SB 100 - 2003

Introduced on Feb 12, 2003
By Commerce and Labor

Makes various changes to provisions governing common-interest communities. (BDR 10-29)

DECLARED EXEMPT

Fiscal Notes View Fiscal Notes

Effect On Local Government: *No.*
Effect on the State: *Yes.*

Most Recent History Action: (See full bill history below) Approved by the Governor. Chapter 385. **Section 88 and 93 effective July 1, 2003. Sections 1 to 23, inclusive, 38 to 69, inclusive, 72 to 87, inclusive, and 89 to 92, inclusive, effective October 1, 2003. Sections 24 to 37, inclusive, 70 and 71 effective October 1, 2003, for the purpose of adopting regulations and January 1, 2004, for all other purposes.**

Hearings

Senate Commerce and Labor	Feb-20-2003	No Action
Senate Commerce and Labor	Feb-25-2003	No Action
Senate Commerce and Labor	Feb-27-2003	No Action
Senate Commerce and Labor	Mar-03-2003	No Action
Senate Commerce and Labor	Mar-06-2003	No Action
Senate Commerce and Labor	Mar-26-2003	No Action
Senate Commerce and Labor	Apr-08-2003	Amend, and do pass as amended
Senate Finance	Apr-30-2003	Do pass
Assembly Judiciary	May-14-2003	No Action
Assembly Judiciary	May-15-2003	Amend, and do pass as amended
Senate Finance	May-27-2003	Concur

Votes (2/3 Majority Required)

Senate Final Passage	May-05	21 Yea ,	0 Nay ,	0 Excused ,	0 Not Voting ,	0 Absent
Assembly Final Passage	May-23	42 Yea ,	0 Nay ,	0 Excused ,	0 Not Voting ,	0 Absent

Bill Text (PDF)	As Introduced	1st Reprint	Second Reprint	As Enrolled
Bill Text (HTML)	As Introduced	1st Reprint	Second Reprint	As Enrolled
Amendments (HTML)	Amend. No.286	Amend. No.744		

Bill History

Feb 12, 2003 Read first time. Referred to Committee on Commerce and Labor. To printer.

Feb 13, 2003 From printer. To committee.

Mar 10, 2003 Notice of exemption.

Apr 18, 2003 From committee: Amend, and do pass as amended.

Apr 21, 2003 From printer. To engrossment. Engrossed. First reprint.

Apr 21, 2003 Taken from General File.

May 01, 2003 From committee: Do pass.

May 05, 2003 Read third time. Passed, as amended. Title approved, as amended. (Yeas: 21, Nays: None) To Assembly.

May 06, 2003 In Assembly.

May 22, 2003 From committee: Amend, and do pass as amended.

May 22, 2003 Placed on Second Reading File.

May 22, 2003 Read second time. Amended. (Amend. No. 744). To printer.

May 23, 2003 From printer. To re-engrossment. Re-engrossed. Second reprint.

May 23, 2003 Read third time. Passed, as amended. Title approved. (Yeas: 42, Nays: None). To Senate.

May 24, 2003 In Senate.

May 27, 2003 Assembly Amendment No. 744 concurred in. To enrollment.

May 29, 2003 Enrolled and delivered to Governor.

Jun 09, 2003 Approved by the Governor. Chapter 385.

Section 88 and 93 effective July 1, 2003. Sections 1 to 23, inclusive, 38 to 69, inclusive, 72 to 87, inclusive, and 89 to 92, inclusive, effective October 1, 2003. Sections 24 to 37, inclusive, 70 and 71 effective October 1, 2003, for the purpose of adopting regulations and January 1, 2004, for all other purposes.

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

BILL SUMMARY

72nd REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

SENATE BILL 100

Topic

Senate Bill 100 makes various changes to provisions governing common-interest communities (CICs).

Summary

The measure addresses various issues relating to common-interest communities, otherwise known as homeowner's associations. Senate Bill 100 creates a five-member Commission for Common-Interest Communities to investigate violations and collect data regarding the number and kind of CICs, lending market conditions, violations of CIC statutes, and the number of foreclosures. When a person aggrieved by the action of a CIC files an affidavit with the Real Estate Division, the Ombudsman and the Division may act on the affidavit to either resolve the underlying dispute or determine if good cause exists to file a formal complaint with the Commission. Procedures are also established for Commission hearings on the complaints filed, and the Commissioner has the authority to adopt regulations and delegate certain of its powers to hearing panels. Finally, the Commission must develop and promote educational guidelines for conducting CIC elections, meetings, and enforcing governing documents through liens, fines, and penalties.

Further, Senate Bill 100 authorizes a unit's owner to display the flag of the United States in a manner consistent with the Federal Flag Code and permits a CIC to impose certain reasonable restrictions on displaying the flag. Board members, officers, and community managers are prohibited from soliciting or accepting any compensation or gratuity that would improperly influence them or result in a conflict of interest. Certain limits are imposed on the amount of interest charged on past due fines and the costs of collecting such fines. The bill provides that terms for board members must be staggered and prohibits a person from serving as a board member or officer of a CIC if the person is related to someone who serves as a community manager for that CIC, with certain exceptions.

Finally, S.B. 100 requires the CIC to take minutes at each meeting of unit owners and at each board meeting, and to make records of the CIC available to members upon written request.

Detailed Summary

Creation of Commission for Common-Interest Communities [Section 13]

Senate Bill 100 defines various terms used in the Act. The bill also creates a five-member Commission for Common-Interest Communities appointed by the Governor. Commissioners must meet certain qualifications, serve three-year terms, and at least three must come from a county with a population of 400,000 or more. While engaged in Commission business, Commissioners receive $80 per day as salary as well as the per diem and travel allowances provided for state employees.

Adoption of Regulations [Section 16 & 18]

The Commission, or the Administrator of the Real Estate Division with the approval of the Commission, may adopt regulations to carry out the Act. The Commission is authorized to employ staff and the Attorney General shall act as counsel for the Commission.

Commission Hearing Panels [Section 19]

Additionally, the bill authorizes the Commission to appoint hearings panels consisting of one or more independent hearing officers. The Commission may by regulation delegate certain of its powers to the hearing panels, including the authority to determine violations, impose fines and take other disciplinary action.

A final order of a hearing panel may be appealed to the Commission and the Commission must review and approve that order not later than 20 days after the Commission provides a written notice of its intention to review the hearing panel order.

Good Faith Immunity of Commission, Division, Employees and Ombudsman [Section 21]

The Commission, its employees and consultants, the Real Estate Division, and the Ombudsman are immune from civil liability for any decision or action taken in good faith without malicious intent.

Commission Data Collection [Section 22]

Furthermore, Senate Bill 100 requires the Commission to collect and maintain certain information regarding the number and kind of CICs in the state, the effect of *Nevada Revised Statutes* Chapter 116 and attendant regulations on the development, operation and management of CICs as well as on the lending market for CICs. The Commission must also collect and maintain information on violations of the chapter, accessibility and use of mediation and arbitration, number of foreclosures within CICs for failure to pay assessments and fines, reserve studies, and any other issues the Commission determines are of concern to unit owners.

Additionally, the Commission shall develop and promote educational guidelines for conducting CIC elections, meetings and for enforcing governing documents through liens, fines, and penalties. Moreover, the Commission shall recommend and approve education and research programs relating to CICs relating to management, sale and resale of units, alternative dispute resolution procedures, and enforcement of assessments and fines.

Commission Regulations [Section 23 & 24]

The bill also authorizes the Commission to adopt regulations establishing standards for subsidizing mediation and arbitration to ensure such proceedings are expeditious, affordable, and accessible. Additionally, the measure authorizes the Commission to adopt regulations establishing standards for education programs for the benefit of unit owners as well as executive board members and officers of associations.

Furthermore, Senate Bill 100 authorizes the Commission to adopt regulations for issuance of certificates for community managers who do not hold a permit.

Commission and Ombudsman Authority to Investigate Violations [Sections 28 & 29]

Moreover, the measure authorizes the Division and Ombudsman to investigate any person who violates the Act and gives the Commission and hearing panels jurisdiction to take action against such violators. The rights, remedies and penalties provided in the Act are not exclusive and do not abrogate others that might exist at law or in equity. However, the Commission or a hearing panel shall not intervene in internal activities of a CIC except to the extent necessary to prevent or remedy a violation.

Filing Affidavit Regarding Violation With Division [Section 30]

Senate Bill 100 provides that a person aggrieved by an alleged violation of the Act may file a written affidavit with the Division not later than one year after the person discovers or reasonably should have discovered the violation. The affidavit must set forth the facts constituting the violation. However, the affidavit may not be filed unless the aggrieved person has provided the respondent with written notice sent by certified mail on at least two occasions mailed at least 15 days apart. The written notice must specify in reasonable detail the alleged violation, any actual damages suffered, and any proposed corrective action. The Commission or a hearing panel may impose a fine of not more than $1,000 if someone knowingly files a false or fraudulent affidavit.

Ombudsman and Division Action on Affidavit [Section 31]

Upon receipt of the affidavit, the Division shall refer it to the Ombudsman who shall give such guidance as the Ombudsman deems necessary to assist the parties with resolving the dispute. If the parties cannot resolve the matter, the Ombudsman shall provide the Division with a report and the Division shall conduct an investigation to determine whether good cause exists

to proceed with a hearing. If the Division determines there is good cause for a hearing, the Administrator of the Division shall file a complaint with the Commission and schedule a hearing.

Procedure for Commission Hearing on Complaint Filed by Division [Section 32]

The Commission or a panel shall hold a hearing not later than 90 days after the complaint is filed unless good cause is shown to continue the matter. The bill requires the Division to give the respondent at least 30 days notice of the hearing and provide a copy of the complaint and all relevant information in the possession of the Division.

The respondent must file an answer not later than 30 days after the Division's notice is delivered or mailed and must contain an admission or denial of the allegations in the complaint and any defenses the respondent will rely upon. If the respondent fails to answer, the Commission may enter a default decision after giving the respondent notice.

Attorney Representation and Commission Decisions [Sections 33 &34]

Any party may be represented by an attorney at any hearing on the complaint. The Commission or a panel must render a final written decision not later than 20 days after the final date of the hearing. The decision must include findings of fact and conclusions of law and all parties must receive notice of the decision by certified mail not later than 60 days after the hearing ends.

Commission Authority to Remedy Violations After Hearing [Sections 35- 37]

If the Commission or a panel finds a violation was committed, it may order the respondent to cease and desist, order the respondent to take affirmative action to correct the violation, or impose an administrative fine of not more than $1,000. The Commission or panel may also remove an executive board member or officer if they have knowingly and willfully committed a violation and their removal is in the best interests of the CIC. If a respondent violates an order of the Commission or panel, it may impose a fine of not more than $1,000 for each violation after notice and hearing.

The bill also authorizes the Commission or panel to order a respondent to pay the costs of the proceedings, including investigation costs and reasonable attorneys' fees. If the respondent is a board member or officer, the CIC is responsible for all fines and costs imposed on the respondent and the respondent may not be held personally liable, unless the respondent knowingly and willfully committed the violation.

Additionally, if the Commission or panel finds the board of a CIC or someone acting on behalf of a board has committed a violation, it may order an audit of the CIC or require the board to hire a community manager or both. The Commission or Division may also bring an action in district court to enjoin further violations if it has reasonable cause to believe such violations

will continue. If the Commission or Division has reasonable cause to believe a person will commit, or continue to commit, a violation, either may seek an injunction in court.

Displaying the Flag [Section 38]

Senate Bill 100 authorizes a unit's owner to display the flag of the United States in a manner consistent with the Federal Flag Code and permits a CIC to impose certain reasonable restrictions on displaying the flag.

Executive Board to Place Complaints on Agenda [Section 39]

Additionally, the bill requires an executive board to place a subject on the agenda of the next regularly scheduled meeting if the board receives a written complaint from a unit's owner alleging the board has violated any provision of the chapter or the governing documents and action is required by the board.

Conflicts of Interest for Board Members [Sections 40, 42 & 62(5)]

Furthermore, the bill prohibits a member of the board, an officer or a community manager from soliciting or accepting any compensation or gratuity that would improperly influence or appear to a reasonable person to improperly influence them or result in a conflict of interest. Senate Bill 100 also prohibits an executive board member or officer from entering into certain contracts for goods or services with the CIC. Each person on the ballot as a candidate for executive board member must make a good faith effort to disclose any business or personal interests that would result in or appear to a reasonable person to result in a potential conflict of interest if elected. The disclosure must be made in writing to each member of the CIC in a manner established in the bylaws.

Prohibition on Retaliatory Action by Board [Section 41]

Moreover, the measure prohibits a board, member of the board, officer, employee, or agent from taking any retaliatory action against a unit's owner because the owner complained in good faith about an alleged violation or requested to review the CIC's books and records.

Payment of Costs and Reserve Contributions by Declarants [Section 43]

The measure also requires declarants and successor declarants to pay certain costs for additional elements when the CIC is developed in phases and further requires them to deliver their share of the reserves specified in the required reserve study.

Transient Commercial Use [Section 44]

Additionally, the bill allows transient commercial use of units under certain conditions in counties with a population of 400,000 or more.

Reallocation of Costs in Master Associations [Section 45]

Furthermore, an executive board of a master association created before January 1, 1975, located in a county with a population of 400,000 or more may reallocate the costs of administering the common elements among the units of the CIC uniformly and based upon actual costs associated with each unit.

Delegate Voting [Section 46]

Moreover, the bill authorizes CICs with at least 1,000 units, or CICs created prior to October 1, 1999, to exercise voting rights by delegates or representatives if the declaration so provides. The bill specifies that the election of any delegate or representative must be conducted by secret written ballot and sets forth provisions governing such an election.

Construction Penalties [Section 47]

Senate Bill 100 authorizes a CIC to impose a construction penalty against an owner who fails to adhere to a construction schedule if the penalty and schedule are set forth in the declaration, another document recorded before the owner acquired title to the unit or in a contract between the owner and the CIC. The owner must receive notice of the violation and be informed of the right to a hearing. A construction penalty is not a fine for purposes of Chapter 116.

Rural Agricultural Residential Common-Interest Communities [Section 47.5]

The bill specifies that rural agricultural residential common-interest communities must comply with the open meeting law.

Commission Subpoena Power [Section 51]

The measure also authorizes the Commission, a member of the Commission or a panel to issue subpoenas that are enforceable by petition to a district court.

Ombudsman's Authority to Investigate and Compile Data [Section 52]

Additionally, the bill authorizes the Ombudsman to investigate disputes involving Chapter 116 of *Nevada Revised Statutes* (NRS) or governing documents of a CIC in order to assist in resolving such disputes. The Ombudsman is also required to compile information on each CIC including information on the number of foreclosures for unpaid fines and assessments and whether the reserve studies have been conducted as required by the statutes.

Exemption of Predominantly Non-residential Associations [Section 54]

Furthermore, the bill exempts CICs created before January 1, 1992, if they are located in a county whose population is less than 50,000 and less than 50 percent of the units are put to residential use unless a majority of the owners elect otherwise in writing.

Prohibition Against Unreasonable Restrictions on Use or Improvement of Units [Section 58]

Moreover, the measure prohibits a CIC from unreasonably restricting or impeding the lawful rights of an owner to have reasonable access to the owner's unit. A CIC is also prohibited from unreasonably restricting or withholding approval for improvements such as ramps, railings or elevators necessary to improve access for owners with disabilities, additional locks to improve security, or shutters to improve security or reduce energy costs. Such improvements that are visible from any other portion of the CIC must be installed in accordance with procedures in the governing documents and must be designed to the maximum extent practicable to be compatible with the style of the CIC.

Limitations on Fines [Section 61]

Senate Bill 100 imposes certain limits on the amount of interest charged on past due fines and the costs of collecting such fines.

Staggered Terms and Prohibition Against Serving on Board if Related to Community Manager [Section 62]

The bill also provides that terms for board members shall be staggered, with certain exceptions, and that there is no limit on the number of terms a member may serve unless the governing documents provide otherwise. Additionally, the measure prohibits a person from serving as a board member or officer of a CIC if the person is related to someone who serves as a community manager for that CIC, unless the person is appointed by the declarant.

Secret Ballots and Other Procedures for Elections [Sections 62 & 63]

Furthermore, Senate Bill 100 makes certain provisions for secret ballot elections for the selection or removal of executive board members, unless the CIC declaration provides for voting by delegates or representatives. If an election is conducted by secret ballot, the ballots must be opened and counted at a meeting of the CIC. Incumbents and candidates are prohibited from participating in the opening or counting of ballots or from possessing or having access to the ballots. Each member of the board must certify in writing to the CIC within 90 days after being elected or appointed to the board that the member has read and understands the governing documents and Chapter 116.

Association and Board Meeting Minutes [Sections 65 & 66]

The bill requires the secretary of the CIC or other designated officer to take minutes at each meeting of unit owners and at each board meeting. The minutes must contain certain specified items. Minutes must be retained until the CIC terminates and owners may record meetings if they provide notice prior to the start of the meeting that they intend to record the proceedings, except when the board meets in executive session.

Actions During Executive Board Sessions [Section 67]

The bill prohibits a board from meeting in executive session to take action on contracts, unless the contract is between the CIC and an attorney. A board may meet in executive session to discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or employee of the CIC. The board may also meet in executive session to discuss the failure of an owner to adhere to a construction schedule.

Quorum Requirements and Use of Proxies [Sections 68 & 69]

Senate Bill 100 provides that if the governing documents require a quorum for an association meeting greater than 20 percent of the eligible votes that may be cast for election of the board, and there are insufficient people present to constitute a quorum, the persons in attendance may adjourn the meeting to a time not less than 48 hours nor more than 30 days later. At the subsequent meeting, a quorum shall be deemed to be present if persons eligible to cast 20 percent of the vote at an election of the board are present. However, only matters that were on the agenda of the original meeting may be acted on. Further, the actual number of votes that are required pursuant to the governing documents for taking a particular action is not changed. The bill also provides that before a vote may be cast pursuant to a proxy, certain conditions must be met.

Commission Regulation of Community Managers [Sections 70 & 71]

Additionally, the measure provides that the Commission shall establish standards of practice for community managers who hold permits or certificates. Moreover, the Commission or a panel is authorized to take appropriate disciplinary action against a community manager who violates any provision of the chapter. Furthermore, the bill makes changes regarding exceptions to the requirements for holding a permit or certificate as a community manager.

Tax Credits for Park Facilities [Section 73]

The bill also authorizes a CIC to use credits against the statutory residential construction tax for park facilities and related improvements under certain conditions.

Penalty for Failure to Pay Fees to Administrator [Section 74]

Additionally, Senate Bill 100 authorizes the Administrator to impose a penalty against a CIC that fails to pay the fees owed by the CIC to the Administrator. The penalty for each violation may not exceed 10 percent of the amount of the fees owed or $500, whichever is less.

Liens [Sections 76-78]

Furthermore, the bill makes certain changes to the provisions regarding liens, including granting a CIC a lien against a unit for any construction penalty imposed under the Act.

Access to Association Records [Section 79]

Senate Bill 100 requires a CIC to make certain records available to members upon written request, including without limitation, all contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. The executive board must also maintain a general record concerning each violation of the governing documents for which a fine, construction penalty or other sanction has been imposed, other than a failure to pay an assessment. The record must contain a general description of the nature of the violation and the type of sanction imposed, including the amount of any fine levied. The record must not contain the name or address of the person who was the subject of the sanction or fine or any other information that could be used to identify them. The record must be organized in such a manner that it is convenient for members to access. All of the records of a CIC must be maintained for at least 10 years. An executive board is prohibited from requiring payment of more than $10 per hour to review books, records, contracts or other papers.

