediator's fees are not lienable to the extent that it is a nonjudicial foreclosure.

I agree, they should be collectable; I just do not want them to be considered part of the arrears for foreclosure.

Eleissa Lavelle:
I agree with that.

Assemblyman McArthur:
I am not comfortable with that. It is muddying the waters and I am not sure it belongs in this particular bill. We have problems whether it is judicial or nonjudicial.

Chairman Ohrenschall:
I think we are trying to clarify this, not muddy the waters. We are trying to say that these fees for mediators and arbitrators would never be one of those categories under NRS Chapter 116 where the HOA is allowed to pursue foreclosure, which are arrears assessments, and the two exceptions for fines or penalties having to do with construction penalties, and with the health hazard penalty. This would clarify that these fees are definitely not something for which an HOA can foreclose on your home.

Assemblyman McArthur:
Are you saying that the addition of these fees may put them in foreclosure because they cannot pay for them?

Chairman Ohrenschall:
I want to clarify that the addition of these fees would not be part of that nonjudicial foreclosure provided for under NRS Chapter 116. The mediator and arbitrator could still go to court and get a judgment, and potentially put a lien on the property.

Eleissa Lavelle:
Anytime you have a judgment against an individual, regardless of whether it is a breach of contract, hit someone in the face, or whatever, if you get a judgment in court, you can record that judgment and it becomes a lien on all properties. That is standard Nevada law and it has to do with every single kind of judgment you can get. This would fall into that category. If an association or a homeowner were to get a judgment against the adverse party and record it, it becomes a lien against that party's property. Because it is a lien, that judgment can be executed on. There are homestead exemptions that apply to this kind of judgment. So the likelihood of foreclosing a judgment lien based upon a violation of someone's CCRs diminishes because it is a judgment lien. This is a significant protection to homeowners but may still provide a way for an association to be paid. For example, if the home sells, it will be paid through

escrow. It is a middle ground and is a way of providing a mechanism by which the prevailing party can get paid upon the sale of a property, but it does not allow for an immediate nonjudicial foreclosure.

Michael Buckley:
I think these are not really clear issues, and as Ms. Lavelle has pointed out, this is very complex. For example, NRS 116.310312, which deals with an abandoned or vacated unit and the association has the ability to clean up a unit, there could be charges. I do not know whether that would be subject to an arbitration if someone objected, but there was an express finding of that by the Legislature last session that these costs should be enforceable as a lien. In fact, it is given a super priority lien. I think we need to be very careful in how to frame the language. We forget sometimes how complex NRS Chapter 116 is, and if you tweak something one place, it may end up making something else not work.

Assemblyman McArthur:
That is my concern. I am not sure this is necessary because we could cause other problems.

Chairman Ohrenschall:
Mr. Buckley, do you think that adding the language we discussed earlier would cause problems elsewhere in NRS Chapter 116?

Michael Buckley:
I think it can be done if it is carefully worded. The basic idea that you are suggesting is that the attorney's fees and costs, and the arbitrator's fees and costs would not be part of the lien under NRS 116.3116 as long as it was clear that it was unless expressly provided for elsewhere. Also, let us go into this again, because the arbitration deals with the amount of the assessment. If someone is not paying his or her assessment, I do not know whether the association would arbitrate an assessment but certainly if the arbitration involves the collection of an assessment, the association is entitled to collect its fees. As mentioned, the assessments are the lifeblood of the association, and it is clear that the association has the right to collect. There is really no defense to not paying your assessments. If the association incurs costs in collecting assessments, they should be included. In concept, it is the subject matter of the arbitration that makes it complicated. If the subject matter deals with something that gives the association the ability to lien, then it may not work.

Assemblyman McArthur:
My main concern is that it would have to be drafted very carefully. If you are comfortable that this can be drafted, I do not have a real problem.

Chairman Ohrenschall:
I am all right with it. Mr. Carrillo, are you okay with the clarification that fees from mediation and arbitration could never be part of a nonjudicial foreclosure provided for in NRS Chapter 116?

Assemblyman Carrillo:
Yes, I am good with that.

