Case No. 70498

In the Supreme Court of Nevada

ALBERT THOMAS, et al.,

Appellants,

vs.

MEI-GSR HOLDINGS, LLC, et al.,

Respondents.

APPEAL

from the Second Judicial District Court, Washoe County
The Honorable ELLIOT A. SATTLER, District Judge
District Court Case No. CV12-02222

RESPONDENTS' RULE 28(f) PAMPHLET

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MEDIATION AND ARBITRATION OF CLAIMS RELATING TO RESIDENTIAL PROPERTY WITHIN COMMON-INTEREST COMMUNITY

NRS 38.300 Definitions. As used in NRS 38.300 to 38.360, inclusive, unless the context otherwise requires:

1. "Assessments" means:

(a) Any charge which an association may impose against an owner of residential property pursuant to a declaration of covenants, conditions and restrictions, including any late charges, interest and costs of collecting the charges; and

(b) Any penalties, fines, fees and other charges which may be imposed by an association pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 or subsections 10, 11 and 12 of NRS 116B.420.

2. "Association" has the meaning ascribed to it in NRS 116.011 or 116B.030.

3. "Civil action" includes an action for money damages or equitable relief. The term does not include an action in equity for injunctive relief in which there is an immediate threat of irreparable harm, or an action relating to the title to residential property.

4. "Division" means the Real Estate Division of the Department of Business and Industry.

5. "Residential property" includes, but is not limited to, real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS. The term does not include commercial property if no portion thereof contains property which is used for residential purposes.

(Added to NRS by 1995, 1416; A 2003, 2251, 2274; 2007, 2277)

NRS 38.310 Limitations on commencement of certain civil actions.

1. No civil action based upon a claim relating to:

(a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or

(b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property,

may be commenced in any court in this State unless the action has been submitted to mediation or arbitration pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.

2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

(Added to NRS by 1995, 1417; A 1997, 526; 2007, 2278)

NRS 38.320 Submission of claim for mediation or arbitration; contents of claim; fees; service of claim; written answer.

1. Any civil action described in NRS 38.310 must be submitted for mediation or arbitration by filing a written claim with the Division. The claim must include:

(a) The complete names, addresses and telephone numbers of all parties to the claim;

(b) A specific statement of the nature of the claim;

(c) A statement of whether the person wishes to have the claim submitted to a mediator or to an arbitrator and, if the person wishes to have the claim submitted to an arbitrator, whether the person agrees to binding arbitration; and

(d) Such other information as the Division may require.

2. The written claim must be accompanied by a reasonable fee as determined by the Division.

3. Upon the filing of the written claim, the claimant shall serve a copy of the claim in the manner prescribed in Rule 4 of the Nevada Rules of Civil Procedure for the service of a summons and complaint. The claim so served must be accompanied by a statement explaining the procedures for mediation and arbitration set forth in NRS 38.300 to 38.360, inclusive.

4. Upon being served pursuant to subsection 3, the person upon whom a copy of the written claim was served shall, within 30 days after the date of service, file a written answer with the Division. The answer must be accompanied by a reasonable fee as determined by the Division.

(Added to NRS by 1995, 1417)

NRS 38.330 Procedure for mediation or arbitration of claim; payment of costs and fees upon failure to obtain a more favorable award or judgment in court.

1. If all parties named in a written claim filed pursuant to NRS 38.320 agree to have the claim submitted for mediation, the parties shall reduce the agreement to writing and shall select a mediator from the list of mediators maintained by the Division pursuant to NRS 38.340. Any mediator selected must be available within the geographic area. If the parties fail to agree upon a mediator, the Division shall appoint a mediator from the list of mediators maintained by the Division. Any mediator appointed must be available within the geographic area. Unless otherwise provided by an agreement of the parties, mediation must be completed within 60 days after the parties agree to mediation. Any agreement obtained through mediation conducted pursuant to this section must, within 20 days after the conclusion of mediation, be reduced to writing by the mediator and a copy thereof provided to each party. The agreement may be enforced as any other written agreement. Except as otherwise provided in this section, the parties are responsible for all costs of mediation conducted pursuant to this section**.**

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

(a) Must be written in plain English;

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

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

3. The Division may provide for the payment of the fees for a mediator or an arbitrator 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 for Common-Interest Communities and Condominium Hotels approves the payment; and

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

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

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

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

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

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

(b) Commences a civil action based upon any claim which was the subject of arbitration, the party shall, if the party fails to obtain a more favorable award or judgment than that which was obtained in the initial binding arbitration, pay all costs and reasonable attorney's fees incurred by the opposing party after the application for a rehearing was made or after the complaint in the civil action was filed.