Providing Reserve Study to Potential Purchaser [Section 83]

Finally, Senate Bill 100 also requires a unit's owner to furnish a purchaser with a summary of the financial components of the CIC reserve study before an offer to purchase becomes binding. Upon request of a unit's owner or a purchaser, the CIC must provide reasonable access to the entire reserve study for inspection, copying and audit.

Effective Date

Portions of the Act become effective on July 1, 2003. Some sections become effective on October 1, 2003. Other sections become effective on January 1, 2004.

LEGISLATIVE HEARINGS

MINUTES AND EXHIBITS

MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-second Session
February 20, 2003

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:00 a.m., on Thursday, February 20, 2003, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4401, 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Warren B. Hardy II, Vice Chairman
Senator Ann O'Connell
Senator Raymond C. Shaffer
Senator Joseph Neal
Senator Michael Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Kevin Powers, Committee Counsel
Laura Adler, Committee Secretary

OTHERS PRESENT:

Jack K. Clark, Ward III, City Council, City of Henderson
Chris Napolitano, General Education Core Requirement, Gateway Educational
Terri Janison, Concerned Citizen
Dave Duritsa, Safe Homes Nevada
Eddie Haddad, Resources Group
Judi Booe, Concerned Citizen
Michael T. Schulman, Attorney
Mark Kaplinsky, Concerned Citizen
Glenn Hayward, Concerned Citizen
Donald Minoli, Concerned Citizen

Joanne C. Young, Concerned Citizen
Michael Trudell, Manager, Caughlin Ranch Homeowners Association
Pamela Scott, Lobbyist, The Howard Hughes Corporation
Eldon Hardy, Ombudsman, Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Michael E. Buckley, Lobbyist, Community Associations Institute
Ann Gerken, Concerned Citizen
John V. Briggs, Concerned Citizen
Karen J. Brigg, Regional Vice President, Eugene Burger Management Corporation
Sara E. Barry, Concerned Citizen
Karen D. Dennison, Lobbyist, Lake at Las Vegas Joint Venture
Melody L. Luetkehans, Lobbyist, Nevada Association of Realtors
William A. S. Magrath II, Lobbyist, McDonald Carano Wilson LLP
Jerry Northfield, Concerned Citizen

CHAIRMAN TOWNSEND:
There are a couple of items with which we will be dealing on Senate Bill (S.B.) 100. We have an able work document (Exhibit C. Original is on file in the Research Library.) put together by our staff, comparing S.B. 100 of this session with S.B. No. 421 of the 71st Session. We also have the Ombudsman for Owners in Common-Interest Communities report (Exhibit D. Original is on file in the Research Library.).

SENATE BILL 100: Makes various changes to provisions governing common-interest communities. (BDR 10-29)

The past work this committee and the Assembly did is still relevant. Are there any additional matters that would be appropriate, given some of the discussions during the interim?

SENATOR SCHNEIDER:
Mr. Chairman, I apologize to you, the committee, the chairman of the judiciary, and the majority leader of the Assembly, for not getting this issue through last session. I am going to work with everyone to get this bill through, because we must do what is right for the people.

We start on this legislation session with an issue about the American flag. It has been an issue statewide because we have many military personnel who wanted to fly their flags after the September 11, 2001, terrorist attacks. It became obvious some homeowners associations did not allow this.

I inserted the issue that people in homeowners associations would be able to fly the American flag. The federal guidelines should be used regarding treatment of the flag.

One of the hallmarks of the last legislation was to develop a commission to handle homeowner complaints and board complaints against homeowners. The commission would be appointed by the Governor to settle disputes that concern many homeowners associations. Money for the commission would come from the ombudsman's office from the $3 door fee established in 1997. I would like to again pursue the idea of a commission.

Section 11 describes how to file a complaint with the commission. The Real Estate Division wants to do more mediation before going to the commission. The commission should have subpoena power. In past legislation subpoena power was given to the ombudsman to subpoena records of an association when they were not turned over to the homeowners. The attorney general did not approve this. We may have to get representatives from the attorney general's office to work with us.

It is my hope the commission will make firm decisions that would end most disputes in homeowners associations. Some things stand out like agricultural common-interest communities (CICs) for our rural areas. We must make sure everyone is on board with it.

In 1997 when we started this process, I met with homeowners in my district. Many associations were being consumed by lawsuits. By the time a case went to court, the homeowners forgot what they were fighting about. Some homeowners spent up to $100,000 defending themselves in court and could not remember what started the lawsuits. We then got everyone together to make sure they agreed to sue before going to court and spending tens of thousands of dollars. That may give some control over boards from getting into lawsuits with homeowners over something small like bushes. Homeowners should know they are putting their property at risk in any type of lawsuit.

Because of the energy costs in Las Vegas, we left the issue of shutters in the bill. The bill also contains a lot about community managers. I request we contact Assemblyman Bernie Anderson to give us someone to work on our subcommittee to understand what we do. Assemblyman John Ocequera and Assemblyman David Brown have previous experience with these issues.

CHAIRMAN TOWNSEND:
Mr. Young, if that would be okay, contact the Speaker of the House, Richard D. Perkins, to advise him S.B. 100 will be worked on in detail in subcommittee. Those meetings will be posted and videoconferenced, and we would appreciate as many members as they can spare to join us to work on common ground. The reason we ought to address it to the speaker is their rules are different.

CHAIRMAN TOWNSEND:
For those of you in southern Nevada, we would like people who can provide input to the details of items in the bill.

JACK K. CLARK, WARD III, CITY COUNCIL, CITY OF HENDERSON:
I would like to give some background on how our ordinance (Exhibit E) in Henderson came about, which was passed January 21, 2003.

Over the past several years we have received complaints from homeowners about the inability to fly the American flag. That issue became extremely important after the September 11, 2001 terrorist attack (Exhibit F). We looked at several court cases; some decided in favor of the homeowners associations, some in favor of the homeowners. We gathered it was unlawful to restrict the flying of the American flag. I suggested to the homeowners associations they incorporate the flag code of the United States into their Covenants, Conditions & Restrictions (CC&Rs). We did not include the code in our ordinance; we said they could not unduly restrict the flying of the American flag.

Since the passage of the ordinance, I have had complaints from homeowners about the restrictive nature, such as only being able to fly it on certain days. As an example, that would preclude a veteran of World War II from flying the flag on December 7. I strongly urge you to include not only the prohibition against homeowners associations restricting the flying of the American flag, but also include the flag code as part of this bill.

SENATOR NEAL:
What restrictions does your ordinance have in terms of flying the flag? If a homeowner decided to fly a Terrible Hurbst flag, would they be permitted to do so?

MR. CLARK:
What we did include was that the flag could not be any higher than the building. It is all included in the United States Flag Code, as well as flag etiquette. That code can easily define the circumstances and manner the flag should be flown.

CHAIRMAN TOWNSEND:
For those of you in Las Vegas who have never appeared before, please state your name for the record.

CHRIS NAPOLITANO, GENERAL EDUCATION CORE REQUIREMENT, GATEWAY EDUCATIONAL:
I am with GECR, Gateway Educational. I am here facilitating the educational requirements.

TERRI JANISON, CONCERNED CITIZEN:
I am here regarding the commission Senator Schneider talked about.

DAVE DURITSA, SAFE HOMES NEVADA:
I represent Safe Homes Nevada. I will be speaking briefly on the commission itself, and one other item in the proposed bill.

EDDIE HADDAD, RESOURCES GROUP:
My company is involved in the purchase at trustee sales of almost 100 homes a year in Las Vegas. Approximately 65 percent of those homes are in homeowners associations. There are a lot of predatory fees charged by the homeowner associations' affiliations, like property management companies, collection agencies, and foreclosure companies.

JUDI BOOE, CONCERNED CITIZEN:
I am here as a citizen and former board member of a homeowners association. I am here to talk to a number of points in the legislation (Exhibit G). I strongly support S.B. 100.

MICHAEL T. SCHULMAN, ATTORNEY:
I represent a number of homeowner associations. I want to talk to one point in section 53 regarding the filing of lawsuits. We have certain issues with section 53.

MARK KAPLINSKY, CONCERNED CITIZEN:
I am a former board member, president, and manager of a small association. I am here out of concern with some language in the proposed bill I feel might compromise a fair election.

GLENN HAYWARD, CONCERNED CITIZEN:
I am president of Sun City Summerlin Community Association of 7779 homes. I am here to speak on some of the items in S.B. 100.

DONALD MINOLI, CONCERNED CITIZEN:
I am a member of the Rainbow Bend Homeowners Association to talk to the many features of a commission. I am against the continuation of the ombudsman's office.

JOANNE C. YOUNG, CONCERNED CITIZEN:
I am a homeowner in a homeowners association (HOA). I would like to address the CC&Rs. A lien can be filed against an individual and it is not protected by the homestead.

MICHAEL TRUDELL, MANAGER, CAUGHLIN RANCH HOMEOWNERS ASSOCIATION:
I am the manager of Caughlin Ranch Homeowners Association in Reno.

PAMELA SCOTT, LOBBYIST, THE HOWARD HUGHES CORPORATION:
I am here to express support for the commission and several portions of this bill.

ELDON HARDY, OMBUDSMAN, OMBUDSMAN FOR OWNERS IN COMMON-INTEREST COMMUNITIES, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS AND INDUSTRY:
I am here to bring you up-to-date on what the ombudsman's office has been doing the last 2 years. When it is appropriate, I would like to go through the handout (Exhibit D) to let you know what we are doing, and what we think would help solve the problems that are starting to diminish.

GAIL J. ANDERSON, ADMINISTRATOR, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS AND INDUSTRY:
This is my first appearance before you in my capacity as Administrator of the Real Estate Division, a position I began July 1, 2002.

MICHAEL E. BUCKLEY, LOBBYIST, COMMUNITY ASSOCIATIONS INSTITUTE:
I am with the law firm of Jones Vargas in Las Vegas. I am representing the Community Associations Institute, Nevada chapter legislative action committee to testify in support of the commission and various sections of the bill.

ANN GERKEN, CONCERNED CITIZEN:
I am a unit owner of the Elk Point Country Club Homeowners Association at Lake Tahoe. On reviewing S.B. 100 with a few more amendments it could be even better.

JOHN V. BRIGGS, CONCERNED CITIZEN:
I also live at Elk Point Country Club. I am here to support the bill with some amendments I have given to the committee in writing (Exhibit H). I would like to say we need a commission with teeth, because the alternate dispute resolution (ADR) is a failed policy.

KAREN J. BRIGG, REGIONAL VICE PRESIDENT, EUGENE BURGER MANAGEMENT CORPORATION:
We have offices in Las Vegas and Reno. I am here to speak with regard to the bill and its support.

SARA E. BARRY, CONCERNED CITIZEN:
I am representing myself. I have been in this industry for 23 years in almost every discipline. I have concerns about portions of the bill. I do want to support a commission.

KAREN D. DENNISON, LOBBYIST, LAKE AT LAS VEGAS JOINT VENTURE:
I am a lawyer and I am here representing Lake at Las Vegas Joint Venture. I am in support of the bill with a couple of minor amendments and some additions (Exhibit I and Exhibit J).

MELODY L. LUETKEHANS, LOBBYIST, NEVADA ASSOCIATION OF REALTORS:
I am general counsel for the Nevada Association of Realtors. We have questions with several sections, and would like to propose clarifications (Exhibit K. Original is on file in the Research Library.)

CHAIRMAN TOWNSEND:
If there is anyone else who would like to testify, come up to the table and we will recognize you. Section 8 is the flag portion of the bill in which Senator Schneider has talked about using federal guidelines.

MS. BOOE:
I am a member of the South Shores Homeowners Association which has about 1200 units. I served on the board for about 3 1/2 months and was horrified at some of the glaring problems. In regard to section 8 on the flag, there should be some language that says it will be administered consistently. We discovered some people were notified to take the flags down, and some were not, based on personal relationships with board members.

MR. MINOLI:
It is a wonderful thing to put the flag in here. Do not leave it up to board members to decide what is right or wrong concerning size or height of the flag.

CHAIRMAN TOWNSEND:
Is there anyone here in opposition to the general concept of the commission as proposed in this bill?

MS. ANDERSON:
As proposed in sections 9 to 17, there are significant problems with how this commission for the common-interest community would function administratively within or outside of the Real Estate Division, and what its jurisdiction would be in regard to chapter 116 of the *Nevada Revised Statutes* (NRS). I am against the commission.

CHAIRMAN TOWNSEND:
How are you going to solve the problem? What is your recommendation?

MS. ANDERSON:
We have developed a proposal involving two prongs. One is an advisory review committee that would be established in statute as a court of first jurisdiction for

matters involving licensed community association managers in violation of NRS 116 for permitted property managers that are licensed under NRS 645. The second prong would deal with the issue of board members and association owner members that a hearing panel would be established in statute. This panel would mediate matters, make decisions and determinations involving violations of NRS 116 and governing documents of an association.

CHAIRMAN TOWNSEND:
Have you shared this with anybody recently?

MS. ANDERSON:
Yes, with two industry entity groups and Senator Schneider.

CHAIRMAN TOWNSEND:
Is this the Governor's position? Have you shared this with him?

MS. ANDERSON:
No, this has been the Real Estate Division's proposal. The director's office is aware of our proposal. But I have not shared it with the Governor's office.

SENATOR SHAFFER:
Who is going to choose the people that serve?

MS. ANDERSON:
Both the advisory committee and the hearing panel, as we do now with real estate and appraisals, we take applications through the division and establish criteria by regulation. In some cases decisions are made by the administrator, in other cases it is the Real Estate Commission who would approve panel members. They would then draw three people for a hearing from that panel. This is something we would discuss, if the subcommittee were willing to consider this as far as managers, association members, and other entities might be interested in participating.

CHAIRMAN TOWNSEND:
Do you have this in a form that can be shared with the people who are here today so they can think about it before we have a subcommittee?

MS. ANDERSON:
We have a written document, but I did not bring copies today.

CHAIRMAN TOWNSEND:
Where does Mr. Hardy's organization fit into this new concept?

MS. ANDERSON:
The office of the ombudsman would be administrating those two functions. A fiscal note would need to be attached. There would need to be a legal administrative officer who schedules and organizes meetings, handles notifications, and arrangements. The office of the ombudsman would carry out those functions in terms of the arrangements for them to function.

CHAIRMAN TOWNSEND:
It is obvious this needs more input by the people here, they want resolution, they do not want to be in a morass and have to go to multiple levels. A law is a law. When there is a disagreement we have courts of competent jurisdiction.

SENATOR SCHNEIDER:
We met in my office yesterday for almost 3 hours. I also discussed it with some members of the industry who are thinking about it.

MR. BRIGGS:
It appears the commission does not resolve anything until after an ADR has been filed and resolved. As I understand this bill, the commission does not do anything until afterwards, so we are still put into purgatory. We have been in three or four of these already, and nothing gets resolved. On page 3, line 37, it says the commission shall not investigate or take action on a complaint until the arbitration is over. If Ms. Anderson's idea is to lift us out of the arbitration/mediation area, I think it should warrant great attention. Otherwise, you could strike the line that allows a commission to investigate or take action before forced arbitration, then that would be a good amendment.

MS. JANISON:
This is exactly the reason I am here this morning I have copies of my testimony (Exhibit L). My family has been in the middle of a dispute with a Summerlin homeowners association that began almost 2 years ago as a trivial matter about a basketball hoop. The NRS 116 states the rules adopted by an association must be uniformly enforced.

When we questioned Summerlin about NRS 116 they said, "Well, that's a new law and it has not been tested yet." The Summerlin homeowners association changed the rule to grandfather in selected homeowners by letting them keep their hoops, while continuing to send threatening and harassing letters to other homeowners.

We asked for their records on basketball hoop enforcement, internal minutes, e-mails, notes, et cetera. We also asked for their records dealing with property dedicated to the City of Las Vegas. We were ignored. We contacted Ombudsman Eldon Hardy. In September Mr. Hardy said he would try to get a subpoena. We have heard nothing formal from his office.

We have received two threats of foreclosure from the Summerlin homeowners association if we do not pay the fines. Pamela Scott, a lobbyist for The Howard Hughes Corporation, signed the threats. Finally, we expressed an interest in making a difference by running for the board, but they have a delegate voting system that permits the delegates and board members to repeatedly vote for themselves to retain office by proxy, regardless of NRS 116.

CHAIRMAN TOWNSEND:
Generally we do not use people's names, but since they were mentioned, would you like to respond?

MR. HARDY:
What Ms. Janison said covers everything in my mitigations with them. This is one of those instances where I was not able to get approval from the attorney general's office, because there was a question about some of the records requested. I modified the request to what I thought was more realistic, but was still unable to get the request through.

CHAIRMAN TOWNSEND:
Who was the deputy attorney general?

MS. ANDERSON:
The attorneys with whom we met were Gina Session, Patricia Palm, and Kateri Cavin. Our discussion focused on if an association board can be required to create records. In other words, compile statistics that were not already compiled. That was the issue. The decision was no. It was not what the law specified.

CHAIRMAN TOWNSEND:
If the request for statistics had not been compiled supported her contention that she was being treated differently than others, then why would that not be acceptable?

MS. ANDERSON:
I cannot answer the question. We also recommended they do the alternative dispute resolution process to have a party involved in sorting out some of the facts and findings.

CHAIRMAN TOWNSEND:
Here we are in mid-February and this lady asked for something in September. We have not responded.

MS. SCOTT:
I am not here to testify on behalf of the Summerlin North Community Association. However, the attorney for the association did respond to the Janison's attorney outlining that some of the records they had requested were from executive session and were confidential to other homeowners' files, and could not be made available. They were also advised the representative public election information, minutes, et cetera, were available. If they would contact the management office, they could review those records. However, the request was never made of the association. The matter has been submitted to the ombudsman's office for arbitration.

MS. JANISON:
I fully understand what the Real Estate Division has stated. We were more than happy to go to that arbitration, but I do not recall ever receiving anything from the association stating we could have access to any other records.

MS. GERKEN:
I have been to arbitration. I have a ruling from the Nevada Supreme Court stating that I could look at all the records. I spent thousands of dollars doing this. I received a letter from the association attorney saying I could not look at all of the records. I do not think the arbitration process has teeth either.

CHAIRMAN TOWNSEND:
Let me resolve this. Ms. Janison, Ms. Scott, Mr. Hardy, today is February 20. On March 4, I want every one of you back here, and I want it resolved.

SENATOR O'CONNELL:
I thought in the past we made it clear the only confidential records were personnel records. Am I incorrect in that assumption?

SCOTT YOUNG, COMMITTEE POLICY ANALYST:
Mr. Powers can speak to it. I think there is another exemption for release of records, which concerns records relating to other members of the association.

SENATOR O'CONNELL:
Would you go over that, Mr. Powers? I think knowing who has basketball hoops does not fit into the category of something private or someone's personnel record.

KEVIN POWERS, COMMITTEE COUNSEL:
> Scott was correct. The present state of the law provides that the power of subpoenaed record does not apply to the personnel records of the employees of the association, and the records of the association relating to another units owners. It does not specify the type of information that has to relate to the other units owners, it just has to be records of the association relating to another units owners. There is no specificity as to how those records may be categorized.

SENATOR O'CONNELL:
Mr. Chairman, I think we had better do it.

SENATOR NEAL:
I was on this committee before when we had this particular issue. I think we should see exactly whether or not we are fulfilling a public purpose here.

CHAIRMAN TOWNSEND:
Section 42, page 17 has to do with cumulative fines. There seems to be a great deal of concern about the following dichotomy. On one hand, the behavior of certain individuals against a CC&R or ruling by the board, that without using common sense, allows fines to accumulate ad infinitum. It is also a means for a

board to get people to take care of their properties and do the right thing. How do you define where you stop the accumulation for purposes of rationality, and also letting fines go on to get people to change their behavior?