Chairman Ohrenschall:
Thank you. Next we will review Senator Copening's amendment number four, which is to include in section 5 the requirement that penalties be imposed for the responder of the claim filing in bad faith, false, fraudulent, or frivolous response to a claim. I believe that is from Mr. Stebbins' amendment. He was concerned that section 5 of the bill would not work both ways.

Michael Buckley:
On page 11, line 9, you see that the original intent was that if you file a claim or a response, a person is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, and it applies to not just the person who files the claim, but the respondent also.

Chairman Ohrenschall:
Thank you. Any questions? [There were none.]

Michael Buckley:
On page 19 is the same issue. Line 28 refers to a claim or response; on line 40 it just refers to the claim. It should also refer to the claim or response.

Assemblyman McArthur:
So for amendment number four we will be adding the word "respondent" or "response."

Chairman Ohrenschall:
Yes, this is just a cleanup. Mr. Carrillo, are you okay with conceptual amendment number four?

Assemblyman Carrillo:
Yes, I am good with that.

Chairman Ohrenschall:
Conceptual amendment number five was proposed by Mr. Segerblom, which we processed yesterday, as a mock-up.

Dave Ziegler:
I checked that mock-up against this bill, and I did not see any overlap between that mock-up and this bill.

Chairman Ohrenschall:
So this is a new amendment?

Dave Ziegler:
No. Amendment number five in Senator Copening's document that states she is in favor of the friendly amendment, number 6818, that applies to Senate Bill 204 (R1). I checked it and I do not see how it overlaps with this bill.

Chairman Ohrenschall:
Okay, and we already accepted that amendment, so we do not need it here.

Conceptual amendment number 6 presented by Senator Copening states, "Add language in Sec. 1 that states that if a party fails to participate in the mediation, that party shall be responsible for any and all costs of that mediation." I believe this will hold parties accountable for resolving their differences.

Michael Buckley:
I would propose that I think this is a good amendment and we need to incorporate the idea of good faith. I think that is in the foreclosure statutes. You would not want someone going through the motions; they need to participate in good faith.

Chairman Ohrenschall:
So we will change that to read "fails to participate in good faith in the mediation . . . ." That is quite a departure from what Mr. Stebbins had proposed.

Michael Buckley:
I do not think so. When people say "participate," we think they will participate in the process, and as lawyers we think how will this work in practice. The practice might be that you could read that literally by saying I will go, but I am not going to get involved. I think the idea of participate, good faith is inherent with what Mr. Stebbins suggested.

Chairman Ohrenschall:
Mr. McArthur and Mr. Carrillo, are you both okay with this amendment, including the addition of the words "good faith" as proposed by Mr. Buckley?

Assemblyman McArthur:
Yes.

Assemblyman Carrillo:
I am good.

Chairman Ohrenschall:
Conceptual amendment number seven reads, "Add language in Sec. 10 that if the person whom a copy of the claim was served refuses or fails to file a written response with the division not later than 30 days after the date of service, the allegations of the claim are deemed substantiated." My only concern is what if there is a bona fide reason that the person could not participate? Should we put in an exception? I would hate for all the allegations to be considered true against him or her if there was a bona fide excuse.

Assemblyman Carrillo:
I think you need to ensure that things are in order if you are going to be away for a period of time. Putting your head in the sand does not resolve anything. If you are going to be away, you need to make sure your business is taken care of before you leave. Obviously, we cannot know whether we will be in the hospital for six months, but a power of attorney would assist getting around this issue. In fact, if you are in the service, you have to give a power of attorney; so that cannot be used as an excuse. You need to ensure your house is in order.

Chairman Ohrenschall:
In an ideal universe that is how it would be. But there could be unforeseen problems.

Assemblyman McArthur:
I agree with Mr. Carrillo. Unless there is a medical emergency that extended the time period, I think in most of the other cases you should be able to take care of your own situation.

Michael Buckley:
I think this could be solved with the word "may" be deemed substantiated. We see this in the Commission, in a complaint where someone did not respond, and you see it in the judicial system. You do take the default, but it is not an automatic that you win. The person would need to prove that the respondent was actually served. I think you would leave that up to the arbitrator. I think that is a customary legal process.