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

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

(Added to NRS by 1995, 1418; A 1999, 3016; 2001, 1283; 2003, 35, 39, 2251; 2007, 2278; 2009, 2904; 2011, 801)

NRS 38.340 Duties of Division: Maintenance of list of mediators and arbitrators; establishment of explanatory document. For the purposes of NRS 38.300 to 38.360, inclusive, the Division shall establish and maintain:

1. A list of mediators and arbitrators who are available for mediation and arbitration of claims. The list must include mediators and arbitrators who, as determined by the Division, have received training and experience in mediation or arbitration and in the resolution of disputes concerning associations, including, without limitation, the interpretation, application and enforcement of covenants, conditions and restrictions pertaining to residential property and the articles of incorporation, bylaws, rules and regulations of an association. In establishing and maintaining the list, the Division may use lists of qualified persons maintained by any organization which provides mediation or arbitration services. Before including a mediator or arbitrator on a list established and maintained pursuant to this section, the Division may require the mediator or arbitrator to present proof satisfactory to the Division that the mediator or arbitrator has received the training and experience required for mediators or arbitrators pursuant to this section.

2. A document which contains a written explanation of the procedures for mediating and arbitrating claims pursuant to NRS 38.300 to 38.360, inclusive.

(Added to NRS by 1995, 1419)

NRS 38.350 Statute of limitations tolled. Any statute of limitations applicable to a claim described in NRS 38.310 is tolled from the time the claim is submitted for mediation or arbitration pursuant to NRS 38.320 until the conclusion of mediation or arbitration of the claim and the period for vacating the award has expired.

(Added to NRS by 1995, 1419)

NRS 38.360 Administration of provisions by Division; regulations; fees.

1. The Division shall administer the provisions of NRS 38.300 to 38.360, inclusive, and may adopt such regulations as are necessary to carry out those provisions.

2. All fees collected by the Division pursuant to the provisions of NRS 38.300 to 38.360, inclusive, must be accounted for separately and may only be used by the Division to administer the provisions of NRS 38.300 to 38.360, inclusive.

(Added to NRS by 1995, 1419)

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MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-eighth Session
June 16, 1995

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:30 a.m., on Friday, June 16, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

GUEST LEGISLATORS PRESENT:

Assemblyman Michael A. Schneider
Assemblywoman Dianne Steel
Assemblyman Richard Perkins

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori M. Story, Committee Secretary

OTHERS PRESENT:

Eric Cooper, Lobbyist, Las Vegas Chamber of Commerce
Greg Harwell, Lobbyist, California State Automobile Association
Paula Treat, Lobbyist, Nevada Judges Association
Eleissa C. Lavelle, Attorney, Lobbyist, Community Associations Institute
Andy Maline, Vice President, Community Associations Institute
I.R. (Renny) Ashleman, Lobbyist, Commission for Binding Arbitration/Dispute Resolution Commission and Southern Nevada Home Builders Association
Becky Lu Brown, PCAM, Owner, Community Consulting Services
John L. Gibbons, Investigator, Real Estate Division, Department of Business and Industry

Jean Georges, Citizen
Lansford Leavitt, President, Nevada Dispute Resolution Services
Pat Coward, Lobbyist, Nevada Association of Realtors
Nancy M. Saitta, Senior Deputy Attorney General, Human Resources Division, Office of the Attorney General
Ben Graham, Chief Deputy, Clark County District Attorney, Lobbyist, Nevada District Attorneys Association
Richard Gammick, District Attorney, Washoe County
John C. Morrow, Chief Administrative Deputy, Washoe County Public Defender
Margaret Springgate, Legal Counsel, Governor's Office

Chairman James opened the hearing on the first bill and welcomed Assemblyman Michael A. Schneider to the hearing.