MR. HADDAD:
One of those behaviors is a homeowner not paying his homeowners association dues on time. I have had the obligation of dealing with many homeowners associations. I know some of them are professional; others are not. Most of the time when I purchase a property at a trustee sale, chances are the homeowners association dues have been delinquent for quite some time. The NRS statute puts a cap of 6 months on a purchaser of a home at a trustee sale. However, these homeowners associations are hiring property management companies that keep changing. During the process, it seems that every one of those organizations is tacking on fees on top of fees.

When there is a delinquent homeowner, for example on an $8 a month fee, by the time we get the bill, it is up to $600 to $700. The NRS statute gave these homeowners associations super-priority lien status. To put this into perspective, Clark County Sanitation District has a $25 lien fee when the account is 1-year delinquent. Why do homeowners associations have $600 to $700 in lien fees on an $8 a month past due bill that we have to pay? These are predatory fees. Essentially, collection companies are mailing a document and charging hundreds of dollars plus postage. Nevada requires, per statute, a single sheet of paper for $15 to be filed with the county recorder's office to put a lien on the property.

Unless the homeowners association is willing to act on that lien and foreclose of their interest, we do not need all these charges. If you are going to give them super priority lien status, you should also maintain what can be charged. Maybe a $25 lien fee would be enough.

I also spoke to Eldon Hardy about this. He tells me the same thing; his hands are tied. He cannot do anything to make homeowners associations comply.

MS. BOOE:
For the short time I served on the board, one of the things I questioned was the monthly fees assessed against a homeowner for a violation. Based on the letter from the homeowner to the board, if it was written nicely, in every case lien was waived. But, if a homeowner sent a letter questioning the lien fees, written in an aggressive manner, without exception the lien stayed and the fines were

increased. It is a five-member board, and three of those board members would consistently refused to waive those fees because they did not like the way that particular letter was written.

There has to be a way for the boards of these associations to be consistent in their treatment of homeowners. It cannot be on a personal basis of whom they like and do not like.

MR. MINOLI:
My handout (Exhibit M) is on section 42 regarding liens put on by a homeowners association. We are going through a horrible circumstance about this misuse of the lien foreclosure, a non-judicial foreclosure. Assessments by a homeowners association are consumer debt, and should be handled by taking through small claims court. Nobody should lose their home, have it put in foreclosure, or have the homestead exemption rendered invalid by the actions of a three-member or five-member board that may not like the person.

MR. HADDAD:
I am for a cap, especially when it comes to a bank acquiring a property. Should they inherit the obligation by the previous owner?

MS. GERKEN:
I am against a homeowners association being able to put a lien on a unit owner's property when the unit owner has not been fined and does not owe the money. I have had liens put on my property of a bogus gas hookup fee when I paid Southwest Gas for it. The association said the unit owner had to pay them. There was no fine involved or violation of the rules. I had to take the association's attorney to small claims court. The association agreed to state they inadvertently placed incorrect liens on my property. I am in favor of capping the amounts.

MR. DURITSA:
Whether you put $100 or a $1000 cap, it does not solve the problem of bringing people into compliance. If this could be taken to subcommittee, maybe some other ideas would come out of it.

SENATOR O'CONNELL:
I would like to request Kevin Powers take a look at the law and see what would happen if we did away with homeowners associations. How would that affect loans based on the CC&Rs being a part of that loan?

MR. MILONI:
If NRS 116 was abolished, CC&Rs would still exist. The CC&Rs are the vehicle, the instrument that creates and brings the subdivision or its homeowners association under the jurisdiction of NRS 116 by the verbiage within them. There is something unclear in the beginning paragraphs of NRS 116. It states what the creation of a common-interest community can or cannot. The word "may" is misused in the first section, which says you can be inured of a common-interest community or you cannot.

Some subdivisions in the Reno area apparently read it that way because they have made clear to their buyers they are not a homeowners association or under a common-interest community. They are paying dues because they belong to a golf course or a country club. This is their way of getting around the NRS. If you abolish NRS 116, your CC&Rs would still be there, but any reference to NRS 116 would no longer be in effect.

WILLIAM A. S. MAGRATH II, PRESIDENT, CAUGHLIN RANCH HOMEOWNERS ASSOCIATION:
The gentleman is correct. What we are discussing and what is referred to in the law, and I am a lawyer, is equitable servitudes. Equitable servitude is the legal term for a burden that is placed on land. Each piece of land is burdened with these rules and regulations creating these associations.

If you eliminate NRS 116, those equitable servitudes, which create property rights, in effect, will remain of record. When a person buys a condominium or a town home in Las Vegas, they buy that property burdened by these rules. Those rules and burdens are what generate the process to care for the common interest such as a pool, roofs, and stairways. If you eliminate these property rights, who is going to care for the common interest?

An individual homeowner who pays $29,000 for a town home cannot afford to pay for the common roof or assemble all 30 homeowners to collectively put together the funds to repair the roof. Homeowners associations can collectively

put together the process by which people can pay for the paving of the parking lot, or pay for the security of the facility.

Everyone in the homeowners association buys their property with those burdens on it. As a homeowner, I have a right to enforce the rule against my neighbor, even if the homeowners association does not agree. My property value is contingent upon making sure my next-door neighbor follows the rules, as well as the people down the street. My home is more valuable because it happens to be in a neighborhood with parks, common areas, and paths. If you eliminate that right, you are taking away my property rights.

I think it is unconstitutional because there is no compensation to me. A homeowners association allows people to put a swimming pool in the middle of 30 units and operate the pool, which will never be properly operated if you take those rules and obligations away. The same goes with the pathways, et cetera.

I am here as a homeowner because I believe in the system. You will impact thousands of associations if you pass laws to remedy individual problems. Thousands of homeowners associations are ultimately going to fail, if homeowners do not volunteer to serve on the boards.

CHAIRMAN TOWNSEND:
Mr. Duritsa, could you address the issue of liening a home based on a homeowners association fine or fee?

MR. DURITSA:
In the past, I served on a board of directors for 3 years. We solved volumes of problems by identifying the problems one at a time. You actually have to get the people together, identify the problem, and come up with a solution.

Regarding all subpoenas chasing after records. At our association everything is available, with the exception of employee records, and items the board deems would give information about a resident that is confidential. A person may need to know about how many basketball hoops have been noted on a walkthrough. Board members tend to kick back with a despotic attitude saying, "This is mine, and I'm not giving you anything." That is just plain wrong.

CHAIRMAN TOWNSEND:
The question posed, relative to one issue brought up, is the ability of an association to lien a home for its dues or fines. I think that is a threshold issue for homeowners.

MR. MAGRATH:
Everyone who purchased a home knew in advance there are rules that apply to the association. If they choose, they can purchase property outside of those rules.

When they enjoy greenbelts for 6 months and not pay dues, they have used and benefited from those common areas. When the association chooses to record a lien allowed by law, it is recorded for failure to pay dues.

A comment was made about the super priority of the lien. A lien does allow, under the law, a foreclosure process. There is substantial due process before you get to that foreclosure process. Maybe we can adopt additional due processes before the foreclosure sale occurs. If the association does not have the power to lien and to foreclose upon the property, every member of the association will have a discretionary right whether or not to pay dues.

The same process occurs on fines. Because the person has failed to comply. Senate Bill No. 421 of the 71st Session allowed for a requirement that you could not foreclose on a property unless it involved the health, safety and welfare of the association. I think that is appropriate. Realistically, if somebody deliberately flaunts the rules and repeatedly builds up fines, if there is no ability to enforce that rule, short of going to court and obtaining an injunction, a problem would be created. That is why the threat of the foreclosure ultimately results in the payment of their obligation. I agree there could be abuses in that situation. However, 99 percent of the time these things are resolved and people pay the fine.

We have an oral surgeon in Reno who does not pay his dues, and can easily afford to do so. We went right up to the foreclosure sale day. Then he finally showed up and paid the dues. If you cannot force people to respond, you will lose the ability to operate the system.

CHAIRMAN TOWNSEND:
I appreciate your ability to do that, but Caughlin Ranch may be slightly different than the rest of the world. In the rest of the world, those are not always the conditions.

SENATOR NEAL:
If we did not permit the lien under law, the individuals would have the discretion to do whatever they wanted. You needed the assistance of statute to make them do certain things. How does the State and the general public benefit?

MR. MAGRATH:
I think the public, in general, benefits in many ways. By creating condominium associations or townhome units, the American dream is purchase a home. Creating condominium or townhome units is one way.

They cannot do it unless there is an association that operates the common area, pays for the common roof, cleans the sidewalks and parking lots. This is a benefit that requires some organization. You must have that or you will lose the ability to create these small units for affordable housing. Caughlin Ranch has a public park operated for the public.

SENATOR NEAL:
Do homeowners that exist outside of these associations pay more or less taxes than the individuals who actually have these subdivisions? I do not live in a homeowners association, but North Las Vegas comes through with street sweepers to clean the streets. I put my garbage out for pickup and cut my own lawn. Are you saying whatever services are rendered by these associations are a property tax break?

MR. MAGRATH:
There is no tax break to the association member, but there is a tax break to the State. In effect, these homeowners associations increase the value of the properties. The actual unit or home in an association is probably assessed at a higher tax value than a homeowner with an identical house who does not have those benefits. My house probably has a greater value because it sits near a park. I paid more for that house because it was on a greenbelt.

I do not have any statistics, but inside associations there is probably a higher assessed valuation because of the benefits from joining an association. Some

people have private roadways. In those cases they pay for maintenance of those roadways. The public benefits by having associations that allow low-cost housing in a common community, and increased property values. I believe those are a benefit to Nevada.

MR. SHULMAN:
In all these associations, certainly the private communities, the developers have built all the streets and infrastructure. In essence the State and local communities have not had to pay for the streets and infrastructure. The homeowners who live in the community paid for those improvements, not the general public; that is the other benefit.

MR. HARDY:
I would like to let everyone know what the ombudsman's office has done in the last 2 years in resolving many of these disputes. We are making great progress. Two years ago we started educational seminars for homeowners and board members. This created a challenge because the budget was not set up to solicit bids for educational seminars. I asked for volunteers and received a tremendous response from professionals in the industry. We conducted 23 seminars in 1 year. Average attendance in Las Vegas was about 130 to 150 people per seminar. We also held seminars in Mesquite and Laughlin every quarter. We did 23 seminars in 12 months.

The seminars were presented by professionals in the industry; managers, attorneys, CPAs, and insurance people. Contracts have been signed to continue the same process. We have up to 10 specific subjects. One of them is a basic overview of the industry, and I would like to see all board members take this 3-hour course.

With us today are Sara E. Barry and Judy Cook, Speaker/Trainer, Cook & Company, Limited, two of the presenters who were awarded contracts to conduct these seminars. We will conduct 27 seminars by the end of June. We are very pleased with the success of these seminars. I believe communication and education will solve most of these problems. I think most people want to do it right. They just do not understand what right is or how to get there, and we are making progress. These seminars were well received, and I attended every one of them. Some of my staff spent 3 hours in the evenings attending these seminars.

Bill Magrath's comments about associations and how they operate are accurate. They do offer some benefits. Also other states are looking to Nevada for leadership. I get calls all the time complimenting us about NRS 116. I know there are a lot of disputes about some things, but overall it is a good bill; it is a work in progress.

CHAIRMAN TOWNSEND:
How much money do you have in your budget? How many complaints have you taken? What were the biggest complaints?

MR. HARDY:
One of the challenges we have is registration of homeowners associations. Less than half in the State are registered with us, and the law says they all should be. If they are not registered, I cannot get this information from the secretary of state in a simple process.

CHAIRMAN TOWNSEND:
What do you need from the secretary of state?

MR. HARDY:
They have provided a list of associations that say homeowner in the name, but that is not all of them, since many have property owner, association, et cetera, in their name. Last session there were 754 associations registered. Today there are 1402 registered, and we think there are about 2800 total.

We could continue to do what we have done to register the original 750 associations. When we get calls, we ask people if they are registered. Many homeowners do not know what we are talking about. We compare the new information with our database. To date there are 250,002 units registered with our office.

Over the last 2 years we received 1474 telephone calls. We resolved 28.2 percent of those problems with one telephone call. We spend an average of 36.41 hours per month meeting with homeowners who have scheduled appointments or walk-ins. The average per month is 106 people who meet with us at our office, and most of those are unscheduled. We have filed an average of 7.6 ADR claims per month. There have been 523 claims filed through the ADR process since it began January 1, 1996, of which 432 have been

completed, and 175, or 40 percent, were withdrawn before they were implemented.

There were 9 binding arbitrations out of 49. Most people want a decision that can be reached under the ADR program. The level of mediation Ms. Anderson talked about will work well. The people want me to solve their problems, but I must remain neutral. If there was a panel, we could refer these situations so they could be told this is right or wrong, it would help.

CHAIRMAN TOWNSEND:
What if we flipped that concept around? You make the decision, and if they do not like it, they can appeal to the higher level.

MR. HARDY:
In the booklet I gave you (Exhibit D), there is a homeowners survey just completed. We printed 162,000 surveys through the assistance of management companies and seminars. We distributed approximately 140,000 surveys, and got back about 9000 surveys. One interesting response was only 6.2 percent had served on their board and were involved in the operation of the association.

At the end of fiscal year 2002, there is $1.6 million in reserve. We have a staff of four people and that budget is $230,000.

We have broken down surveys from all respondents, and a survey on a large association, Sun City Summerlin, and a small association. The average number of units per association that are registered with us, is 225 units. One question asked was if the person knew the ombudsman was there to assist. Of the respondents, 61 percent did not know we existed, and 32 percent did. We asked, "Now that you know the ombudsman's office is there, would you use it?" The responses where 62 percent said yes, 5 percent said no, and 32 percent were not sure. This pointed out there is a lot of misinformation out there.

CHAIRMAN TOWNSEND:
Are there regulations against using some of your reserve to let the community know you exist?

MR. HARDY:
No, there is not. We are already doing it.

CHAIRMAN TOWNSEND:
Why do 62 percent of the people not know about you?

MR. HARDY:
Most of them belong to nonregistered associations that do not have any information about us.

SENATOR O'CONNELL:
Is there any reason your budget is not printed in this report?

MR. HARDY:
Our office put this together in about 4 hours earlier this week and I did not have that information at the time. I will see that you get it.

CHAIRMAN TOWNSEND:
No matter what proposal, whether it is this commission's idea or whether it is a real estate idea, there is another idea. You and your staff have a great deal of expertise. I hope we can tap into your expertise and make you part of that process because you have heard it and been through it.

MS. GERKEN:
Mr. Hardy, were the surveys sent to the boards of the homeowners associations?

MR. HARDY:
Management companies helped distribute the surveys to all registered associations. We sent letters to all the management companies, and dispersed them at the seminars we conducted. There was a follow-up article in the Las Vegas Review-Journal that stimulated a lot of inquiries about the survey from associations not registered with us.

MS. GERKEN:
What is the procedure? We have asked to be put on your database. We are a registered association, but the board manages us, not a management company.

MR. HARDY:
Give me a call tomorrow and I will be sure you get on the list.

CHAIRMAN TOWNSEND:
I would like to work with you on how to present these figures. There is some important data here, and I think the people who helped put these figures together sometimes forget who the audience is. It should be easier to pull out the figures.

MR. HARDY:
I understand. It was a quick job this time.

MS. YOUNG:
Mr. Hardy, as a professional management company we have never received any notice of anything your office is doing. Another thing is the number of unregistered homeowners associations. Because the CC&Rs must be recorded to be valid, has anyone thought of going to the county records?

CHAIRMAN TOWNSEND:
Database opportunities such as the county recorders should be helpful to the ombudsman's office.

MR. HARDY:
We are totally understaffed and have complained about it.

CHAIRMAN TOWNSEND:
We do not have a problem with that. We can never forget why this is in front of us; it is all about the homeowner. If homeowners and unregistered homeowners associations are not getting information about opportunities to resolve differences, the system is breaking down. Homeowners need to know you exist. Your point and the gentleman's from southern Nevada was education, information, and communication should solve 99 percent of these problems. The other 1 percent is people just do not get along.

MR. HARDY:
I agree, Senator. My whole focus has been education and communication. We have done everything we can to do.

MR. HADDAD:
A lot of homeowners associations are surpassing Eldon Hardy and the ombudsman's office by hiring collection agencies. The ombudsman cannot regulate them or their fees. Maybe the NRS needs to give the ombudsman or

the commission, as being proposed, the power to say whether these are justified or unjustified fees.

JERRY NORTHFIELD, CONCERNED CITIZEN:
I am a homeowner in North Las Vegas. I might be a current victim of the process. I just refinanced my home. When I went to the title company I asked why they were not informing me about my HOA? They said, "We don't know about that." I have been in my HOA for 3 years. The system is not supporting the homeowners, especially with the large influx to this town, for people who have never experienced this environment. The system does not have enough checks and balances to ensure the homeowners are getting informed, and that the process is running properly. The board of directors is receiving the education from the ombudsman's office, and the training they need to properly run a community. The current system is not working well right now.

CHAIRMAN TOWNSEND:
It is our goal to get a bill to the Assembly as soon as possible, so they have the time needed to spend on this issue. Ms. Anderson, we need your proposal as soon as possible. Mr. Hardy, we need a bullet list on what you are suggesting you need to do your job. This includes the identification of homeowners associations all over the State that we cannot get registered, and your suggestions on how we are going to provide public information and education to homeowners so they know the options.

SENATOR NEAL:
As I understand from listening to today's testimony, the ombudsman actually has two functions. One is the State law we passed in this area. Second are various agreements that govern these homeowners associations, which in many cases is controlling what action should or should not be taken. Where the statute does not cover then the agreements would be controlling. It would be left to interpretation by the individual making the complaint what the rights are under those agreements.

I assume with the number of people in some homeowners associations, there must be a rack of agreements to go through of which to stay abreast. Would they not have to look at the agreements as well as the statutes?

MR. HARDY:
We do not keep a copy of all governing documents of associations because we do not have a big enough building in which to store them. We can request people send us a copy of the area with which they are dealing, and we will try to interpret it.

SENATOR NEAL:
I understand your problem would be in rendering decisions on a complaint when you have to go through it in that fashion. It is not only the statute you have to deal with, it is also those agreements. I just wanted to get that on the record as to your job, as I understood it today.

CHAIRMAN TOWNSEND:
I think Senator Neal has brought up something important for us as we move through this. Mr. Magrath's articulate representation about the value of an association versus the value of the property of each individual homeowner is well positioned and respected. Not all associations are well defined, gated communities with well-defined common areas. I would suggest, Mr. Hardy, you think through this and talk to your staff.

I would like to know if you can give us a breakout on how many complaints are coming from these larger well-defined, planned unit developments versus the others. In our last hearing we heard there are many homeowners associations that are not gated and use public streets, et cetera. It is important to differentiate the types of homeowners associations we have so everyone involved has an opportunity to get their issues resolved.

MR. TRUDELL:
There are multi-levels of quality control, in each of these associations. In NRS 116.31162, subsection 4, "The association," and that means the good ones and the bad ones, "may not foreclose a lien by sale for the assessment of a fine for a violation of the declaration, bylaws, rules, or regulations of the association unless the violation is of the type that threatens the health, safety and welfare of the residents of the common-interest community." It is already in the law. There are other ways to simply remedy that than to eliminate the lien ability.

MR. HARDY:
One of the things I have encountered is most homeowners have an account with their board or association. On that account are the homeowner and association assessments and fines. If they get behind on one or another, it is turned over to a collection company. The association will not accept payment for their assessment because the homeowner owed a balance on their account. I would like to propose we look at keeping the fines and assessments separate in the billing process. I have had people who have been foreclosed on because they owed a fine and had not paid it off. The association refused to accept their payment and sent their checks back, and then sent the past due fine to foreclosure because they were behind on their assessments.