Eleissa Lavelle:
I think something perhaps as a hybrid so that there may be some requirement that the case be proved perhaps by affidavit so there does not have to be a full-blown hearing if the party does not show up, but it could be an abbreviated hearing to keep the costs low.

Chairman Ohrenschall:
That would be in addition to this amendment?

Eleissa Lavelle:
Actually I think the word "may" does it, but I think you may want to say that it is not an absolute that the party still needs to establish by affidavit or some abbreviated mechanism that the arbitrator designates to establish the service has been proper and that the claim is appropriate.

Chairman Ohrenschall:
That gives me a lot more comfort. Mr. McArthur and Mr. Carrillo, would you be all right with amendment number seven if we changed it from "the allegations of the claim are deemed substantiated" to "the allegations of the claim may be deemed substantiated" and include proof of service and perhaps affidavits that prove the allegations?

Assemblyman McArthur:
I would be okay if we can come up with a good conceptual amendment along those lines.

Assemblyman Carrillo:
I am okay.

Chairman Ohrenschall:
Thank you.

Michael Joe, representing Legal Aid Center of Southern Nevada:
I want to comment about what the foreclosure mediation program is doing in terms of people who have a reason for not attending a mediation. The Supreme Court explained to me that they have ruled a lot about the phrase "good cause." Under the mediation program they allow a homeowner or a lender to say they cannot attend for good cause. This has to be a request in writing. The foreclosure mediation program has it addressed specifically by rule. We do see it come up quite often.

Chairman Ohrenschall:
Do you know what the foreclosure mediation program charges to conduct a mediation?

Michael Joe:
They charge a flat fee of $400. In terms of what that works out to per hour, it varies. The program allows for four hours. Some mediations take less and some will go longer. For the $400, the mediator guarantees four hours of mediation plus the mediator does the scheduling work and documentation work up-front. The mediator easily puts in the four hours of work. They have 215 mediators and most of them are happy to do this work. I am okay with a cap on fees, as well.

Chairman Ohrenschall:
Thank you. Regarding the proposed clarifying language that we want to add to ensure that mediator's fees do not become something foreclosable under NRS Chapter 116, do you have an opinion on that?

Michael Joe:
I specialize in doing foreclosures and I deal with people with homeowners' associations (HOAs). We believe that the foreclosure under that statute should only be limited to those situations where it is a violation of paying the association dues and assessments. We do believe that an association plans its budget on those and therefore should be able to collect on it. The most serious remedy we give them of foreclosure should be limited to that and should not be applied to other things. If there is a foreclosure for some other reason, that is okay. It could be a judicial foreclosure, which I have never seen. You cannot foreclose nonjudicially in Nevada; you have to foreclose judicially; so as a practical matter, they just do not bother foreclosing.

Chairman Ohrenschall:
I received an email, and I am not sure this would be an amendment the Subcommittee would consider. What if during the mediation, the fines froze until the mediator made his decision? Is that something that you think would be reasonable?

Michael Joe:
I am sorry, I do not understand.

Chairman Ohrenschall:
After the parties enter the mediation, what if the fines, fees, and any potential foreclosure were frozen until the mediator made the decision?

Michael Joe:
I think there are some real issues of due process for the homeowner. Can you foreclose on someone while he is still appealing something? I think there should be a stay on foreclosure and also maybe on some of the fees. There are different situations where it might be okay, but in general, if you have the mediator's intent to be quick, I think you can resolve an issue, and during that period, through the pendency of that hearing, maybe it should be stayed. In the mediation program, we essentially stay the foreclosure until the mediation is completed.

Chairman Ohrenschall:
So it is possible that this mediation program for problems with HOAs could take a lot of lessons from how the foreclosure mediation program is working under the auspices of the Nevada Supreme Court. It seems that it is working well in terms of how it administers the program.

Michael Joe:
The foreclosure mediation program has had a lot of effort put into it, and therefore, it is a pretty decent program. It gives homeowners one way to appeal and it is appealed pretty quickly and efficiently. If everybody does their jobs, the foreclosure mediation program runs within that 90- to 111-day period that it takes to foreclose. In addition, I know the neighborhood justice center does mediations on a routine basis. I know there are a lot of trained mediators in Clark County and across the state. There is a pool of mediators who are available to do this, and you could craft a program that works pretty well. Currently, there is a $50 fee for the notice of default that goes to fund the program and the administration of it. I am not sure whether that would be available for this program.