ASSEMBLY BILL 540: Increases monetary limits relating to small claims in justices' courts.

Senator James asked the assemblyman to explain the purpose of the bill, since the Legislature had addressed the same issue in the last session. Mr. Schneider explained he brings the bill because he was not involved in the "background negotiations" during the last session. He noted many businesses, particularly auto dealers and real estate companies, must discount their claims against parties in order to qualify for small claims court. If these businesses cannot meet the $3500 cutoff to get into small claims courts they must pay an attorney to represent them. Thus, he said, there is a lot of support from the business community for a raise in the dollar limit.

Mr. Schneider admitted the judges are not in favor of this measure, noting "they never like it," but, there were discussions held with them and they "signed off on it." He reported the original small claim limit proposal was for $10,000, but the compromised limit came in at $5000. Senator James interjected that Paula Treat, Lobbyist, Nevada Judges Association, was indicating from the audience that the judges concurred but were "not acting on free will." Mr. Schneider disagreed, noting Ms. Treat always acts on free will.

The assemblyman explained the filing fee was raised to $85 for any small claims in the $3500 to $5000 range. This, he reported, made the judges more agreeable to the concept.

Senator James asked the witness how this proposal will help the public. Mr. Schneider replied it will help the small businessman, who is part of the public. This

Ms. Treat agreed with the senator. She noted there are many bills around which could negatively impact the state courts, which are already burdened with full calendars. There are not enough judges, nor enough financial backing, she testified, to hire personnel to process all the work the courts face. She asked the Legislature to take an opportunity, in some interim, to examine the lower courts in an attempt to gain a clear perspective of their situation and to examine possible ways to make them work better.

There was no further testimony on Assembly Bill (A.B.) 540 and the chairman closed the hearing. He moved to the next bill, brought by Assemblyman Schneider, A.B. 152.

ASSEMBLY BILL 152: Requires arbitration or mediation of certain claims relating to residential property.

The assemblyman explained this bill is very important to the citizens of Clark County, as well as being a good step toward tort reform. Mr. Schneider reported that currently 60 percent of all people in Clark County live under some type of community association. Virtually all the new homes being built in the county are in an association. This is supported by the city and county government because it shifts some of the governmental responsibilities to the associations which are like "mini-cities," the witness said, with their own "little" governments, police forces, etc.

Unfortunately, these mini-cities are without real enforcement authority and the residents and boards of directors are at war with each other, the assemblyman reported. There have been efforts to devise a solution to this problem, Mr. Schneider said, with representatives of the Community Associations Institute (CAI) working with the assemblyman to draft this legislation. He reported there was much public testimony on the problem during hearings held in the Assembly, and many stories were told of the extent to which the animosity exists between these boards and the residents of the community.

This bill proposes for any problems between the residents of the community or the residents and the board, Mr. Schneider explained, the parties go to arbitration or mediation, rather than court. He opined this first step will result in most of the dispute being resolved before they make it to court. Especially since most of the disagreements end up as personality conflicts, rather than conflicts over substantive issues, he stated. Senator James asked how it is decided whether mediation or arbitration is used. Mr. Schneider told him the parties must choose, and they must both agree.

Mr. Schneider told the committee the Assembly had amended the bill, but it did not come out of bill drafting quite as intended, and therefore, there are some small changes to be made, as time allows. He reported the Assembly ways and means committee approved the bill due to its minimal fiscal impact. He noted the Real Estate Division requested the bill become effective January 1, 1996, and there is no opposition to this request. He offered to answer questions from the committee.

Senator Porter told the witness he had read newspaper articles which told of these community problems, referring to the parties involved as "condo commandos." This is because the problem is way out of hand, with physical assaults and emotional and psychological warfare. This bill is very much needed, he opined, and offered his support for the bill. Mr. Schneider informed the senator the bill covers all real property that is covered by covenants. The assemblyman turned the floor over to the next witnesses, who were there to explain the technical aspects of the bill.