GLENN HAYWARD, CONCERNED CITIZEN:
I live in Sun City Summerlin, and will refer to my handout (Exhibit N). I am the president of Sun City Summerlin Community Association and serve on the board of directors of that association. There are 7779 homes, and the required quorum is 50 percent of members. Since I have been there we have never reached a quorum. In S.B. 100, section 53 there is the proposed amendment to NRS 116.3115. As the statute presently exists it causes our association numerous issues regarding assessments and majority votes. There are situations in which we need to pursue third parties without having to obtain votes. Those situations are when we need to pursue a vendor for breach of contract, or an unrelated third party that causes damage to the association.

The association's annual budget exceeds $13 million. There are numerous vendors the association pays for services. If they had to get votes before pursuing a vendor, they would be at a disadvantage. Additionally, the association owns golf courses. We believe the law should not be changed, and there should be exemptions for boards to pursue third parties without a vote of the homeowners. Without this exemption, it would be impossible for our board to be fiscally responsible to the association. The committee may need to consider different rules for different size associations. I believe the remedy for homeowners who do not like their boards is to vote them out and vote in new board members.

MR. SCHULMAN:
I also represent Green Valley Ranch that has 4000 units. They have similar concerns. They have substantial landscaping contracts giving rise to regular disputes. The board could not get 2000 votes to do anything. Basically, the law

benefits the wrongdoer. I know this committee understands the apathy of the homeowner because the bill contains a section on reduced quorums for certain meetings, and a no quorum for election of directors. If section 53 goes through the way it is, it would further handcuff my clients.

I think there is a huge inconsistency in the law. In 1999 a bill was passed that allowed homeowners associations, through their boards, to levy assessments to fund reserves without homeowner approval, and I think that is a great idea. You do not let the homeowners' board pursue the third party responsible for damages to the association.

MS. BOOE:
There is good reason why there is not participation by homeowners in homeowners associations. Association boards do everything they can to strangle the homeowner so they are not able to participate. When you volunteer to participate, there are 2 or 3 people who have the quorum and you are unable to make any changes.

There are 1200 homes in the Summerlin area. If someone is a delegate, they vote for everyone that is not there. Basically, they have the proxy of 200 homeowners that did not show up. They automatically get those votes.

MR. DURITSA:
I would ask you to look at page 29, section 53, line 17, regarding written notice. Subsection (d) is lined out, which said, "to protect the health, safety, and welfare of the association." It appears an association would not be able to commence a civil action. Unless I am misreading this, I take it that it was scratched out in error.

CHAIRMAN TOWNSEND:
That is the way it is printed and it will be part of the debate.

MR. DURISTA:
One thing I have witnessed in homeowners associations is no one makes a final decision. These homeowners are asking for adjudication one way or the other so they know where they stand. What we see are homeowners boards not willing to make decisions because they are unpopular. We need this proactive approach to make a decision. We would like to see that from the ombudsman's office.

SENATOR SCHNEIDER:
I would like to start the subcommittee hearings next Tuesday. I will check with the Speaker to see if he can give us some Assembly people to work on this. We discussed with the secretary of state getting notification of homeowners associations from his office. His office is designing a new computer program, a checkbox may be included for homeowners associations, because they are now listed as nonprofit corporations. This information could be turned over to the ombudsman right away.

MR. MINOLI:
If you want to give verbal input when there is nothing in writing, would you still have the opportunity?

CHAIRMAN TOWNSEND:
Absolutely. Anyone is welcome to make verbal input. Anything that occurs in these committees can be part of litigation. The court looks for guidance on paper as to what is the intent.

MR. MINOLI:
Regarding writing, I would suggest this committee consider the revisions of NRS 116 to adopt a declaration of legislative intent. Set out what are your objectives. It is a uniform act out of the Chicago group of judges and lawyers who put it together. It was thrown against the wall here in 1991 and about 25 percent of it fell off.

CHAIRMAN TOWNSEND:
For those of you who are also here on S.B. 136, because it deals with the same topic, it will also be assigned to the subcommittee.

SENATE BILL 136: Revises provisions governing assessment of fines by unit-owners' associations. (BDR 10-897)

CHAIRMAN TOWNSEND:
Everyone should leave your information so we can contact you about these meetings. There being no further business, we are adjourned at 10:46 a.m.

RESPECTFULLY SUBMITTED:

_____
Laura Adler,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chairman

DATE:_____

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Comparison of Senate Bill 100 and Senate Bill 421 (First Reprint from the 2001 Session)

Senate Bill 100		Senate Bill 421	
Section No.		**Section No.**	
8	***Displaying the Flag*** *1. Notwithstanding any provision of the governing documents to the contrary, and except as otherwise provided in subsection 2, a unit's owner may display a flag of the United States within the boundaries of his unit.* *2. An association may adopt rules reasonably restricting the placement and manner of display of a flag of the United States by a unit's owner.* *3. As used in this section, "flag of the United States" means a flag of the United States made of fabric, cloth or paper displayed from a staff or pole or in a window. The term does not include a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, paving materials, flora, balloons or any other similar building, landscaping or decorative component.*		
	Creation of CIC Commission *1. The Commission for Common-Interest Communities, consisting of five members appointed by the Governor, is hereby created.* *2. The Governor shall appoint to the Commission:* *(a) Two members who are units' owners residing in this state, one of whom is serving or has served as a member of the executive board of an association;* *(b) One member who is in the business of developing common-interest communities in this state;* *(c) One member who holds a permit or certificate; and*	**11**	*1. The commission for common-interest communities, consisting of five members appointed by the governor, is hereby created within the division.* *2. The governor shall appoint to the commission:* *(a) Two members who are units' owners residing in this state, one of whom is serving or has served as a member of the executive board of an association;* *(b) One member who is in the business of developing common-interest communities in this state;* *(c) One member who holds a permit or a certificate; and*

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	(d) One member who has experience with or knowledge of matters related to common-interest communities, other than property management. *3. At least three members of the Commission must be residents of a county whose population is 400,000 or more. Each member of the Commission must have resided in a common-interest community or have been actively engaged in a business related to common-interest communities for not less than 3 years immediately preceding the date of his appointment.* *4. After the initial terms, each member of the Commission shall serve a term of 3 years. Each member may serve no more than two consecutive full terms. If a vacancy occurs during a member's term, the Governor shall appoint a person qualified under this section to replace the member for the remainder of the unexpired term.* *5. While engaged in the business of the Commission, each member is entitled to receive:* *(a) A salary of not more than $80 per day, as established by the Commission; and* *(b) The per diem allowance and travel expenses provided for state officers and employees generally.* *Commission; and* *(b) The per diem allowance and travel expenses provided for state officers and employees generally.*		*(d) One member who has experience with or knowledge of matters related to common-interest communities, other than the management of a common-interest community.* *3. Three members of the commission must be residents of a county whose population is 400,000 or more. Each of the other two members of the commission must be a resident of a county whose population is less than 400,000. Each member of the commission must have resided in a common-interest community or have been actively engaged in a business related to common-interest communities for not less than 3 years immediately preceding the date of his appointment.* *4. After the initial terms, each member of the commission shall serve a term of 3 years. Each member may serve no more than two consecutive full terms. If a vacancy occurs during a member's term, the governor shall appoint a person qualified under this section to replace the member for the remainder of the unexpired term.* *5. While engaged in the business of the commission, each member is entitled to receive:* *(a) A salary of not more than $80 per day, as established by the commission; and* *(b) The per diem allowance and travel expenses provided for state officers and employees generally.*
10		**13**	***Instruction for Commissioners*** *1. The division shall provide or arrange for courses of instruction in rules of procedure and substantive law appropriate for members of the commission.* *2. Each person appointed to the commission shall attend the instruction provided pursuant to subsection 1 before serving on the commission.*
		14	***Commission Duties*** *The commission shall:* *1. Conduct such hearings as are required by sections 11 to 27, inclusive, of this act.*

2. Collect and maintain accurate information relating to:

(a) The number and kinds of common-interest communities created in this state;

(b) The effect of the provisions of this chapter, and any rules or regulations adopted pursuant thereto, on the development and construction of common-interest communities, residential lending for common-interest communities, and the operation and management of common-interest communities;

(c) Violations of the provisions of this chapter and any rules or regulations adopted pursuant thereto;

(d) The accessibility and use of, and the cost related to, mediation and arbitration under NRS 38.300 to 38.360, inclusive, and the decisions rendered and awards made pursuant thereto;

(e) The number of liens foreclosed on units within common-interest communities for the failure to pay assessments levied against those units or fines imposed against units' owners; and

(f) The studies of reserves of associations required to be conducted pursuant to NRS 116.31152.

3. Maintain current information concerning issues that are of concern to units' owners, associations, persons engaged in the management of common-interest communities, developers and other persons affected by common-interest communities.

4. Recommend and approve for accreditation programs of education and research related to common-interest communities, including, without limitation:

(a) The management of common-interest communities;

(b) The sale and resale of units in a common-interest community;

(c) Alternative methods that may be used to resolve disputes related to common-interest communities; and

(d) The enforcement of liens foreclosed on units within a common-interest community for the failure to pay assessments levied against those units or for fines imposed against the units' owners.

5. Perform such other acts as are necessary to carry out the

			provisions of sections 11 to 27, inclusive, of this act.
47		**15**	***Commission Regulations*** *1. The commission shall adopt by regulation:* *(a) Standards for subsidizing proceedings for mediation and arbitration conducted under NRS 38.300 to 38.360, inclusive, to ensure that such proceedings are affordable, are not lengthy, are readily accessible and resolve disputes related to common-interest communities in an effective manner.* *(b) The qualifications for a person who engages in the management of a common-interest community, including, without limitation, requirements for continuing education and standards of practice.* *(c) Standards for conducting meetings of the executive boards of associations, meetings of the units' owners and elections of members of executive boards of associations.* *(d) Standards for enforcing the governing documents of associations by the enforcement of liens or the imposition of fines.* *2. The commission may:* *(a) Adopt such regulations as are necessary for the administration of sections 11 to 27, inclusive, of this act.* *(b) By regulation, delegate any of its authority to the administrator to be exercised pursuant to regulations adopted by the commission.* *(c) Accept any gifts, grants or donations, and may enter into agreements with other entities that are required or authorized to carry out similar duties in this state or in other jurisdictions, to carry out the provisions of sections 11 to 27, inclusive, of this act.*
11	***Filing Complaint with Commission*** *1. A person who is aggrieved by any act committed in violation of the provisions of this chapter may, within 2 years after the alleged violation and after submitting the complaint for resolution to the Ombudsman for Owners in Common-Interest Communities, file a written complaint with the Commission specifying the relevant facts. The Commission may prescribe*	**18**	*1. A person who is aggrieved by any act committed in violation of the provisions of this chapter may, within 1 year after the discovery of the alleged violation, file with the division a written affidavit that sets forth the facts constituting the alleged violation. Such an affidavit may be filed only if the aggrieved person first provides to the respondent, by certified mail, return*

48	*forms and adopt procedures for the filing of such a complaint.* *2. Except as otherwise provided in this subsection, the Commission shall, upon the receipt of such a complaint, conduct an investigation to determine whether disciplinary action is warranted. The Commission shall not investigate or take action on a complaint that has been submitted to mediation or arbitration pursuant to the provisions of NRS 38.300 to 38.360, inclusive.* *3. The Commission may require any person who knowingly files a false or fraudulent complaint with the Commission to pay a fine of not more than $1,000.*		*receipt requested, two written notices of the violation to be alleged in the affidavit. The notices must:* *(a) Be mailed to the respondent's last known address. (b) Be mailed at least 15 days apart.* *(c) Specify, in reasonable detail, the alleged violation, any injury suffered by the aggrieved person as a result of the alleged violation and any corrective action proposed by the aggrieved person.* *2. A written affidavit filed with the division pursuant to subsection 1 must be: (a) On a form prescribed by the commission.* *(b) Be accompanied by evidence that:* *(1) The respondent has been given a reasonable opportunity after receiving the written notices to correct the alleged violation; and* *(2) Reasonable efforts to resolve the alleged violation have failed.* *3. Except as otherwise provided in this section, the division shall, upon the receipt of a written affidavit, conduct an investigation to determine whether good cause exists to proceed with a hearing on the affidavit.* *4. The commission shall adopt by regulation procedures for filing a written affidavit pursuant to this section.* *5. The commission may require any person who knowingly files a false or fraudulent affidavit with the division to pay an administrative fine of not more than $1,000.*
12	***Commission Subpoena Power*** *1. To carry out its duties, the Commission, or any member thereof, may issue subpoenas to compel the attendance of witnesses and the production of books, records and other papers.* *2. If any person fails to comply with a subpoena issued by the Commission pursuant to this section within 10 days after its issuance, the Commission may petition the district court for an order of the court compelling compliance with the subpoena.* *3. Upon such a petition, the court shall enter an order*		

	directing the person subpoenaed to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and to show cause why he has not complied with the subpoena. A certified copy must be served upon the person subpoenaed. *4. If it appears to the court that the subpoena was regularly issued by the Commission, the court shall enter an order compelling compliance with the subpoena, and upon failure to obey the order, the person must be dealt with as for contempt of court.*		
13	***Commission Hearings*** *1. If the Commission determines that a complaint received pursuant to section 11 of this act is not frivolous, the Secretary of the Commission shall fix a time and place for a hearing on the complaint and cause a notice of the hearing and a formal complaint prepared by the Commission to be served on the person who is alleged to have committed the violation. The notice must be served at least 20 days before the date fixed for the hearing.* *2. The Commission shall hold a hearing on the complaint within 90 days after the complaint is filed with the Commission. The hearing may be continued by the Commission upon its own motion or upon written request, for good cause shown.* *3. Written notice may be served to the person alleged to have committed the violation by personal delivery or by mailing it by registered or certified mail to his last known address.* *4. If the person alleged to have committed the violation submits a written request, the Commission shall furnish him with copies of any communications, reports and affidavits in the possession of the Commission relating to the complaint.* *5. A person may be represented by an attorney at any proceeding or hearing conducted pursuant to this section or section 14 of this act.*	**19**	*1. If, after investigating a written affidavit received pursuant to section 18 of this act, the division determines that the affidavit is not frivolous, false or fraudulent and that good cause exists to proceed with a hearing on the affidavit, the administrator shall file a formal complaint with the commission and schedule a hearing before the commission on the complaint.* *2. The commission shall hold a hearing on the complaint within 90 days after the complaint is filed with the commission. The hearing may be continued upon the motion of the commission or at the discretion of the commission, upon the written request of the respondent or of the division for good cause shown. The respondent may be represented by an attorney at the hearing.* *3. The division shall give the respondent written notice of the date, time and place of the hearing at least 30 days before the date of the hearing. The notice must be:* *(a) Accompanied by:* *(1) A copy of the complaint; and (2) Copies of all communications, reports, affidavits and depositions in the possession of the division that are relevant to the complaint. The division may present evidence at the hearing that is obtained after giving notice to the respondent only if the division proves to the satisfaction of the commission that the evidence was not available after diligent investigation before the notice was given to the respondent and that the evidence was given or communicated to the respondent immediately after it was*

			obtained. *(b) Delivered personally to the respondent or mailed to the respondent, by certified mail, to his last known address.* *4. If the respondent is the holder of a permit or certificate, the division shall give written notice of the complaint to the broker or community managing agent with whom the respondent is associated. The notice must:* *(a) Be mailed to the broker or community managing agent, by certified mail, to his last known address.* *(b) Include an exact statement of the alleged violations.* *(c) Include the date, time and place of the hearing.*
		20	***Electronic Hearings*** *The commission may conduct any hearing required by section 19 of this act by means of video teleconference or telephone conference only if all participants in the proceedings are able to hear one another.*
		21	***Commission Procedural Rules*** *1. The respondent shall file an answer with the commission within 30 days after receiving the notice required by section 19 of this act.* *2. The answer must:* *(a) Contain an admission or a denial of the allegations contained in the complaint and any defenses upon which the respondent will rely; and* *(b) Be delivered to the commission or mailed to the principal office of the division, by certified mail.* *3. If an answer is not filed within the time required by subsection 1, the division may, after giving notice to the respondent in the manner prescribed in section 19 of this act, request the commission to enter a finding of default against the respondent.*
15	***Commission Decisions*** *1. The Commission shall render a decision on a complaint within 20 days after the final hearing thereon.* *2. The Commission shall notify all parties to the complaint of its decision in writing by certified mail, return receipt requested.*	**22**	*1. The commission shall render a final decision on the complaint within 20 days after the final hearing thereon.* *2. The commission shall notify all parties to the complaint of its decision in writing by certified mail, return receipt requested,*

			within 60 days after the date of the final hearing. The written decision must include the commission's findings of fact and conclusions of law.
16	***Commission Powers*** *1. If the Commission determines, after notice and hearing, that:* *(a) Any person has violated a provision of this chapter, the Commission may:* *(1) Issue an order to cease and desist from engaging in such conduct;* *(2) Issue an order to take affirmative action to correct conditions resulting from the unlawful conduct;* *(3) Impose a fine of not more than $5,000 for each violation; or* *(4) Take any combination of the actions authorized by subparagraphs (1), (2) and (3).* *(b) A member or officer of an executive board of an association has knowingly and willfully violated a provision of this chapter, the Commission may remove him from his office if it determines that the removal is in the best interest of the association.* *2. If the Commission takes any disciplinary action pursuant to subsection 1, it may recover from the person against whom the action is taken the costs of the proceedings incurred by the Commission, including, without limitation, the cost of the investigation and reasonable attorney's fees.*	**23**	*1. If the commission determines, after notice and hearing, that any person has violated a provision of this chapter, the commission may:* *(a) Issue an order to cease and desist from engaging in such conduct;* *(b) Issue an order to take affirmative action to correct conditions resulting from the unlawful conduct; or* *(c) Take both actions authorized by paragraphs (a) and (b).* *2. If a person fails to comply with an order issued pursuant to subsection 1, the commission may impose a fine of not more than $1,000 for each violation.*
18	***Precedence of Chapter*** *If a matter governed by this chapter is also governed by chapter 82 of NRS and there is a conflict between the provisions of this chapter and the provisions of chapter 82 of NRS, the provisions of this chapter prevail.*		
		25	***Commission Immunity*** *The commission and any of its members, acting pursuant to sections 11 to 27, inclusive, of this act, are immune from any civil liability for any decision or action taken in good faith and without malicious intent in response to a complaint filed with the*

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			commission.
		26	***Employment of Staff*** *Within the limitations of legislative appropriations, the division may employ such attorneys, investigators, professional consultants and other employees as are necessary to carry out the provisions of sections 11 to 27, inclusive, of this act.*
		27	***Remedies Not Exclusive*** *The rights and remedies provided by sections 11 to 26, inclusive, of this act do not abrogate and are in addition to any other rights and remedies that may exist at law or in equity.*
19	***Agricultural CICs*** *In conducting any meetings, a rural agricultural residential common-interest community must comply with the provisions set forth in chapter 241 of NRS concerning open meetings which are generally applicable to public bodies.*	**49**	NRS 116.1201 is hereby amended to read as follows: 116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this state. 2. This chapter does not apply to: (a) Associations created for the limited purpose of maintaining: (1) The landscape of the common elements of a common-interest community; (2) Facilities for flood control; or (3) A rural agricultural residential common-interest community. (b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the chapter does apply to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted, only if the declaration so provides or the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes. (c) Common-interest communities or units located outside of this state, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this state by any party unless exempt under subsection 2 of NRS 116.4101. *(d) A common-interest community that was created before January 1, 1992, is located in a county whose population is less*