Michael Buckley:
There is a difference between assessments and other fees. I am not sure there is anything the association can do if it is in mediation as far as collecting the penalties or fines. It is different as far as assessments go. If someone is not paying his or her assessments, I do not think the assessments should stop or that the association should be stopped from enforcing its liens for the assessments. Those assessments are the lifeblood of the association. They are based on a budget and there are not too many arguments you can make about not paying your assessment. There are lots of arguments as far as fines or interpretation of the documents or construction penalties, et cetera. I would distinguish between those.

Chairman Ohrenschall:
You would be all right with freezing any move toward collections, fines, or potential foreclosure if it dealt with construction penalties as long as it did not deal with arrears assessments. Is that correct?

Michael Buckley:
I think I would be okay with that.

Eleissa Lavelle:
When you see these arbitrations or intervention matters, if someone has violated the governing documents, for example, he or she has not landscaped his or her property, or he or she left his garbage cans out, or there may be some other dispute that has absolutely nothing to do with construction penalties or with the payment of the assessments. I personally think it is inappropriate to penalize the association for enforcing a rule or regulation that has nothing to do with those assessments and then not allowing them to collect the assessments. If there is a homeowner who is absolutely violating rules and regulations on something that has nothing to do with payment of assessments or construction penalties, there is no reason that you stop the payment of assessments because he or she has not taken his or her garbage cans in or left playground equipment out. One has nothing to do with the other.

Chairman Ohrenschall:
Perhaps I am not expressing myself clearly. I was thinking that only fines, collection costs, or interest should be suspended during the pendency of any mediation or arbitration, because that could be part of the arbitrator's award. I was not referring to the assessments.

Eleissa Lavelle:
I wanted to ensure that was the case because I was hearing different things and I wanted to clear it up. If a homeowner is being assessed $10 per month for a violation and the arbitration process goes for 4 months, does that mean that during the time there will be no retroactive assessment of those fines? Do they stop completely, or simply stop the collection process during that time?

Chairman Ohrenschall:
The way I was envisioning this is that any action by a collection agency would be stopped until resolution. I also believe that any interest accrual would stop.

Michael Buckley:
Under NRS there was no interest on fines by statute, but that was changed in 2009. I believe that the fine is not foreclosable, except for the two exceptions you mentioned. I am not aware of collection agencies enforcing fines.

Eleissa Lavelle:
The distinction needs to be if we are talking about the accrual of the fine as opposed to the collection of the fine.

Chairman Ohrenschall:
What would be the adverse impact to having both frozen until the mediator or arbitrator makes his decision?

Eleissa Lavelle:
I have no problem with freezing them both, provided that the arbitrator is entitled to do a retroactive award of those accrued fines if it is determined that the homeowner has violated the governing documents.

Chairman Ohrenschall:
Do you feel that would need to be spelled out in statute?

Eleissa Lavelle:
I think it is happening that way now. I would not want to see the provision be authored in such a way that the association's ability to retroactively collect those accrued fines be diminished if in fact it is determined that the homeowner has violated.

Chairman Ohrenschall:
In those two exceptions on fines where someone could lose his or her home for construction penalties or for a health hazard issue, assuming that got resolved, it might prevent a foreclosure if the mediator or arbitrator is able to reach a successful agreement.

Eleissa Lavelle:
That would be absolutely appropriate.

Assemblyman McArthur:
I am not comfortable with this at all. This new language for this new amendment, we are going to have to add too much technical wording for a conceptual amendment.

Chairman Ohrenschall:
I think our Legal division is pretty topnotch.

Assemblyman McArthur:
I understand that, but we have a lot of topnotch stuff we are adding to this bill already.

Chairman Ohrenschall:
We do want it to be right.

Assemblyman McArthur:
Well, if you want to bring it back to another work session later this week so we can see those conceptual amendments.

Chairman Ohrenschall:
We could always propose the amendment to the full Committee. I could make my recommendation and you can certainly express your opinions against it. Mr. Carrillo, what are your feelings?