Eleissa C. Lavelle, Attorney, Lobbyist, Community Associations Institute, and Andy Maline, Vice President, Community Associations Institute (CAI) came forward. The chairman asked the witnesses if the bill allows the parties to choose from mediation and arbitration that is binding or nonbinding, depending upon their agreement. Ms. Lavelle responded affirmatively. He asked if the parties could then file an action in court and go to trial. He asked also what would be the effect of an adverse, nonbinding arbitration.

Ms. Lavelle reported the intent was to provide some "bite" to the law because it is believed it is important that people understand the significance of the arbitration. It is not simply one more layer of bureaucracy that people would have to go through. If the award made by the arbitrator is not bettered by the court, should the parties proceed to that venue, then the party taking the action to court will be bound to pay the attorney's fees and costs of the opposing party, she explained. Thus, the law should make the parties pause to consider whether the court action is really justified and worth the possible expense. It is not the intent to foreclose access to the court, but it is important to make the arbitration a legitimate means of resolving these conflicts.

Senator James asked if the losing party would have to pay only the attorney's fees and costs for the court action, but not the arbitration. He read from the bill. Ms. Lavelle replied the senator is correct, and it would be the costs incurred after the filing of the petition for rehearing or a complaint for suit. The intent of the bill is to make it clear that the costs incurred after the trial *de novo* or the rehearing is

requested, would be those paid by the party that requested the rehearing or trial and still does not receive a better award.

Senator James opined it would not be a rehearing if the matter is moved from the arbitrator to the court. Ms. Lavelle stated it was her understanding the parties would only have one arbitrator. Senator James agreed with the witness. He noted the parties are entitled to challenge the decision collaterally on the basis of fraud or the arbitrator exceeding his authority, without having to pay the attorney's fees. Ms. Lavelle explained that any time the matter proceeds to court the parties will be exposed to fees, as the bill is currently drafted. She expressed her preference to allow the parties to challenge the hearing collaterally without having to pay fees of the other party.

Ms. Lavelle explained the bill is designed to allow the parties mediation, if both parties agree to it. If the mediation is not successful, or if a decision cannot be made, or if no mediation is sought, the matter will go to arbitration. The parties can elect to make the arbitration binding, in which case there is no court review; or they can decided to have nonbinding arbitration, with the option of a rehearing before the court or filing for a trial *de novo* before the court. Therefore, the exposure to fees only applies to arbitration and not mediation, the witness stated.

Mr. Maline spoke next, telling the committee the history of this bill. He explained the bill is designed to cover all property with covenants, even those with no architectural committee or board of directors to enforce the covenants. This bill is unique to Nevada, he told, and it is beneficial to the citizens because it provides a low-cost and expedient means of dispute resolution. He voiced support for the Real Estate Division's request to postpone the effective date of the bill.

Ms. Lavelle told the committee she has been very active in the process of drafting this bill. As an attorney that works with community associations, she stated, she has noticed the same issues develop over and over again. The need for the association to repeatedly defend the same issue is very costly to all the members of the association. This bill will provide a means to quickly, easily, and expertly resolve the disputes in the communities.

She explained there are some changes to the bill being requested. They relate to section 6, Ms. Lavelle told, and one would add a requirement that the fees charged by the arbitrators and mediators should be provided to the litigants in order to allow an informed choice. The second change would be a minor word change; the requirement that the parties offering the mediation or arbitration should be trained

in one *or* the other, but not both. Thus, if the service offered is mediation, it should not be a requirement to be trained in arbitration, she explained.

The chairman pointed out the bill says the board *"may* require" that they have training. Ms. Lavelle responded it is the hope that they will have the training because it is one of the chief components of the bill. The senator read the section again and the intent was clarified to be the board may require *proof* of the training. Finally, Ms. Lavelle noted, the bill currently includes an incomplete list of the sources for arbitrators or mediators. She asked that the list be expanded to include all possibilities such as the American Arbitration Association, Nevada Arbitration Association, Communities Associations Institute, Nevada Dispute Resolution Service and Mediators of Southern Nevada, Inc.. Another alternative would be to remove the list altogether.