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			than 50,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.
		28	***Community Manager Licensing*** *1. Except as otherwise provided in this section, a person acting as a community managing agent in this state must obtain a license from the division.* *2. The commission shall provide by regulation for the issuance of licenses to community managing agents. The regulations:* *(a) Must establish the qualifications for the issuance of such a license, including the education and experience required to obtain such a license;* *(b) May require applicants for such a license to pass an examination in order to obtain a license;* *(c) Must establish standards of practice for persons holding such a license;* *(d) Must establish the grounds for initiating disciplinary action against a person to whom a license has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a license and for the suspension or revocation of a license; and* *(e) Must establish rules of practice and procedure for conducting disciplinary hearings. No license may be revoked or suspended without first giving notice and holding a hearing pursuant to section 19 of this act.* *3. The division may investigate the community managing agents to whom licenses have been issued to ensure their compliance with the standards of practice adopted pursuant to this section and collect a fee for the issuance of a license by the division in an amount not to exceed the administrative costs of issuing the license.* *4. The provisions of subsection 1 do not apply to:* *(a) A person who is engaged in the management of a common-interest community on October 1, 2001, and is granted an exemption from the requirements of subsection 1 by the administrator upon demonstration that he is qualified and*

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			competent to engage in the management of a common-interest community. *(b) A financial institution.*
20		**29**	
23		**32**	
24		**33**	
25		**34**	
26	***Conflict of Interest Prohibition*** ***1. An officer or a member of the executive board of an association shall not:***	**35**	Same, except SB 100 adds "an officer" in subsection 1
54		**36**	***Construction Defect Provisions*** *1. An association may bring an action to recover damages resulting from constructional defects in any of the units, common elements or limited common elements of the common-interest community, or submit such a claim to mediation pursuant to NRS 40.680, only:* *(a) If the association first obtains the written approval of each unit's owner whose unit or interest in the common elements or limited common elements will be the subject of the action or claim;* *(b) Upon a vote of the units' owners to which at least a majority of the votes of the members of the association are allocated; and* *(c) Upon a vote of the executive board of the association.* *2. If an action is brought by an association to recover damages resulting from constructional defects in any of the units, common elements or limited common elements of the common-interest community, or such a claim is submitted to mediation pursuant to NRS 40.680, the attorney representing the association shall provide to the executive board of the association and to each unit's owner a statement that includes, in reasonable detail:* *(a) The defects and damages or injuries to the units, common elements or limited common elements;* *(b) The cause of the defects, if the cause is known;* *(c) The nature and the extent that is known of the damage or injury resulting from the defects;*

55			*(d) The location of each defect within the units, common elements or limited common elements, if known;* *(e) A reasonable estimate of the cost of the action or mediation, including reasonable attorney's fees;* *(f) An explanation of the potential benefits of the action or mediation and the potential adverse consequences if the association does not commence the action or submit the claim to mediation or if the outcome is not favorable to the association; and* *(g) All disclosures that are required to be made upon the sale of the property.* *3. An association or an attorney for an association shall not employ a person to perform destructive tests to determine any damage or injury to a unit, common element or limited common element caused by a constructional defect unless:* *(a) The person is licensed as a contractor pursuant to chapter 624 of NRS;* *(b) The association has obtained the prior written approval of each unit's owner whose unit or interest in the common element or limited common element will be affected by such testing;* *(c) The person has provided a written schedule for repairs;* *(d) The person is required to repair all damage resulting from such tests in accordance with state laws and local ordinances relating thereto; and* *(e) The association or the person so employed obtains all permits required to conduct such tests and to repair any damage resulting from such tests.* *4. As used in this section, "constructional defect" has the meaning ascribed to it in NRS 40.615.*
		37	***Commencing Civil Lawsuits*** *1. Except as otherwise provided in subsection 2 and section 36 of this act, an association may commence a civil action only upon a vote or written agreement of the owners of the units to which at least a majority of the votes of the members of the association are allocated. In such a case, the association shall provide written notice to the owner of each unit of a meeting at*

			which the commencement of a civil action is to be considered or action is to be taken within 21 calendar days before the meeting. *2. The provisions of subsection 1 do not apply to a civil action that is commenced:* *(a) By an association for a time-share project governed by the provisions of chapter 119A of NRS;* *(b) To enforce the payment of an assessment;* *(c) To enforce the declaration, bylaws or rules of the association;* *(d) To proceed with a counterclaim; or* *(e) To enforce or rescind a contract to which the association is a party.*
27		38	
28	***Phased CIC Development*** *1. If a common-interest community is developed in separate phases and the declarant, including a successor declarant who does not control the association established by the initial declarant, is constructing any common elements that will be added to the association's common elements, the declarant is responsible for:* *(a) Paying all expenses related to the common elements which are incurred before the conveyance of the common elements to the association; and* *(b) Except as otherwise provided in NRS 116.31038, delivering to the association the declarant's share of the amount specified in the study of reserves completed pursuant to subsection 2.* *2. Before conveying the common elements to the association, the declarant shall deliver to the association a study of the reserves for the additional common elements which satisfies the requirements of NRS 116.31152.*	39	*1. If a common-interest community is developed in separate phases and the declarant, including a successor declarant who does not control the association established by the initial declarant, is constructing additional common elements that will be added to the association's common elements, the declarant shall:* *(a) Pay all common expenses related to the additional common elements;* *(b) Prepare a study of the reserves for the additional common elements in accordance with NRS 116.31038; and* *(c) Deliver to the association all reserves required by that section before delivery of the common elements to the association.* *2. If a declarant, including a successor declarant who does not control the association established by the initial declarant, attempts to deliver to the association common elements that have improvements for which a study of reserves is required, the declarant that constructed those common elements shall, before the delivery of the common elements to the association, prepare a study of the reserves for the common elements in accordance with NRS 116.31038. The study must be approved by the association before the delivery of those common elements to the association. If there is a deficiency in the amount of reserves*

			collected by the declarant or the association for those common elements, the declarant shall deliver the deficiency to the association before delivery of those common elements to the association.
29		40	
30		41	
		42	***Correction of Health and Safety Defects*** *1. Notwithstanding any other provision of this chapter, the executive board of an association may, without giving notice to the units' owners, employ a contractor licensed pursuant to the provisions of chapter 624 of NRS and such other persons as are necessary to make such repairs to a unit or common element within the common-interest community as are required to protect the health, safety and welfare of the units' owners.* *2. If the governing documents of the association require such action to be taken at a meeting of the executive board of the association, the executive board shall, within 90 days after employing any person pursuant to subsection 1, provide written notice to the units' owners of its action and include the action on the agenda of its next regularly scheduled meeting.*
31		43	
35		47	Virtually the same
36		48	
37		49	
38		50	
39		51	
41	***Permissible Owner Modifications to Units*** NRS 116.2111 is hereby amended to read as follows: 116.2111 ~~[Subject]~~*1. Except as otherwise provided in this section and subject* to the provisions of the declaration and other provisions of law, a unit's owner: ~~[1.]~~ *(a)* May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community; ~~[2.]~~ *(b)* May not change the appearance of the common	53	NRS 116.2111 is hereby amended to read as follows: 116.2111 ~~[Subject]~~*1. Except as otherwise provided in this section and subject* to the provisions of the declaration and other provisions of law, a unit's owner: ~~[1.]~~ *(a)* May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community; ~~[2.]~~ *(b)* May not change the appearance of the common elements,

elements, or the exterior appearance of a unit or any other portion of the common-interest community, without permission of the association; and	or the exterior appearance of a unit or any other portion of the common-interest community, without permission of the association; and
[3.] *(c)* After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community. Removal of partitions or creation of apertures under this [subsection] *paragraph* is not an alteration of boundaries.	an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community. Removal of partitions or creation of apertures under this [subsection] *paragraph* is not an alteration of boundaries.
2. An association may not:	*2. An association may not:*
(a) Require the removal of any structure, fixture or other improvement made to a unit if it was approved by the association in writing before it was installed or constructed in accordance with the procedures set forth in the governing documents of the association.	*(a) Require the removal of any structure, fixture or other improvement made to a unit if it was approved by the association in writing before it was installed or constructed in accordance with procedures set forth in the governing documents of the association.*
(b) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a unit's owner to have reasonable access to his unit.	*(b) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a unit's owner to have reasonable access to his unit.*
(c) Unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit:	*(c) Prohibit or unreasonably restrict or withhold approval for a unit's owner to include or add in or to a unit:*
(1) An apparatus required for the use of solar energy;	*(1) An apparatus required for the use of solar energy;*
(2) Improvements such as ramps, railings or elevators that are necessary or desirable to increase the unit's owner's access to his unit if an occupant of the unit is disabled; or	*(2) Improvements such as ramps, railings or elevators that are necessary or desirable to increase the unit's owner's access to his unit if an occupant of the unit is disabled; or*
(3) Shutters or additional locks that are desirable to decrease the cost of electrical energy or to make a unit's owner feel safe in his unit.	*(3) Shutters or additional locks that are desirable to make a unit's owner feel safe in his unit.*
3. Any improvement or alteration made pursuant to subsection 2 that is visible from any other portion of the common-interest community must be installed, constructed or added in accordance with the procedures set forth in the governing documents of the association and must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.	*3. If the improvement or alteration is visible from any other portion of the common-interest community, any device or other improvement included or added in or to a unit pursuant to paragraph (b) or (c) of subsection 2 must be added or installed in accordance with the procedures set forth in the governing documents of the association and must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.*

58

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51	***Rules for Community Managers*** NRS 116.31139 is hereby amended to read as follows: 116.31139 1. An association may employ a ~~[person engaged in property management for the common interest community.]~~*community manager.* 2. Except as otherwise provided in this section, a ~~[person engaged in property management for a common interest]~~community *manager* must: (a) Hold a permit *;* ~~[to engage in property management that is issued pursuant to the provisions of chapter 645 of NRS;]~~ or (b) Hold a certificate issued by the ~~[Real Estate Commission]~~*Division* pursuant to subsection 3. 3. The ~~[Real Estate Commission]~~ *Division* shall provide by regulation for the issuance of certificates for ~~[the management of common interest communities to persons]~~ *community managers* who are not otherwise authorized to engage in property management pursuant to the provisions of chapter 645 of NRS. The regulations: (a) Must establish the qualifications for the issuance of such a certificate, including the education and experience required to obtain such a certificate; (b) May require applicants to pass an examination in order to obtain a certificate; (c) Must establish standards of practice for ~~[persons engaged in property management for a common interest~~	63	NRS 116.31139 is hereby amended to read as follows: 116.31139 1. An association may employ a ~~[person engaged in property management for the common interest community.]~~*community manager.* 2. Except as otherwise provided in this section, a ~~[person engaged in property management for a common interest]~~community *manager* must: (a) Hold a permit *;* ~~[to engage in property management that is issued pursuant to the provisions of chapter 645 of NRS;]~~ or (b) Hold a certificate issued by the ~~[Real Estate Commission]~~*Division* pursuant to subsection 3. 3. The ~~[Real Estate Commission]~~ *Division* shall provide by regulation for the issuance of certificates for ~~[the management of common interest communities to persons]~~ *community managers* who are not otherwise authorized to engage in property management pursuant to the provisions of chapter 645 of NRS. The regulations: (a) Must establish the qualifications for the issuance of such a certificate, including the education and experience required to obtain such a certificate; (b) May require applicants to pass an examination in order to obtain a certificate; (c) Must establish standards of practice for ~~[persons engaged in property management for a common interest~~

~~community;~~]*community managers;*

(d) Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate; and

(e) Must establish rules of practice and procedure for conducting disciplinary hearings.

The ~~[Real Estate Division of the Department of Business and Industry]~~ *Division* may investigate the ~~[property]~~ *community* managers to whom certificates have been issued to ensure their compliance with the standards of practice adopted pursuant to this subsection and collect a fee for the issuance of a certificate by the ~~[Commission]~~ *Division* in an amount not to exceed the administrative costs of issuing the certificate.

4. The provisions of subsection 2 do not apply to:

(a) A person who is engaged in ~~[property management for]~~ *the management of* a common-interest community on October 1, ~~[1999,]~~ *2003,* and is granted an exemption from the requirements of subsection 2 by the Administrator upon demonstration that he is qualified and competent to engage in ~~[property management for]~~ *the management of* a common-interest community.

(b) A financial institution.

(c) An attorney licensed to practice in this state.

(d) A trustee.

(e) An employee of a corporation who manages only the property of the corporation~~[.]~~ *, unless that corporation is also an association.*

(f) A declarant.

(g) A receiver.

~~[5. As used in this section, "property management" means the physical, administrative or financial maintenance and management of real property, or the supervision of those activities for a fee, commission or other compensation or valuable consideration.]~~

60

~~community;~~]*community managers;*

(d) Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate; and

(e) Must establish rules of practice and procedure for conducting disciplinary hearings. *No certificate may be revoked or suspended without first giving the notice and holding a hearing pursuant to section 19 of the act.*

The ~~[Real Estate Division of the Department of Business and Industry]~~ *Division* may investigate the ~~[property]~~ *community* managers to whom certificates have been issued to ensure their compliance with the standards of practice adopted pursuant to this subsection and collect a fee for the issuance of a certificate by the ~~[Commission]~~ *Division* in an amount not to exceed the administrative costs of issuing the certificate.

4. The provisions of subsection 2 do not apply to:

(a) A person who is engaged in ~~[property management for]~~ *the management of* a common-interest community on October 1, ~~[1999,]~~ *2003,* and is granted an exemption from the requirements of subsection 2 by the Administrator upon demonstration that he is qualified and competent to engage in ~~[property management for]~~ *the management of* a common-interest community.

(b) A financial institution.

(c) An attorney licensed to practice in this state.

(d) A trustee.

(e) An employee of a corporation who manages only the property of the corporation~~[.]~~ *, unless that corporation is also an association.*

(f) A declarant.

(g) A receiver.

~~[5. As used in this section, "property management" means the physical, administrative or financial maintenance and management of real property, or the supervision of those activities for a fee, commission or other compensation or valuable consideration.]~~

	(h) An officer or member of the executive board of an association who acts solely as an officer or member of the executive board.		*(h) An officer or member of the executive board of an association who acts solely as an officer or member of the executive board.*
53		**64**	
57		**68**	
58		**69**	
59	***Public Offering Statements*** NRS 116.4108 is hereby amended to read as follows: 116.4108 1. A person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 shall provide a purchaser with a copy of the current public offering statement not later than the date ~~[of any contract of sale.]~~ *on which an offer to purchase becomes binding on the purchaser.* Unless the purchaser has personally inspected the unit, the purchaser may cancel, by written notice, the contract of purchase until midnight of the fifth calendar day following the date of execution of the contract, and the contract for purchase must contain a provision to that effect. 2. If a purchaser elects to cancel a contract pursuant to subsection 1, he may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. Cancelation is without penalty, and all payments made by the purchaser before cancelation must be refunded promptly. 3. If a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 fails to provide a purchaser to whom a unit is conveyed with a current public offering statement, the purchaser is entitled to actualdamages, rescission or other relief, but if the purchaser has accepted a conveyance of the unit, he is not entitled to rescission.		
60	***Public Offering Statements*** NRS 116.4109 is hereby amended to read as follows: 116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under		

	subsection 2 of NRS 116.4101, a unit's owner shall furnish to a purchaser before ~~[execution of any contract for sale of a unit, or otherwise before conveyance:]~~ *an offer to purchase a unit becomes binding on the purchaser:* (a) A copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095; (b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner; (c) The current operating budget of the association and a financial statement for the association; and (d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge. 2. The association, within 10 days after a request by a unit's owner, shall furnish a certificate containing the information necessary to enable the unit's owner to comply with this section. A unit's owner providing a certificate pursuant to subsection 1 is not liable to the purchaser for any erroneous information provided by the association and included in the certificate. 3. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. If the association fails to furnish the certificate within the 10 days allowed by subsection 2, the seller is not liable for the delinquent assessment.		
65	***Effective Date of Manager Certification*** Notwithstanding the provisions of section 51 of this act, a person who engages in business as a community manager is not required to be certified pursuant to the provisions of this act before January 1, 2004.		

State of Nevada
Department of Business And Industry
Nevada Real Estate Division



OMBUDSMAN'S OFFICE
for
COMMON INTEREST COMMUNITIES

THIS EXHIBIT IS 93 PAGES LONG.
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February 19, 2003

EXHIBIT D Committee on Commerce/Labor
Date: 2/20/03 Page 1 of 2

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ORDINANCE NO. 2154
(Amends HMC 19.10.2)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, AMENDING HMC 19.10.2 BY ADDING A NEW SECTION D (3) TO MAKE UNENFORCEABLE ANY COVENANT, CONDITION, RESTRICTION OR OTHER REGULATION THAT PROHIBITS OR UNDULY RESTRICTS THE DISPLAY OF THE AMERICAN FLAG, AND PROVIDING FOR OTHER RELATED MATTERS.

WHEREAS, Section 19.10.2 of the Henderson Municipal Code ("HMC") is hereby amended by adding a new subsection D (3) as set forth below; and

WHEREAS, HMC 19.10.2 (D) addresses the display of flags and banners within the City; and

WHEREAS, the City Council wishes to clarify the issues to be regulated by passage of this Ordinance as they pertain to displaying the American flag on residential property.

NOW, THEREFORE, the City Council of the City of Henderson, Nevada, does ordain:

SECTION 1: Henderson Municipal Code section 19.10.2 - General Provisions, is hereby amended by adding a new subpart (3) to subsection D, consisting of the provisions set forth as follows:

3. Any of the following that prohibits or restricts the display of the American flag is void and unenforceable, except as provided herein and elsewhere in this Chapter.

a. A covenant, condition or restriction contained in a legal instrument affecting an interest in real property; or

b. Any rule or regulation of an owners' association that otherwise has the authority to regulate the use of real property.

This Ordinance does not apply to any covenant, condition, restriction, rule or regulation that, with respect to the display of the American Flag, establishes:

(1) Reasonable placement and safety standards applicable to the display of the flag;

(2) A maximum number of flags that may be displayed on a parcel;

(3) A requirement that flags to be displayed be portable and removable; or

(4) In the case of residential property, a requirement that the height of any flag, when displayed, does not exceed the height of the residence.

SECTION 2. If any section, subsection, paragraph, clause or provision of this Ordinance shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such section or subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 3. All ordinances, or parts of ordinances, sections, subsection, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.

EXHIBIT E Committee on Commerce/Labor
Date: 2/20/03 Page 1 of 2

SECTION 4. A copy of this Ordinance shall be filed with the office of the City Clerk, and notice of such filing shall be published once by title in the Henderson Home News, a newspaper having general circulation in the City of Henderson, at least ten (10) days prior to the adoption of said Ordinance, and following approval shall be published by title (or in full if the Council by majority vote so orders) together with the names of the Councilmen voting for or against passage for at least one (1) publication before the Ordinance shall become effective. This Ordinance is scheduled for publication on January 23, 2003 in the Henderson Home News.

PASSED, ADOPTED, AND APPROVED THIS 21st DAY OF JANUARY 2003.

James B. Gibson, Mayor

ATTEST:

Monica M. Simmons, CMC, City Clerk

The above and foregoing Ordinance was first proposed and read in title to the City Council on January 7, 2003, which was a Regular Meeting, and referred to a Committee of the following Councilmen:

"COUNCIL AS A WHOLE"

Thereafter on January 21, 2003, said Committee reported favorably on the Ordinance and forwarded it to the Regular Meeting with a do-pass recommendation. At the Regular Meeting of the Henderson City Council held January 21, 2003, the Ordinance was read in title and adopted by the following roll call vote:

Those voting aye — James B. Gibson, Mayor
Councilmembers:
Amanda Cyphers
Jack Clark
Arthur "Andy" Hafen
Steven D. Kirk

Those voting nay: None
Those abstaining: None
Those absent: None

James B. Gibson, Mayor

ATTEST:

Monica M. Simmons, CMC, City Clerk

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Jack Clark

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Saturday, January 18, 2003
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Henderson ordinance to let flags fly

New law will override association rules

By ADRIENNE PACKER
REVIEW-JOURNAL

Henderson homeowners living in neighborhoods with strict regulations soon may be guaranteed the right to pledge allegiance to the flag on their own property.