Assemblyman Carrillo:
I concur with that, Chairman.

Chairman Ohrenschall:
Mr. Joe, is there anything else here in S.B. 254 (R1) that causes you any concern for your clients?

Michael Joe:
I see arbitration clauses all the time, and for those of us who went to law school, it seemed like they were good things. I have no problem with arbitration as long as it is reined in and accomplishes what it is supposed to. I think arbitration was intended to be an alternative to the judicial process; it is supposed to be cheaper, and to the extent that it does not turn out to be easier, or cheaper, or faster, what is the point? If you are saying that you want to have an arbitration and mediation process that has reasonable costs, I am okay with that. Sometimes arbitration can run amuck, then they ought to be in district court and they should not be barred from doing that. If the reason an arbitrator wants to charge $10,000 to $20,000 is because it is so complicated, then maybe it should be in district court. Having a cap on it will drive those cases that should be in the district court and this will give them an opportunity to get there. I am in favor of a cap for both the arbitration and mediation.

Chairman Ohrenschall:
I suppose as a compromise, we could go ahead with the $500 flat fee for mediation and with the $225-per-hour fee that Senator Copening recommended, maybe have a maximum of $2,500, and give the party the option to go to district court if the fees will be higher than that.

Michael Buckley:
The Real Estate Division has a group of experienced arbitrators who know NRS Chapter 116. As we all know, NRS Chapter 116 is complex, it is

complicated, and, of course, CCRs are usually 80 pages long. Even in A.B. 448, while there is a $1,000 cap, it says "unless for good cause." I am not sure you can legislatively solve this by giving a cap. You will always need to have an out. If we add "for good cause," that will be the next issue to discuss; what is "good cause"? Ms. Lavelle mentioned earlier to allow the Administrator or the Commission to have the ability to review the fees of an arbitration. She mentioned that the State Bar has the fee dispute committee, where they can see whether the fees are reasonable.

Chairman Ohrenschall:
Thank you. You are correct. Assembly Bill 448 does have that safety hatch of a good cause showing allowing higher fees. We could put that good cause in this bill also, or we could go with Senator Copening's proposal of $225 an hour with no absolute cap. These are complex issues that could require a lot of time. I do think Mr. Joe brought up a good point that when it gets over $1,000, should the people go to court?

Eleissa Lavelle:
I would like to go back to the beginning and why arbitration is important. It works. Are there problems? Yes, sometimes there are problems. I think that Senator Copening's suggestion addresses those issues with the additional suggestions we have been talking about today. My concern is that, because these issues are complex, there will be cases not being heard by arbitrators who are qualified to do the work and are spending the time to do the work. This program has been enormously successful. While I recognize that there are many people who are in very serious financial straights, understand that there are communities with all kinds of people, with all kinds of property values, with all kinds of issues. By saying that there will be an absolute dollar cap on these arbitrations, effectively what you are saying is that these arbitrations are not going to be doing what they were initially designed to do. I gave a seminar on NRS Chapter 116 with Mr. Buckley in Reno. It was interesting to hear from the people up there how successful this program has been and how very few of these cases actually get to district court because people are satisfied that they are getting an adequate opportunity to be heard and getting fair and reasonable arbitration awards. They may not always win, but if they feel like they have been heard and understood and there is a good reason for the decision, they are not going to go anywhere else.

Michael Joe:
The question of whether it is working or not is depending on which side you are looking at it from. If you are saying that the purpose is to keep it out of district court, I am not sure that it is working for homeowners and association members. Maybe it is working for the Real Estate Division, maybe it is working

for the district court, maybe it is working for attorneys and collection companies, but I do not think it is working for homeowners. I think that it is not fair to say that it is working if you do not look at all parties involved. The question is who is it that you are representing and who is it that you are trying to protect in this. I think there are plenty of protections for the collection companies and the management companies and the associations, but there are very few protections for the homeowners. This arbitration and mediation process and court litigation is a process to help the homeowner protect himself. I wonder whether it is not slanted to protect the other parties: the management companies, the associations, and the attorneys.