Senator Adler interjected there seems to be no real utility in listing the groups, because they could change over time. He supports requiring training in either mediation or arbitration, but there are other persons who may have expertise in the area, but would not appear on the list. Ms. Lavelle reiterated the group would support the alternative of listing no specific groups.

Senator James asked what section 10 of the bill intends to do. Ms. Lavelle explained this portion of the bill was an add-on, which would be explained by another witness. I.R. (Renny) Ashleman, Lobbyist, Commission for Binding Arbitration/Dispute Resolution Commission and the Southern Nevada Home Builders Association, came to the stand to explain section 10. He stated this section contains language that is in California law which allows the posting of a bond rather than depositing funds to cover the costs of special add-ons in a construction project.

Mr. Ashleman explained depositing these funds, along with the necessary tracing and tracking of it, is quite bothersome. In 99 percent of the cases the money is paid over, he explained, and posting a bond to cover those cases where it is not paid over would aid in cash flow and tracking, for both the escrow company and the developer. Senator James asked the witness to backtrack a bit to page 4 of the bill which refers to Nevada Revised Statutes (NRS) 116.4110. He asked him to explain.

Mr. Ashleman told the chairman this is a section of the Uniform Common Interest Ownership Act, which talks about what happens to various kinds of deposits that are made by the purchaser in a real estate transaction. The chairman read section 10, subsection 1(a)-(c), asking the witness to confirm his understanding of the

provision. He noted the declarant is the builder and the deposits must be placed in escrow and held until: the deposit is delivered to the declarant at closing (as part of the purchase price); delivered to the declarant because of the purchaser's default (the liquidated damages provision of the act); or released to the declarant for an additional item, improvement, optional item or alteration (if the purchaser wanted upgraded carpet or the like). He continued to read the section and asked if this section was being removed because a bond was being posted, rather than the deposit made. Mr. Ashleman agreed, adding the idea of making the deposits into escrow is to protect the purchasers should he have good reason to back out of the purchase. He noted the bond would be more than adequate to cover these concerns. The chairman expressed confusion.

Senator Adler pointed out his concern with dealings with bonding companies. It is typical to end up in litigation with bonding companies that do not pay. Mr. Ashleman explained he asked the regulators in California if there is a problem of this nature. They report they do not have such problems, possibly because the amounts are relatively small, he reported. He explained that ordinarily a master bond is purchased which is for a good sum or money, then individual segments of the master bond are inserted into the individual transactions. The bond segment amounts are not great, he explained. The senator opined that, "telling someone they can sue a bonding company is not doing them a favor." Mr. Ashleman explained there are very few instances where the purchase does not go through.

The chairman asked the witness if section 10, subsection 1 refers to the purchaser who is putting up the money. Mr. Ashleman agreed. The senator asked if subsection 3 refers to the builder. The witness concurred the declarant is the builder. The chairman asked what the purpose of this section is. Mr. Ashleman replied the builder mainly wishes to avoid the bookkeeping problems that arise with all the miscellaneous deposits that must be made and tracked.

Under subsection 3(c), the chairman asked, what if the bond is in an amount of $5000, for example, and the declarant gets the bond released for the purchase of some item or improvement that costs less than $5000. Mr. Ashleman opined this would not occur because the bond would stand for each of the separate elements in the transaction. When an upgrade is ordered by the purchaser it is paid for by the builder up front, he stated. The witness opined the language in subsection 3 of section 10 simply mirrors the language already in NRS 116.4110. Senator James interjected this was with the exception of the language in subsections 1 and 2.

Mr. Ashleman emphasized the bond was only released as to the amount of the item or improvement, the bond is not redelivered or surrendered. The senator did not believe that is what the provision said. Mr. Ashleman disagreed. He stated when a bond is given up it is delivered, which accounts for the first two subparagraphs in subsection 3. Subparagraph, (c) says the bond is *released for an additional item....* Here, the witness opined, "released" is a technical term talking about the relinquishment less than the whole. This is a different term than "delivered" which is used in the subparagraphs above. He stated he is willing to consider language that might clarify this difference.