City Council members will consider a new flag ordinance Tuesday in response to residents infuriated by homeowners association rules that prohibit the flag from being flown from houses.

"I was really appalled at that, especially with the times we're in now," said City Councilwoman Amanda Cyphers, who sponsored the ordinance. "It's the most unpatriotic thing I've heard."

If approved, the city's ordinance would override homeowners associations' codes, covenants and restrictions.

Vicki Taylor, assistant to the city manager, said the battle over flags and banners started with the wave of patriotism that washed over the country after the Sept. 11, 2001, terrorist attacks.

"After 9-11, homeowners were incensed," she said.

The First Amendment protecting free speech prohibits an outright ban of American flags. But according to the city, homeowners associations are allowed to regulate when and where flags can be displayed as long as the rules aren't "unduly restrictive."

Robert Orfaly, who gained recognition after the Sept. 11 attacks when he took a team of volunteers to New York City to help with cleanup efforts, believes his neighborhood rules are too stringent.

Orfaly recently waged war against the Monument Point Homeowners Association in Green Valley and called upon city officials to join his battle.

Orfaly said he raised his 3-by-5-foot flag when he returned from New York, but homeowners

EXHIBIT F Committee on Commerce/Labor

association representatives asked him to remove it, saying the flag violated neighborhood rules. The flag is now coiled behind his front door.

"We're normal citizens trying to act in patriotic ways," Orfaly said Friday.

Cyphers said the new city law, which was written after discussions with Orfaly, would give homeowners associations authority to determine how many flags are allowed, their size, and whether they can be permanent or temporary.

The ordinance is patterned after a city of Las Vegas law adopted in November.

Richard Hattings, president of the Monument Point association, said Orfaly has misinterpreted the neighborhood guidelines.

Until the terrorist attacks, American flags were allowed to be flown only on federal holidays, Hattings said. However, the law was amended the following summer. Now they are allowed to fly during daylight but not at night.

"I've been a serving Navy reserve officer of 38 years, and I'm a Vietnam veteran," Hattings said. "It's not like I'm passive here."

Find this article at:
http://www.reviewjournal.com/lvrj_home/2003/Jan-18-Sat-2003/news/20503064.html

☐ Check the box to include the list of links referenced in the article.



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Wednesday, January 22, 2003
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Henderson votes to prevent bans on flag flying

Ordinance overrides association rules restricting U.S. banner display

By ADRIENNE PACKER
REVIEW-JOURNAL

As a parachutist in the Marine Corps, Danny Noonan was dropped into some of the country's most historic battles.

Noonan, 81, found himself fighting again Tuesday evening. However, this time it was against homeowners associations that prohibit any type of banner -- including the American flag -- from being flown at houses.

"We're the land of the free because we made it that way," Noonan said. "Someday, you're going to walk out of your homeowners association house, gaze at the sun and bow, then raise your right arm and say, 'Heil Hitler!' "

A troop of patriotic residents attended Tuesday's Henderson City Council meeting to encourage the board to pass an ordinance overriding homeowners association rules restricting the display of the American flag.

The crowd didn't have much of a fight on its hands. The council voted 5-0 in favor of the ordinance, with Councilman Jack Clark leading the way.

Clark scolded homeowners association representatives, none of whom announced their attendance, for not amending their rules after the Sept. 11, 2001, terrorist attacks. He scoffed at many associations that allow the flag to be flown only on national holidays.

"It's a national holiday at my house every single day," Clark said during a five-minute speech. "Because I fly my flag every single day."

Joseph Bifano couldn't believe that as the country is pulling together, the city was forced to spend its time writing an ordinance to override neighborhood associations.

"Our men and women are getting ready to go to war, and we're talking about this?" Bifano said. "(Homeowners associations) want to control people's lives, and that is not what this country is about."

3

The city's new ordinance simply says homeowners can fly the American flag on their property. Neighborhood associations can limit the size of the flag, the flag pole and flying the flag at night.

"I don't think you can have too many flags in a neighborhood," Clark said. "I'm amazed this issue has become so controversial."

The issue was raised by Green Valley resident Robert Orfaly. He contacted Henderson officials after Monument Point Homeowners Association representatives ordered him to remove his American flag from his home.

The homeowners association changed its rules the summer following the attacks on Washington, D.C., and New York City. Association President Richard Hattings said flags cannot fly at night.

Proper flag etiquette requires a flag be lighted at night.

Find this article at:
http://www.reviewjournal.com/lvrj_home/2003/Jan-22-Wed-2003/news/20527731.html

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4

Judi Booe
2305 Bear Valley Street
Las Vegas, Nev. 89128
(702) 240-3753
jbooe@earthlink.net

February 16, 2003

Senator Michael Schneider
Clark County # 11
Las Vegas, Nev. 89103

Dear Senator Schneider,

I am writing to you out of serious concerns about homeowner associations (Common interest communities) and their abuse of power. I am aware that you have legislation drafted (BDR 10-29). I don't have the complete language that you are proposing, but I hope that the information I provide you can assist you with positive changes for homeowners.

I recently moved to Las Vegas from Virginia. While living there, I not only was a President of a homeowner's association for 14 years, I helped in the drafting of legislation that helped protect homeowner's from abuses by HOA Boards. This was done in conjunction with a legislator who is still in office, if you wish to verify my comments. (His name is Delegate Ken Plum from Reston, Va.) I was also the President of the Federation of Citizens' Associations that represented over 100,000 households in HOA's. (The 3rd female president in the 52 years of the organization's existence)).

When I moved into our home in Desert Shores, I wanted to help the community as I have always done. I volunteered to run for the Board of Directors and won that seat in December of 2001. (In over 1200 homes only 3 people volunteered to run). I took office in January of 2002. I should note that the first meeting was called and held by the old Board 20 minutes prior to my arrival. By the time I arrived at the time I was told, they had already transacted elections of officers. In addition, what I found was a closely held organization that abused homeowners based on personal vendettas and the ability to intimidate residents with financial threats. This 5 member board employed a management company that ran the day–to-day operations, but also could care less about the fair treatment of residents. Their main concern was getting their management fee. For many months I tried to introduce policies that would even the playing field, but was always outvoted 3 to 1... the other Board member rarely showed up. I spent many hours studying the Covenants and found that the Board only exercised those provisions they wanted to, and treated some residents better than others based on personal friendships. If a homeowner corrected a violation and asked for the fines to be waived nicely, the Board always waived them. If a homeowner wrote in an angry way, their fines were never waived. After about 4 months of being treated disrespectfully, not being told of meetings of the Board and a general disregard of fairness, I resigned knowing that I was not able to make a difference.

You may ask, what prompted me to write to you? In this morning's Review Journal is an article about a presentation being made by Eldon Hardy, of the Ombudsman Office to the legislators. I am afraid that he will paint you a rosy calm picture that his office settles everything. When in fact, they side in most cases with the Board of the HOA's. You may ask, am I angry.... The answer is a resounding YES! I have always resented injustice and probably always will. The abuse of power of many of these HOA Boards is not isolated to just my HOA. Please ask to actually review some of the complaints by residents.. not just take the presentation at face value.

I have always tried to represent the weakest in any group.. they need the protection of government the most. The arrogance, and disregard for fairness is rampant in many of the HOA's in Las Vegas. I have heard stories about the treatment that residents receive from many of my friends. I would be willing to testify if you need some actual events to assist with you legislation.

I will be tracking the course of your legislation and wish you success in getting it enacted as a bill with the 72nd Session.

Sincerely,

Judi Booe

Cc: file -HOA

2

Briggs

February 20, 2003

SB100 Senators Schneider, O'Connell and Gegavske
Committee on Commerce and Labor

Page 3, Line 30-42
Eliminate the requirement a dispute be submitted to mediation or arbitration.
Empower the Commission to resolve all issues.
On Page 11, line 27, the Ombudsman can assist... Good. But don't send homeowner off into a legal jungle of non-binding arbitrations, and trial de-novos.
Let the Ombudsman and Commission speedily resolve. Most can be done IF YOU CAN GET THE ASSOCIATION TO GET SERIOUS AND SIT DOWN WITH AN AGGRIEVED HOMEOWNER.

Reason: Time and money. Been involved in three non-binding.
1. In court
2. Received favorable decision and entered into settlement
3. Received favorable decision, Homeowners Assoc. did not appeal, just ignores.

Thousands of dollars paid out by individual homeowners. Association employs attorneys with ill-founded legal opinions to ring up legal fees and goad Association into fighting rather than complying.

EPCC lost it's $2,000 deductible D&0. Now has a $50,000 ded. $16,000 a year premium.
EPCC budgets over 1/4 of its $200,000 income to for attorney at $50,000 a year.

Page 7, Line 25 after the word Board, Strike "shall if action is required by the board"
Page 7, Line 32 after word that, Strike "if action is required by the board".

Reason: The Board will never agendize the complaint. Period. Why should they. What "action" would be taken on say "The board failed to agendize an action item at the last board meeting".

"Let 'em eat cake" is at EPCC the rule of the day. With the amendment, the Board would be exposed to all other Unit owners to hear the complaint of another unit owner.

Page 13, Line 40 after the word "Conform" add "by adding verbatim language of NRS116" (Otherwise paraphrased language can be inserted into bylaws not even closing resembling 116, with the homeowner left with resorting to Arbitration.

Add "at a regularly called executive board meeting", and "exempt common interest associations of 125 unit owners, or less..

Problem with this is it is dangerous including the present language doesn't even required recording the bylaw change due to language of "without compliance with the procedural requirements generally applicable.

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Page 25 .line 26, add (d)
The proxy instructions shall be open to public inspection throughout the meeting.

PROPOSED AMENDMENTS TO SB 100

(Page 13, lines 36-44)
(Page 14, lines 1-23)

Section 38. NRS 116.1206 1. Any ***provision contained in a*** declaration, bylaw or other governing document of a common-interest community ~~[created before January 1, 1992]~~ ***in effect on October 1, 2003***, that ~~[does not conform to]~~ ***violates*** the provisions of this chapter shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

2. In the case of amendments to the declaration, bylaws or plats and plans of any common-interest community created before January 1, 1992:

(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.

Proposed amendments submitted by:

Karen D. Dennison
Hale Lane Peek Dennison and Howard
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
Phone: 775-327-3000
Fax: 775-786-6179
E-Mail: KDennison@HaleLane.com

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PROPOSED AMENDMENTS TO SB 100

Sec. 29. 1. Except as otherwise provided in subsection 2, in a county whose population is 400,000 or more, a person who owns, or directly or indirectly has an interest in, one or more units within a planned community that are restricted to residential use by the declaration, may use that unit or one of those units for a transient commercial use only if:

(a) The governing documents of the association and any master association do not prohibit such use; and

(b) ***Unless the planned community and one or more hotels are subject to the governing documents of a master association,*** ~~[Persons entitled to cast at least a majority of the votes in]~~ ***the executive board of*** the association and any master association ***must*** approve the transient commercial use of the unit~~[.]~~***; and***

(c) The unit is properly zoned and licsened by the local government for transient commercial use.

2. A declarant who owns, or directly or indirectly has an interest in, one or more units within a planned community under the governing documents of the association that are restricted to residential use by the declaration, may ~~[not]~~ use that unit or ~~[one of]~~ those units for a transient commercial use ***during the period that the declarant is offering units for sale within the planned community.***

3. The association and any master association may establish requirements for such use pursuant to subsection 1, including the payment of additional fees that are related to any increase in services or other costs associated with the transient commercial use of the unit.

4. As used in this section:

(a) "Remuneration" means any compensation, money, rent or other valuable consideration given in return for the occupancy, possession or use of a unit.

(b) "Transient commercial use" means the use of a unit, for remuneration, as a hostel, hotel, inn, motel, resort, vacation rental or other form of transient lodging if the term of the occupancy, possession or use of the unit is for less than 30 consecutive calendar days.

Proposed amendment submitted by:

I. R. Renny Ashleman
702 860 2437
P.P. Box 3840
Incline Village, NV 89450

Karen D. Dennison, Esq.
Hale Lane Peek Dennison and Howard
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
Phone: 775-327-3000
Fax: 775-786-6179
E-Mail: KDennison@HaleLane.com

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THE COMMISSION

NRS Chapter 116 is amended by adding thereto the following provisions[1] [at 116.5101 et seq.]:

Section 1. "Commission" means the commission for common-interest communities created pursuant to section 7 of this act.

Section 2. "Community manager" means an individual who provides for or otherwise engages in the management of a common-interest community.

~~**Section 3.** "Community managing agent" means a person who employs or supervises a community manager.~~

Section 4. "Complainant" means a person who files a written affidavit with the division pursuant to section 17 of this act.

Section 5. "Hearing Panel" means a hearing officer or panel established by the commission in accordance with subsection (c) of Section 12 of this act.

Section 6. "Respondent" means a person who is the subject of a written affidavit filed with the division pursuant to section 17 of this act.

Section 7.

1. The commission for common-interest communities, consisting of five members appointed by the governor, is hereby created within the division.

2. The governor shall appoint to the commission:

(a) One member who is a unit's owner residing in this state and who has served as a member of an executive board for an association in this state;

(b) One member who is in the business of developing common-interest communities in this state;

(c) One member who holds a permit or a certificate;

(d) One member who is a licensed Nevada certified public accountant; and

(e) One member who is a licensed Nevada attorney.

3. Not less than three members of the commission must be residents of a county whose population is 400,000 or more.

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[1] The definitions should go in proper order at the beginning of NRS Chapter 116. The remaining new provisions should be placed in a new part (e.g., Part 5) of NRS Chapter 116.

4. Each member of the commission must have resided in a common-interest community or have been actively engaged in a business or profession related to common-interest communities for not less than 3 years immediately preceding the date of his appointment.

5. After the initial terms, each member of the commission shall serve a term of 3 years. Each member may serve no more than two consecutive full terms. If a vacancy occurs during a member=s term, the governor shall appoint a person qualified under this section to replace the member for the remainder of the unexpired term.

6. While engaged in the business of the commission, each member is entitled to receive:

(a) A salary of not more than $80 per day, as established by the commission; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

Section 8.

1. The commission shall, at the first meeting of each fiscal year, elect from its members a chairman, vice chairman and secretary.

2. The commission shall meet at least once each calendar quarter and at other times on the call of the chairman or a majority of its members.

3. A majority of the members of the commission constitutes a quorum for the transaction of all business.

4. The commission shall prescribe such forms and adopt such procedures as are necessary for the hearings or other proceedings described in Sections 10 through 23 of this act or for submitting information to the commission.

Section 9.

1. The division shall provide or arrange for courses of instruction in rules of procedure and substantive law appropriate for members of the commission.

2. Each person appointed to the commission shall attend the instruction provided pursuant to subsection 1 within 6 months of being appointed to the commission.

Section 10.

The commission shall:

1. Conduct such hearings or other proceedings as are required by sections 8 to 23, inclusive, of this act.

2. Collect and maintain or cause to be collected and maintained accurate information relating to:

(a) The number and kinds of common-interest communities in this state;

(b) The effect of the provisions of this chapter, and any rules or regulations adopted pursuant thereto, on the development and construction of common-interest communities, residential lending for common-interest communities, and the operation and management of common-interest communities;

(c) Violations of the provisions of this chapter and any rules or regulations adopted pursuant thereto;

(d) The accessibility and use of, and the costs related to, mediation and arbitration under NRS 38.300 to 38.360, inclusive, and the decisions rendered and awards made pursuant thereto;

(e) The number of completed foreclosures or trustee's sales on units within common-interest communities for the failure to pay assessments levied against those units or for fines imposed against units= owners;

(f) The studies of reserves of associations required to be conducted pursuant to NRS 116.31152; and

(g) Issues that are of concern to units= owners, associations, community managers, developers and other persons affected by common-interest communities.

3. Develop and promote:

(a) Educational guidelines for conducting meetings of the executive boards of associations, meetings of the units= owners and elections of members of executive boards of associations.

(b) Educational guidelines for enforcing the governing documents of associations by the enforcement of liens or the imposition of fines.

4. Recommend and approve for accreditation programs of education and research related to common-interest communities, including, without limitation:

(a) The management of common-interest communities;

(b) The sale and resale of units in a common-interest community;

(c) Alternative methods that may be used to resolve disputes related to common-interest communities; and

(d) The enforcement, including foreclosure, of liens on units within a common-interest community for the failure to pay assessments levied against those units or for fines imposed against the units= owners.

5. Perform such other acts as are necessary to carry out the provisions of sections 8 to 23, inclusive, of this act.

Section 11.

1. The commission shall provide by regulation for the issuance of certificates to community managers. The regulations:

(a) Must establish the qualifications for the issuance of such certificates, including the education and experience required to obtain such a certificate;

(b) May require applicants to pass an examination in order to obtain a certificate;

(c) Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate; and

(d) Must establish rules of practice and procedures for conducting disciplinary hearings.

2. The commission shall provide by regulation for standards of practice for community managers.

3. The division may investigate any person to whom a certificate under this section has been issued to ensure his compliance with the standards of practice adopted pursuant to this subsection.

4. The division may collect a fee for the issuance of a certificate by the commission in an amount not to exceed the administrative costs of issuing the certificate.

Section 12.

The commission may:

(a) Adopt such regulations as are necessary for the administration of sections 8 to 23, inclusive, of this act.

(b) By regulation, delegate any of its authority to the administrator to be exercised pursuant to regulations adopted by the commission.

(c) By regulation, delegate to an independent hearing officer or panel its authority to determine violations of this chapter and take disciplinary action pursuant to sections 8 to 23, inclusive, of this act, including the authority to impose and collect fines and penalties, provided that:

(1) A final order of the hearing panel may be appealed to the commission by any party, upon written notice filed with the commission within 20 days of the final order; and

(2) A final order of the hearing panel must, if required by the commission upon written notice to all parties within 20 days of the final order, be approved by the commission.

(d) By regulation, establish standards for subsidizing proceedings for mediation and arbitration conducted under NRS 38.300 to 38.360, inclusive, to ensure that such proceedings are not lengthy and are affordable and readily accessible to all parties.

(e) By regulation, establish standards for subsidizing educational programs for the benefit of units' owners and officers and members of executive boards.

(f) Accept any grants or donations, and may enter into agreements with other entities that are required or authorized to carry out similar duties in this state or in other jurisdictions, to carry out the provisions of sections 8 to 23, inclusive, of this act.

(g) Cooperate with other entities that are required or authorized to carry out similar duties in this state or in other jurisdictions to develop uniform procedures for carrying out the provisions of sections 8 to 23, inclusive, of this act and for accumulating information needed to carry out those provisions.

Section 13. The commission shall not intervene in any internal activities of an association except to the extent necessary to prevent or remedy a violation of any provision of this chapter or any rule or regulation adopted pursuant thereto.

Section 14. Any notice or other information required to be served upon the commission may be delivered to the principal office of the division.

Section 15.

1. All money received by the commission must be deposited in the account for common-interest communities and paid out on its order for its expenses.

2. Fines and penalties imposed by a hearing panel must be deposited in the account for common-interest communities.

Section 16.

1. The Administrator, with the approval of the commission may from time to time adopt reasonable regulations for the administration of this chapter. When regulations are proposed by the administrator, in addition to other notices required by law, he shall provide copies of the proposed regulations to the commission no later than 30 days before the next commission meeting. The commission shall approve, amend, or disapprove any proposed regulations at that meeting.