Chairman Ohrenschall:
Thank you, Mr. Joe. We did adopt that $1,000, and it is not an absolute cap. It does have exceptions for good cause. When higher fees are needed, they could be granted. We thought it was good policy six weeks ago in A.B. 448, and I am not really sure we should backtrack from it. It was a unanimous vote when we adopted that $1,000 cap to match the Supreme Court Rule 24, but it also had the exception for circumstances that required it. I would propose that we accept all the amendments with the changes proposed by Senator Copening, with the changes we recommended, which for conceptual amendment number one included instructing the Administrator of the Division of Real Estate to adopt a flat fee cap for mediation fees of $500. However, I think we should stick with the cap we adopted in A.B. 448, which is not an absolute cap. I am sure when there is a complex case involving a lot of money, an exception will be granted for the Administrator to charge an hourly rate going over the cap of $1,000. We all agreed on amendments two and three. Regarding amendments four, five, and six, we were all fine. Actually we decided not to adopt number five because it is in S.B. 204 (R1). Conceptual amendment number seven, we will change the word "are" to "may be" and "proof of service of affidavits proving the claim" should be there to substantiate the other party was served if the other party does not show up. Mr. Joe has a good potential amendment to the conceptual amendment coming from the mediation program that our Supreme Court administers that good cause be required if the person cannot show up for the mediation. Perhaps we could model that on the rule the Supreme Court has adopted for the foreclosure mediation program. We also have Mr. Stebbins' amendment which has been incorporated into Senator Copening's amendments.

Assemblyman McArthur:
If we are going to take a vote, I am not going to go with the recommendation at this point until I see the conceptual amendments.

Chairman Ohrenschall:
Do you mean a mock-up?

Assemblyman McArthur:
Yes, I want to see those mock-ups of conceptual amendments.

Assemblyman Carrillo:
I agree with Mr. McArthur's statement.

Chairman Ohrenschall:
We have gone over Senator Copening's amendments and we agree on most of the language. There is a little debate on conceptual amendment one on whether we should adopt the arbitrator fee cap we had adopted in A.B. 448. Mr. McArthur brought up some cleanup in the original bill he is interested in. I think we should process all the recommendations that we all agree on that will be in the mock-up we present to the full Committee, which basically are conceptual amendments two through seven, without amendment five and with the additions proposed in conceptual amendment number seven. The part we disagree on is in conceptual amendment number one. We can propose to the full Committee on Friday. Does either of you have any appetite for Mr. Friedrich's amendment?

Assemblyman Carrillo:
I do not.

Chairman Ohrenschall:
Mr. McArthur is shaking his head no.

Michael Buckley:
For clarification, I did not hear that the Subcommittee had an issue with the mediation set fee, only the arbitration fees, correct?

Chairman Ohrenschall:
That is correct. We would go ahead with recommending that the Administrator of the Real Estate Division propose a regulation that has a maximum total cost of $500 flat fee for mediation. We are in dispute about whether to keep the arbitrator cap we had adopted in A.B. 448, which is $1,000 with exceptions, or to go ahead with Senator Copening's suggestion. Is there anything else that I am missing? Are we all in favor of that recommendation?

There is another point we do not agree on, which is those fines for construction penalties and the health hazard. These are the fines that are not for assessments that can lead to foreclosure in a common-interest community.

Should they be put on hold during the pendency of the mediation or the arbitration? I feel they should, if they are the issue of the arbitration or mediation. Mr. McArthur has some concerns with that. Maybe we can have an option A and an option B in the mock-up on that issue when we present to the full Committee.

Assemblyman McArthur:
There are some other cleanup things we want to get in there also.

Chairman Ohrenschall:
One is dealing with the geographical area of the Ombudsman.

Assemblyman McArthur:
We have noted it.

Chairman Ohrenschall:
Are we all on board with the recommendation for the full Committee that we agree on most of these recommendations, and there are two points where we are presenting an option A and option B? We are all unanimous on this recommendation and hopefully we will have a mock-up by Friday to present to the full Committee. Could I get a motion?

ASSEMBLYMAN MCARTHUR RECOMMENDED AMEND AND DO PASS SENATE BILL 254 (1st REPRINT).

ASSEMBLYMAN CARRILLO SECONDED THE RECOMMENDATION.

THE RECOMMENDATION PASSED UNANIMOUSLY.

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