The chairman asked if it includes the "stuff in lines 5-8." Mr. Ashleman responded it does not. Senator James stated it might not be important, but it seems to him the language in lines 5-8 should be included in subsection 3. Mr. Ashleman could not say why subparagraph (c) of subsection 3 was included. He referred to section 10, subsection 1, lines 3 and 4 of page 5, noting the funds referred to here are always passed directly through. There is never any bond on these funds, he reported. Senator James suggested the language in lines 5-7 of page 5 should be reinserted in subsection 3(c) in order to clarify the intent. The witness did not object to this change.

The next witness to speak was Becky Lu Brown, PCAM, Owner, Community Consulting Services. Ms. Brown stated, despite comments made by previous witnesses, community associations are a positive means of ownership. The problems experienced in them also occur outside the associated communities, she observed. Ms. Brown explained she is a private sector consultant who specializes in management and process consulting for public and private communities. She stated she has many years of experience in the field.

Ms. Brown recommended the passage of A.B. 152 with the discussed amendments. She opined that arbitration is a positive way of dealing with the problems that arise in these communities. She voiced particular support for the concept of naming all or naming no dispute resolution services in the statute. She stepped down.

John L. Gibbons, Investigator, Real Estate Division, Department of Business and Industry, came to the witness stand. Mr. Gibbons stated he appears as a representative of the Administrator, Joan Buchanan, who was unable to attend. He said the division is in support of making the effective date of the law January 1, 1996. This is because the appropriations needed to effect the change will not be available until October 1, 1995. The division will need some time to prepare before the change takes effect, he reported. Mr. Gibbons stepped down.

The next witness to come forward was Jean Georges, Citizen. Ms. Georges offered a copy of her prepared statement (Exhibit D). She informed the committee that the third page of her testimony contains some suggested amendments. These can all be disregarded, except the amendment to page 4, section 6 and section 9, she said, as they have been addressed.

Senator Titus asked to note for the record that Ms. Georges is an expert in this area, whom she has known since 1989, when other legislation in this area was started. The next witness to speak about A.B. 152 was Lansford Leavitt, President, Nevada Dispute Resolution Services.

Mr. Leavitt voiced concurrence with his colleagues noting this is a very important bill. He spoke of one dispute that ended in a 2-week trial costing in the neighborhood of $50,000 in legal fees. That dispute could have been remedied through the process proposed in this bill, he opined. Mr. Leavitt expressed support for the bill and the proposed amendments.

Mr. Leavitt told the committee the Nevada Dispute Resolution Services is a non-profit corporation that was formed in cooperation with the national judicial college and the juvenile/family court judges. The corporation has considerable experience in training and also in providing services of mediation and arbitration throughout the state. Also, the corporation has been responsible for training arbitrators for all the state courts, he reported, as well as for the state bar association. Currently, the organization is administering the real estate contracts disputes for the Reno/Sparks Association of Realtors and for Incline Village. Because of the vast experience of the organization, the witness asked either it be included in the listing of recommended arbitrators and mediators, or alternatively, that no list be provided in the statute. This concluded his testimony.

Finally, Pat Coward, Lobbyist, Nevada Association of Realtors, came forward to support this bill. He stated the association feels it is good legislation and very much needed. He offered to answer questions. There were none and he stepped down. There were no more witnesses to testify in support of or opposition to A.B. 152 and the chairman closed the hearing. He moved to the next bill.

ASSEMBLY JOINT RESOLUTION 38: Urges congress to require application for passport for child to be signed by both parents under certain circumstances.

SENATOR TITUS MOVED TO AMEND AND DO PASS A.B. 152 AS OUTLINED ABOVE.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR PORTER WAS ABSENT FOR THE VOTE.)

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Senator James explained that A.B. 540 would be held for a work session at a later date, along with A.J.R. 38, to allow time to address Senator Porter's concerns about joint custody. There was no further business and the chairman adjourned the hearing at 10:35 a.m.

RESPECTFULLY SUBMITTED:

Lori M. Story,
Committee Secretary

APPROVED BY:

Senator Mark A. James, Chairman

DATE: 8-18-95