2. All regulations adopted by the commission or adopted by the administrator with the approval of the commission, must be published by the division and offered for sale at a reasonable fee.

3. The division may publish or supply a reference manual or study guide for community managers and may offer it for sale at a reasonable fee.

Section 17.

1. A person who is aggrieved by any act or omission in violation of the provisions of this chapter, the rules and regulation established by the commission or any order of the commission may, within 1 year after the discovery of the alleged violation, file with the division a written affidavit that sets forth the facts constituting the alleged violation, including any actual damages. Such an affidavit may be filed only if the complainant first provides to the respondent, by certified mail, two written notices of the violation to be alleged in the affidavit. The notices must:

(a) Be mailed to the respondent=s last known address.

(b) Be mailed at least 15 days apart.

(c) Specify, in reasonable detail, the alleged violation, any actual damages suffered by the complainant as a result of the alleged violation and any corrective action proposed by the complainant.

2. A written affidavit filed with the division pursuant to subsection 1 must be:

(a) On a form prescribed by the commission.

(b) Be accompanied by evidence that:

(1) The respondent has been given a reasonable opportunity after receiving the written notices to correct the alleged violation; and

(2) Reasonable efforts to resolve the alleged violation have failed.

3. Except as otherwise provided in this section, the division shall, upon the receipt of a written affidavit, provide a copy of the affidavit to the ombudsman and conduct an investigation to determine whether good cause exists to proceed with a hearing on the affidavit.

4. The commission may require any person who knowingly files a false or fraudulent affidavit with the division to pay an administrative fine of not more than $1,000.

Section 18. If, after investigating a written affidavit received pursuant to section 17 of this act, the division determines that the affidavit is not frivolous, false or fraudulent and that good cause exists to proceed with a hearing on the affidavit, the administrator shall file a formal complaint with the commission and schedule a hearing before the commission on the complaint.

1. The commission or a hearing panel shall hold a hearing on the complaint within 90 days after the complaint is filed with the commission. The hearing may be continued at the discretion of the commission or hearing panel, upon the written request of the respondent, complainant or division for good cause shown, including the existence of an arbitration proceeding or civil action involving facts that constitute the basis of the complaint. The complainant, the division and the respondent may be represented by counsel at the hearing.

2. The division shall give the respondent written notice of the date, time and place of the hearing at least 60 days before the date of the hearing. The notice must be:

(a) Accompanied by:

(1) A copy of the complaint; and

(2) Copies of all communications, reports, affidavits and depositions in the possession of the division that are relevant to the complaint. The division may present evidence at the hearing that is obtained after giving notice to the respondent only if the division proves to the satisfaction of the commission or hearing panel that the evidence was not available after diligent investigation before the notice was given to the respondent and that the evidence was given or communicated to the respondent immediately after it was obtained.

(b) Delivered personally to the respondent or mailed to the respondent, by certified mail, to his last known address.

~~3. If the respondent is the holder of a permit or certificate pursuant to subsection 1 of NRS 116.31139, the division shall also give written notice of the complaint to the community managing agent with whom the respondent community manager is associated. The notice must:~~

~~(a) Be mailed to the community managing agent, by certified mail, to his last known address.~~

~~(b) Include an exact statement of the alleged violations.~~

~~(c) Include the date, time and place of the hearing.~~

Section 19. The commission or hearing panel may conduct any hearing required by section 18 of this act by means of video teleconference or telephone conference only if all participants in the proceedings are able to hear one another.

Section 20.

1. The respondent shall file an answer with the division within 45 days after receiving the notice required by section 18 of this act.

2. The answer must:

(a) Contain an admission or a denial of the allegations contained in the complaint and any defenses upon which the respondent will rely; and

(b) Be delivered to the division by certified mail.

3. If an answer is not filed within the time required by subsection 1, the division may, after giving notice to the respondent in the manner prescribed in section 18 of this act, request the commission to enter a finding of default against the respondent.

Section 21.

1. The commission or hearing panel shall render a final decision on the complaint within 20 days after the final hearing thereon.

2. The commission or hearing panel shall notify all parties to the complaint of its final order in writing by certified mail, within 60 days after the date of the final hearing. The written decision must include the commission=s or hearing panel's findings of fact and conclusions of law.

Section 22. If the commission or hearing panel determines, after notice and hearing, that any person has violated a provision of this chapter, the commission or hearing panel may:

(a) Issue an order to cease and desist from engaging in such conduct;

(b) Issue an order to take affirmative action to correct conditions resulting from the unlawful conduct; or

(c) Take both actions authorized by paragraphs (a) and (b).

2. If a person fails to comply with an order issued pursuant to subsection 1, the commission, upon notice to that person and following a hearing, may impose a fine of not more than $1,000 for each violation.

3. In addition, if the commission or hearing panel determines, after notice and hearing, that a community manager has violated a provision of this chapter or any rules and regulations or standards of practice applicable to community managers, the commission or hearing panel may:

(a) Initiate disciplinary action against a person to whom a certificate has been issued, pursuant to the regulations described in subsection 1(c) of Section 11 of this act; or

(b) Refer the matter to the real estate commission or the division for disciplinary action if the community manager is the holder of a permit to engage in property management pursuant to NRS Chapter 645 and the rules and regulations promulgated pursuant to that chapter.

Section 23.

1. If the commission, from evidence satisfactory to it, determines that any person has violated or will continue to violate a provision of this chapter, the commission may bring an action in the district court for the county in which the person resides or, if the person does not reside in this state, in any court of competent jurisdiction in this state, to enjoin that person from continuing such violation or engaging in the violation or from doing any act in furtherance of the violation.

2. The action must be brought in the name of the State of Nevada.

3. An injunction may be issued without:

(a) Proof of actual damage sustained by any person.

(b) The filing of any bond.

Section 24.

The rights and remedies provided by sections 8 to 23, inclusive, of this act do not abrogate and are in addition to any other rights and remedies that may exist at law or in equity.

Section 25. The commission and any of its members and each hearing panel and any of its hearing officers, acting pursuant to sections 8 to 23, inclusive, of this act, are immune from any civil liability for any decision or action taken in good faith and without malicious intent in response to a complaint filed with the commission.

Section 26. Within the limitations of legislative appropriations, the division may employ such attorneys, investigators, professional consultants and other employees as are necessary to carry out the provisions of sections 8 to 23, inclusive, of this act.

Amendments to Existing Statutes

Section 27. NRS 116.11145 is hereby amended to read as follows:

1. To carry out the purposes of this chapter, the [~~real estate~~] commission, or any member thereof ***acting on behalf of the commission, and the hearing panel, or any member thereof acting on behalf of the hearing panel,*** may issue subpoenas to compel the attendance of witnesses and the production of books, records and other papers.

2. If any person fails to comply with a subpoena issued by the commission ***or hearing panel*** pursuant to this section within 20 days after service of subpoena, the commission may petition the district court for an order of the court compelling compliance with the subpoena.

3. Upon such a petition, the court shall enter an order directing the person subpoenaed to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 20 days after the date service of the order, and show cause why he has not complied with the subpoena. A certified copy must be served upon the person subpoenaed.

4. If it appears to the court that the subpoena was regularly issued by the commission ***or hearing panel***, the court shall enter an order compelling compliance with the subpoena, and upon failure to obey the order the person shall be dealt with as for contempt of court.

Section 28. NRS 116.1117 is hereby amended to read as follows: There is hereby created the account for [~~the ombudsman for owners in~~] common-interest communities in the state general fund. The account must be administered by the administrator.

1. The fees collected pursuant to NRS 116.31155 must be credited to the account.

2. The interest and income earned on the money in the account, after deducting any applicable charges, must be credited to the account.

3. The money in the account must be used solely to defray:

(a) the costs and expenses of administering ***the commission and*** the office of the ombudsman for owners in common-interest communities; and [~~for the payment of fees for a mediator or an arbitrator pursuant to NRS 38.330~~]

(b) ***if authorized by the commission or the rules and regulations of the commission, the costs and expenses of subsidizing mediation and arbitration conducted under NRS 38.300 to 38.360, inclusive.***

Section 29. NRS 116.1201 is hereby amended to read as follows:

1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this state.

2. This chapter does not apply to:

(a) Associations created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) A rural agricultural residential common-interest community.

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the chapter does apply to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted, only if the declaration so provides or the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this state, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this state by any party unless exempt under subsection 2 of NRS 116.4101.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units= owners of the association;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;

(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992; or

(d) Prohibit a common-interest community created before January 1, 1992, from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. For the purposes of this section, the **[~~administrator~~]** ***commission*** shall establish, by regulation, the criteria for determining whether an association ~~is created for the limited purpose of maintaining the landscape of the common elements of a common-interest community, maintaining facilities for flood control or maintaining a rural agricultural residential common-interest community~~ ***or a common interest community falls within an exemption from any provision of this chapter.***

Section 30. NRS 116.31139 is hereby amended to read as follows:

1. ~~An association may employ a person engaged in property management for the common-interest community.~~ Except as otherwise provided in this section, a ~~person engaged in property management for a common-interest community~~ ***a community manager*** must:

(a) Hold a permit to engage in property management that is issued pursuant to the provisions of chapter 645 of NRS; or

(b) Hold a certificate issued by the ~~[real estate]~~ commission pursuant to subsection 11.

~~[2. The real estate commission shall provide by regulation for the issuance of certificates for the management of common interest communities to persons who are not otherwise authorized to engage in property management pursuant to the provisions of chapter 645 of NRS. The regulations:~~

(c) ~~Must establish the qualifications for the issuance of such a certificate, including the education and experience required to obtain such a certificate;~~

(d) ~~May require applicants to pass an examination in order to obtain a certificate;~~

(e) ~~Must establish standards of practice for persons engaged in property management for a common interest community;~~

(f) ~~Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate; and~~

(g) ~~Must establish rules of practice and procedure for conducting disciplinary hearings.~~

~~The real estate division of the department of business and industry may investigate the property managers to whom certificates have been issued to ensure their compliance with the standards of practice adopted pursuant to this subsection and collect a fee for the issuance of a certificate by the commission in an amount not to exceed the administrative costs of issuing the certificate.]~~

2. ~~*A community managing agent may only provide for or otherwise engage in the management of a common interest community through a community manager who holds a permit or certificate of the type described in subsection 1.*~~

3. The provisions of ~~[subsection 2]~~ *subsections 1 and 2 do not apply to*:

(a) ~~A person who is engaged in property management for a common interest community on October 1, 1999, and is granted an exemption from the requirements of subsection 2 by the administrator upon demonstration that he is qualified and competent to engage in property management for a common interest community~~. A financial institution *engaging in an activity permitted by law*.

(b) An attorney licensed to practice in this state *acting in that capacity*.

(c) A trustee *with respect to the property of the trust.*

(d) ~~An employee of a corporation who manages only the property of the corporation.~~ A declarant *or an affiliate of a declarant, and their respective employees, engaged in property management for a common-interest community during the period of declarant=s control of that common-interest community.*

(e) A receiver *with respect to property subject to the receivership.*

(f) *An officer or member of the executive board of an association acting solely within the scope of his duties as an officer or member of the executive board.*

4. ~~As used in this section, Aproperty management@ means the physical, administrative or financial maintenance and management of real property, or the supervision of those activities for a fee, commission or other compensation or valuable consideration.~~]

Section 31. NRS 116.31152 is hereby amended to read as follows:

1. The executive board of an association shall:

(a) Cause to be conducted at least once every 5 years, a study of the reserves required to repair, replace and restore the major components of the common elements;

(b) Review the results of that study at least annually to determine if those reserves are sufficient; and

(c) Make any adjustments it deems necessary to maintain the required reserves.

2. The study required by subsection 1 must be conducted by a person qualified by training and experience to conduct such a study, including a member of the executive board, a unit=s owner or the property manager of the association who is so qualified. The study must include, without limitation:

(a) A summary of an inspection of the major components of the common elements the association is obligated to repair, replace or restore;

(b) An identification of the major components of the common elements that the association is obligated to repair, replace or restore which have a remaining useful life of less than 30 years;

(c) An estimate of the remaining useful life of each major component identified pursuant to paragraph (b);

(d) An estimate of the cost of repair, replacement or restoration of each major component identified pursuant to paragraph (b) during and at the end of its useful life; and

(e) An estimate of the total annual assessment that may be required to cover the cost of repairing, replacement or restoration of the major components identified pursuant to paragraph (b), after subtracting the reserves of the association as of the date of the study.

3. The **[~~administrator~~]** ***commission*** shall adopt by regulation the qualifications required for conducting a study required by subsection 1.

Section 32. NRS 645.190 is hereby amended to read as follows:

1. The division may do all things necessary and convenient for carrying into effect the provisions of this chapter ***and the provisions of Sections 8 through 23, inclusive, of this act.***

2. The commission or the administrator, with the approval of the commission, may from time to time adopt reasonable regulations for the administration of this chapter. When regulations are proposed by the administrator, in addition to other notices required by law, he shall provide copies of the proposed regulations to the commission no later than 30 days before the next commission meeting. The commission shall approve, amend or disapprove any proposed regulations at that meeting.

3. All regulations adopted by the commission, or adopted by the administrator with the approval of the commission, must be published by the division and offered for sale at a reasonable fee.

4. The division may publish or supply a reference manual or study guide for licensees or applicants for licenses, and may offer it for sale at a reasonable fee.

Section 33. NRS 645.200 is hereby amended to read as follows:

1. The attorney general shall render to the division opinions upon all questions of law relating to the construction or interpretation of this chapter ***or NRS Chapter 116***, or arising in the administration thereof, that may be submitted to him by the division ***or the commission or the commission for common-interest communities.***

2. The attorney general shall act as the attorney for the division in all actions and proceedings brought against or by the division pursuant to any of the provisions of this chapter.

Section 34. NRS 645.210 is hereby amended to read as follows:

1. Whenever the real estate division believes from evidence satisfactory to it that any person has violated or is about to violate any of the provisions of this chapter or ***NRS Chapter 116***, or any order, license, permit, decision, demand or requirement, or any part or provision thereof, it may bring an action, in the name of the real estate division, in the district court of the State of Nevada in and for the county wherein such person resides, or, if such person resides outside the State of Nevada, in any court of competent jurisdiction within or outside the State of

Nevada, against such person to enjoin such person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof.

2. If this action is in a district court of the State of Nevada, an order or judgment may be entered awarding such preliminary or final injunction as may be proper, but no preliminary injunction or temporary restraining order shall be granted without at least 5 days' notice to the opposite party

Section 35. NRS 38.330 is hereby amended to read as follows:

1. 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 **[~~the ombudsman for owners in~~]** common-interest communities created pursuant to NRS 116.1117, to the extent that money is available in the account for this purpose.

Section 36. As soon as practicable after October 1, 2003, the governor shall appoint to the commission for common-interest communities:

1. One member whose term expires on October 1, 2005.

2. Two members whose terms expire on October 1, 2006.

3. Two members whose terms expire on October 1, 2007.

Section 37. The state treasurer shall transfer any balance remaining unexpended on October 1, 2003, in the account for the ombudsman for owners in common-interest communities in the state general fund to the account for common-interest communities which is created pursuant to NRS 116.1117, as amended by this act.

Section 38. On or before November 1, 2006, the commission for common-interest communities created pursuant to section 7 of this act shall submit a report containing the information it is required to obtain pursuant to subsection 2 of section 10 of this act, and any recommended legislation, to the director of the legislative counsel bureau for transmittal to the 74th session of the Nevada legislature.

Section 39.

1. This section and section 36 of this act become effective upon passage and approval.

2. Sections 1 to 35, inclusive, and 37 and 38 of this act become effective on October 1, 2003.

Section 40.

[Add sunset language, terminating the commission as of July 1, 2007 unless extended.]

Terri Janison

We are in the middle of a dispute with the Summerlin HOA, that began almost two years ago as a trivial matter about a basketball hoop. We put one next to our driveway so our kids could play. The Summerlin Homeowners Association sent us notices that we had to remove it. Even though in a neighborhood one block away, dozens of hoops had been standing 24 hours a day, for years. This didn't seem to matter to the HOA even though:

NRS 116 states "The rules adopted by an association: 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." (.31065.5)

When we questioned Summerlin about NRS 116, they say, "well, that's a new law and it hasn't been tested yet." After ten months of us standing up for our kids' rights, the Summerlin HOA changed the rule to grandfather in the selected homeowners, letting them keep their hoops, while at the same time, continuing to send threatening and harassing letters to other homeowners. This in spite of:

NRS 116 stating: Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement. (.1113)

Then we asked for their records on basketball hoops, enforcement, internal minutes, emails, notes, etc. We also asked for their records dealing with property dedicated to the City of Las Vegas. We were ignored, which would be in violation of:

NRS 116 stating: Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association. (31175)

So we contacted Ombudsman Eldon Hardy by phone and certified letter. Mr.Hardy contacted Summerlin on our behalf. They told him, "We're not giving our friend a thing." Mr. Hardy said he would try and get a subpoena. That was in September and we haven't heard anything formal from his office despite the fact

NRS 116. states: If the executive board refuses to allow a unit's owner to review the books, records or other papers of the association, the ombudsman for owners in common-interest communities may:
(a) On behalf of the unit's owner and upon written request, review the books, records or other papers of the association during the regular working hours of the association; and
(b) If he is denied access to the books, records or other papers, request the commission to issue a subpoena for their production (31175.2)

During our dispute, we have received two threats from the Summerlin HOA that they may foreclose on our home if we don't pay the fines. The threats were signed by Pamela Scott, who is a registered lobbyist for the Howard Hughes Corporation. We believe Ms. Scott was in Carson City when this part of NRS 116 was passed:

EXHIBIT L Committee on Commerce/Labor
Date: 2/20/03 Page 1 of 2

The association may not foreclose a lien by sale for the assessment of a fine for a violation of the declaration, bylaws, rules or regulations of the association, unless the violation is of a type that threatens the health, safety or welfare of the residents of the common-interest community. (31162.4)

Finally, we have expressed an interest in making a difference by running for the board, but they have a delegate voting system that permits the delegates and Board Members to repeatedly vote for themselves to retain office by proxy, regardless of:

NRS 116 stating: A vote may not be cast pursuant to a proxy for the election of a member of the executive board of an association. (311.2c)

All we are asking is that if we abide by the rules of the Summerlin Homeowners Association, they abide by NRS 116. Please help the common homeowner so the Goliaths of our neighborhoods can't hide behind expensive attorneys.
And at the very least, provide some type of system that allows the common homeowner to enjoy their home without the bullying procedures now induced by HOAs!

Thank you.

2

Minoli

STOP THE MADNESS! REPEAL THE LAWS

The taking of hearth and home by hellions of housing through HOA non-judicial foreclosures must stop.

May 22, 2002

By Anne Roth (View author info)
Copyright © 2002 Anne Roth

United States of America, CA - Not all of us live in Texas, but if you are one of millions of homeowners across the country serving time in a homeowners association, you should be gravely concerned about the Non-Judicial Foreclosure laws that have been or are being passed by your legislators that will allow someone to come along and foreclose on your home without your day in court. In Texas, The Texas Homestead Act means nothing because of case law like Inwood vs. Harris and their HB2152 law that supports non-judicial foreclosures. In California it is called the Davis Stirling Act. Before long, it will be your home State. Or is it already? If it is, join our efforts now.

Homeowner advocates from across America are working to preserve the American Dream of Home Ownership and rid the books of bad law like these. Many of them have travelled far and wide, with no company or government credit card, to fight these unconstitutional and unjust laws. From national Senate hearings in Las Vegas called by Senator Mike Schneider to protests in Florida and California, they forge forward, determined in preserving the American Dream of Home Ownership.

Rep. (D) Dick Gephardt was recently quoted as saying, "You have to defend your people. That is the first duty of any government". Our government is failing its people more so than anywhere else, where it counts the most, on the home front. Not so long ago, a major news hour discussed how freedom of speech no longer exists. On another news forum, the discussion was about how America has come closer to communism than ever. We are more regulated and rule bound than any other country in the world.

Now, our absolute last bastion of freedom, "Home Sweet Home", is under calculated attack by an unscrupulous HOA housing industry. They have

EXHIBIT M Senate Committee on Commerce/Labor
Date: 2/20/03 Page 1 of 4

layers of rules, regulations, laws, by-laws, civil and corporate codes and covenants, conditions and restrictions, that govern our lives and nearly our bedrooms.

Just who is this HOA industry? It is a seemingly incestuous mix of legislators, lawyers, managers and a sundry of other vendors that live off of the HOA housing concept. This HOA industry has only one interest - MONEY. The American home in an HOA has been turned into a full employment tool for a herd of HOA vendors.

They write the laws, lobby for the laws and then live off of these laws that govern how you and I will live in our homes. Who invited these pirates to come into our homes, write laws for us, tell us how to live and turn our home into a litigation feast? Nobody I know. The American people can take care of themselves and run their own "back yards". We don't need these bandits 'big brothering' us right into non-judicial foreclosure.

But who does? The Legislators? Just how much of the share of the tasty HOA cash cow ends up in their coffers? Isn't any motive to further the HOA housing concept suspect and driven by greed, pure and simple? Unless of course you believe that perfectly cut green square lawns and sanitized beige homes marching in lock step to the same boring shades of beige (a.k.a. - planned vomit) are a priority over one's right to life liberty and the pursuit of happiness. Then perhaps you could be the model HOA prisoner or the poster child for the HOA industry.

It is the voice of the people who own the homes that is credible and should be honored first and foremost. You don't have to be a lawyer to understand the flaws of this housing model. You don't have to be a Doctor to realize that it is badly broken. And you certainly don't have to be a Chief to sit on the board or commission of any HOA housing task force. (As the story goes, one legislator actually told a homeowner, 'but you aren't a lawyer') It isn't exactly Rocket Science.

But the legislators won't listen. They just keep passing those laws, uncaring of the damage they cause. Beware, because their next big push might be what has been referred to as UNIFORM COMMON INTEREST OWNERSHIP ACTS - meaning the same laws apply nationwide for everybody. That probably just means the lawyers who need to non-judicially foreclose on someones home won't have to spend hours getting to know a particular state's laws. They'll just have to know one. THAT one.

ABC's 20/20 did a segment on the horrors of HOA's not too long ago. The show's message boards, some several weeks after the 20/20 special aired, was still burning up the internet with HOA related postings. This is no small problem. And national media coverage is gaining momentum!

There is a saying "as Texas goes, so goes the nation". Will Texas set the precedent for denouncing this obviously inherently flawed housing model? Will Texas, the Lone Star State, dare to be the lone leader in denouncing the HOA industry vendors who seek to make their meal ticket the American home? Or will Texas merely lead the nation in Non-Judicial Foreclosures because of bad laws. Judging by the recent study conducted by the Texas Homeowners Advocate Group, they are well on their way to being number one. And In California, a study conducted by the Sentinel Fair Housing reports much of the same tragic news.

And for what? To keep the grass green? To keep the pool filled? Isn't this outrageous? In the meantime, people are left homeless? How do these HOA industry vendors and their ilk sleep at night? Likely on expensive down bedding paid for by now homeless homeowners.

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It is a sad thing when you have to tell homeowners, "You better pay your HOA dues FIRST because the HOA can take your home a lot sooner than the bank will." Even the deed holding bank has to follow a strict regimen before it can begin foreclosure proceedings and they stand to lose a lot more than this non-entity HOA corporation that has invested NOTHING!

And what about that so-called HOA contract? It absolutely fails in the face of true contract theory. This so called "contract" can change before you even have a chance to move into your home. Not only that, any revisions in the HOA "contract" may not have been voted on by the homeowner. They may have opposed it. Realtors don't always advertise as HOA and homeowners may not be required to disclose it.

Because covenants "run with the land" is a sorry excuse for the mantra by HOA vendors that homeowners should have known it was an HOA. That is like saying Americans should all know every federal, state, civil, and criminal code that governs the lands. The difference is, these HOA laws practically govern our bedrooms and no law should be passed that "signs away constitutional rights"

There is no system of checks and balances in the HOA "government". It is wrought with fraud right down to the election of directors who enforce non-judicial foreclosures. Would any honest politician feel good about such an electoral process? Would they be proud to be elected under such a flawed system? God help us if they do.

All non-judicial foreclosure laws must be repealed. They are bad law and have opened the floodgate of foreclosures against HOA homeowners. Where is George Bush today? Does he even realize what is happening in his own State? Has he any idea the pain and suffering being lauded upon the people of his state by his law? And how about Gray Davis of the Davis Stirling Common Interest Act? California is lost in the dark already and now homeowners will just be out on the dark streets.

We have all heard of road rage and sports rage. Now there is HOA rage. Whether in California, Florida, Nevada, Arizona or Texas, it is real and it is happening more often. Tragically real in some cases. Think about it. What, pray tell, could cause more rage than someone trying to protect his family, his livelihood, his homefront. Far more sinister than someone who simply loses his spot on the freeway.

American's put on uniforms to protect their country and are considered heroes when they attack the enemy. Should the homeowners defending their homes and families from domestic HOA enemies be considered any different? Just because the law says it is "legal" to take ones home in an HOA nonjudicial foreclosure, doesn't make it right. It is inherently and fatally flawed law and thinking.

Like the monster in the movie Tremors, the HOA industry collection lawyers lie in wait, just beneath the surface of HOA homes, ready to pounce on unsuspecting homeowners who because of illness, hard times or just plain old age related forgetfulness, have not paid their dues or couldn't afford that $4,000 (possibly illegal) special assessment on a fixed income. OR WORSE, they are being accused of an invalid and unsubstantiated non payment because of outright criminal behavior of the board and/or its managing agent.

HOA foreclosure laws need to be repealed. They are OVERKILL - no pun intended. Right or wrong, within 90 days or so, these homeowners can become the industry monsters scatological remains. Who will be the next victim of an illegal and unconstitutional non-judicial foreclosure? Someone

the home? It should be neither.

Our last bastion of freedom has been raped, pillaged and bastardized. Return the old saying "A Man's house is his castle", back to its rightful owner - the HOMEOWNER.

HOA non-judicial foreclosure laws fail the test of basic property rights afforded us under the Constitution of the U.S., and laws like the Texas Homestead Act. It fails the American Dream of Home Ownership.

Protecting private property rights and preserving simple freedoms resonates in the hearts and souls of the American People, contract or no contract. When our legislators have failed in their duty to protect these freedoms, by legislating and signing away constitutional rights, they have worn their welcome, flunked their duties, failed their people, and no longer serve any useful purpose.

View Comments (0) | Post a comment

For more information, please check out the articles listed below:

- Homeowner loses House over $205 Delinquent Assessments - Unidentified
- The American Home- A Thing of the Past - AHRC News Services
- Calaveras Man Fights Foreclosure - Diana Griego Erwin
- Woman Loses Home Over $500. Debt - Tim Grant
- TAXATION WITHOUT REPRESENTATION - Dave Hagmaier
- Governor Jeb Bush, You signed an Unconscionable & Probably Unconstitutional Bill - Colonel Donald I. Rehman, USA, Retired
- HOME FORECLOSURE RACKET CAUSING VIOLENCE - Geneva Kirk Brooks, Houston Editor
- A Cautionary Tale About Homeowners' Associations - Wendy K. Laubach
- Sea Ranch House Lost Over $567 Debt - Tyra Mead
- New Gangster In Town - Steve Solcich
- Rancho Niguel HOA lawyers and manager charge sea captain $2823.92 for being late with his $208 association bill - A Sea Captain from California
- Homeowner fined $50,000 for removing snow - Unknown
- Elderly Peoria woman evicted after battle with HOA - Dennis Godfrey

American Homeowners Resource Center (AHRC)
PO Box 97 • San Juan Capistrano • California • 92693
Telephone: **(949) 366-2125** Email: ahrc@ahrc.com
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EM @ AHAC.com

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Hayward

Talking Points

1. My name is Glenn Hayward. I am the President of Sun City Summerlin Community Association. I presently serve on the Board of Directors of the Association.

2. There are 7,500 homes in the Association. The required quorum for a meeting of the Association is 50% of the members. In my experience at the Association, we have rarely or never reached quorum for the purposes of holding a member's meeting.

3. I have had an opportunity to review certain sections of SB 100. Specifically, I have reviewed the proposed amendment to NRS 116.3115 which are contained in section 53 of SB 100.

4. NRS 116.3115, as it presently exists, causes our Association numerous issues. Specifically, the law presently appears to state that except when the Association is suing to collect an assessment, to enforce the governing documents, to proceed with a counterclaim or to protect the health, safety and welfare of the members, the Board needs to obtain a majority vote of all the owners of the Association. It is unlikely that we could obtain the majority vote of the owners on any issue, especially in a timely fashion, to pursue a third party for our rights.

5. There are numerous situations in which we need the right to pursue third parties without having to obtain the vote of the owners. The circumstances which have arisen previously or which could arise are those situations in which we need to pursue a vendor for breach of contract or a third party who is unrelated to the Association who might cause damage to the Association.

6. The Association's annual budget exceeds $13 million dollars. There are numerous vendors to whom the Association pays substantial amounts to provide services to the Association, including, but not limited to, landscapers. Additionally, the Association owns and operates a number of golf courses which are part of the Association. If the Association had to obtain the vote of the owners to pursue any vendor who violates a contract with the Association, the Association would be at a distinct disadvantage. We not only believe that the law should not be changed as proposed, but we believe that there should be exemptions for the Board to pursue third parties who damage the Association or breach contracts, without the duty of seeking the vote of the homeowners.

7. In our situation, if a vendor were to breach a contract and cause substantial damage to the Association, which could be as much as $50,000 - $100,000 in a short period of time, it would be impossible for the Board to fulfill our fiduciary duties to pursue such third party.

EXHIBIT N Senate Committee on Commerce/Labor
Date: 2/20/03 Page 1 of 2

8. We presently have a situation at the Association where a number of owners have sued the Association for an alleged interference with their view. The Association believes that it is not responsible for the views or for any alleged interference with the views. However, if the Association were to lose the lawsuit, it would certainly want to seek indemnification against certain third parties. Pursuant to the way the law is written, the Association has no right to seek such indemnification in a separate suit unless it obtains the vote of a majority of the owners of the Association. As stated above, that is an impossibility for our Association.

I respectfully suggest that the committee carefully review the language of SB 100 relating to the limitation to bring civil law suits to protect an Association. We will be unable to fulfill our fiduciary duties as Members of the Board of Directors if we are handcuffed. It may be that the committee needs to consider different rules for different sized associations. However, we cannot run to the members of the Association each time we need to make a decision. I believe that the remedy for members who do not like the way their Board is behaving is to vote in new Board members or remove the Board members.

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MINUTES OF THE SUBCOMMITTEE OF THE SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-second Session
February 25, 2003

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 3:34 p.m., on Tuesday, February 25, 2003, in Room 2134 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael Schneider, Chairman
Senator Randolph J. Townsend
Senator Maggie Carlton

GUEST LEGISLATORS PRESENT:

Senator Warren B. Hardy II, Clark County Senatorial District No. 12
Mr. John C. Carpenter, Assembly District No. 33

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Kevin Powers, Committee Counsel
Laura Adler, Committee Secretary

Subcommittee meeting was on Senate Bill 100, and Senate Bill 136.

SENATE BILL 100: Makes various changes to provisions governing common-interest communities. (BDR 10-29)

SENATE BILL 136: Revises provisions governing assessment of fines by unit-owners' associations. (BDR 10-897)

Transcription of subcommittee minutes is not required. The audio recording is available for purchase through the Legislative Counsel Bureau's Publications and Gift Shop.

DISCLAIMER

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

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

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

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

SENATE AGENDA

for the

COMMITTEE ON COMMERCE AND LABOR
SUBCOMMITTEE ON TITLE 10

Day Tuesday Date February 25, 2003 Time See Below* Room 2135

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative website is http://www.leg.state.nv.us. For audio broadcasts, click on the link "Listen to Live Meetings."

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Senate Subcommittee on Commerce and Labor at (775) 684-1451.

(R#) Indicates the reprint number of the bill/resolution being considered.

PLEASE PROVIDE 25 COPIES OF YOUR EXHIBITS AND NOTES.

*Meeting will begin at 3:00 p.m. or upon adjournment of Senate Taxation.

S.B. 100 Makes various changes to provisions governing common-interest communities. (BDR 10-29)

S.B. 136 Revises provisions governing assessment of fines by unit-owners' associations. (BDR 10-897)

Public comment.

Interested parties may observe the proceedings through a simultaneous videoconference in Room 4401 of the Grant Sawyer Office Building, Las Vegas.

EXHIBIT A Committee on Commerce/Labor

Date: 2/25/03 Page 1 of 1

Meeting ID: 2019

SB 100

Room 2134

Guest List for Commerce + Labor Subcommittee Committee Date Feb. 25 2003, 20

PLEASE LEAVE A COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

❖ PLEASE PRINT ❖

Name / Title	Representing	Phone No.	Bill No.	For	Against	Neutral	✓ If Speaking
Karen Briggs	Eugene Burger Mgmt Corp	326-5970	SB 100	✓			✓
Susan Keenan	Eugene Burger Mgmt Co	828-3664	100	✓			
Joanne Young	self	345-0525	SB 100	—			—
Donald Mineti	Accurance	542-0230	SB 100		—		—
Shari O'Donnell	Signature Homes	671-6016	SB 100	✓			
Norman Rossnissen	Assoc Area Management	832-0888	SB 100			✓	
Michael Trudell	Cunningham Rural Homeowners Assn.	746-1491	SB100 SB136	SB100	SB136		—
Judy Cook	Cook + Co	324-4400	SB100 SB136				✓
Anne Gorham	Elk Point	(775)588-1073	SB 100	✓			✓
Tami DeVries	NM Real Estate Div.	7604840333	SB136			✓	✓
Elton Hardy	"					✓	✓
Earl Anderson	"					✓	✓

ORIGINAL—Secretary; YELLOW COPY—Chairman

EXHIBIT B

EXHIBIT B Committee on Commerce/Labor Date: 2/25/03 Page 1 of 5

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(Rev. 9-00)

(O) 425

SB 100

Room 2134

Guest List for Commerce & Labor Subcommittee Committee Date Feb 25, 2003

PLEASE LEAVE A COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

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Name / Title	Representing	Phone No.	Bill No.	For	Against	Neutral	✓ If Speaking
Michael Buckley	CAI	702 862 3397	100	x			✓
William Magrath	Caughlin Ranch Homeowners Assn	775 788-2000	100 136				✓
KAREN DENNISON	Lake at Las Vegas Joint Venture	775 327-3000	100	✓			✓
Judy Favrah	CAI	702 610-6122	100	x			x
Pamela Scott	Howard Hughes Corp.	702 - 838-5500	100/136	X			✓
MELODY LEE THE HANDS	NEVADA ASSOC. OF REALTORS	775 829-5911	100/136			✓	✓

ORIGINAL—Secretary; YELLOW COPY—Chairman

EXHIBIT B

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(Rev. 9-00)

(O) 425

SB 100

Room 54

Guest List for Commerce & Labor Committee Date Feb 25, 20 03

PLEASE LEAVE A COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

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Name / Title	Representing	Phone No.	Bill No.	For	Against	Neutral	✓ If Speaking
JIM FLIPPEN	ASSOCIATED MGMT & LAC	775 882-0899	SB100/136				—
Eldon Hardy	REO. Ombudsman	702-486-4033	SB 100/136				✓

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ORIGINAL—Secretary; YELLOW COPY—Chairman

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EXHIBIT B

(O) 425

Guest List for Commerce & Labor Sub — Committee Date FEB. 25, 2003

PLEASE LEAVE A COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

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Name / Title	Representing	Phone No.	Bill No.	For	Against	Neutral	✓ If Speaking
Shawn P. McMullen	Humboldt River Fish/NSA		100				

ORIGINAL—Secretary; YELLOW COPY—Chairman

EXHIBIT B

(Rev. 9-00)

(O) 425

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FEB-25-03 15:57 FROM:LEGISLATIVE COUNSEL LVO ID:7024862810 107

2135-4401 (4-1398)

Guest List for: SENATE SUBCOMMITTEE ON TITLE 10 FOR SENATE COMMERCE & LABOR **Date** 02/25/03

PLEASE LEAVE COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

** PLEASE PRINT CLEARLY **

Name/Title	Representing	Phone No.	Bill No.	For	Against	Neutral	Check this box if Speaking
DONNA TOUSSAINT	WEST SAHARA COMMUNITY ASSOCIATION	702.240.5994	SB100				X
GREG TOUSSAINT	LAKES ASSOC	702-256-9998	SB100				X
BILL FELIZ /RE	BOKER FELIZ MANAGEMENT	702-387-1608	SB 101/136	X			X
MARK KAPLINSKY	HOMEOWNER	702-914-8000	SB100	X			X
MARGARET KAPLINSKY	HOMEOWNER	702-914-8000	SB100	X			
JUDITH WHITE	HOMEOWNER	702-459-7717	SB100				
Sara Barry	Self	702-269-9301	SB100 SB136	X			X
MICKI JOHNSON	NV. LAND TITLE ASSN	702-791-7000	SB100	X			X
Cheryl Markin	TERRA WEST	702-251-4566	SB100				
Kevin Ruth	Thoroughbred Mgt	702-515-2000	4			X	

NOTE: This meeting was video-conferenced to the Legislative Counsel Bureau, Las Vegas Office.

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MINUTES OF THE SUBCOMMITTEE OF THE SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-second Session
February 27, 2003

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chairman Michael Schneider, at 9:14 a.m., on Thursday, February 27, 2003, in Room 2135 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael Schneider, Chairman
Senator Randolph J. Townsend
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Kevin Powers, Committee Counsel
Laura Adler, Committee Secretary

Subcommittee meeting was on Senate Bill 100, and Senate Bill 136.

SENATE BILL 100: Makes various changes to provisions governing common-interest communities. (BDR 10-29)

SENATE BILL 136: Revises provisions governing assessment of fines by unit owners' associations. (BDR 10-897)

Transcription of subcommittee minutes is not required. The audio recording is available for purchase through the Legislative Counsel Bureau's Publications and Gift Shop.

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SENATE AGENDA

for the

COMMITTEE ON COMMERCE AND LABOR
SUBCOMMITTEE ON TITLE 10

Day Thursday Date February 27, 2003 Time 9:00 a.m. Room 2135

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative website is http://www.leg.state.nv.us. For audio broadcasts, click on the link "Listen to Live Meetings."

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Senate Subcommittee on Commerce and Labor at (775) 684-1451.

(R#) Indicates the reprint number of the bill/resolution being considered.

PLEASE PROVIDE 25 COPIES OF YOUR EXHIBITS AND NOTES.

This meeting is a continuation of the February 25 Subcommittee on Title 10

S.B. 100 Makes various changes to provisions governing common-interest communities. (BDR 10-29)

S.B. 136 Revises provisions governing assessment of fines by unit-owners' associations. (BDR 10-897)

Public comment.

Interested parties may observe the proceedings through a simultaneous videoconference in Room 4412 of the Grant Sawyer Office Building, Las Vegas.

EXHIBIT A Committee on Commerce/Labor

Date: 2/27/03 Page 1 of 1

Meeting ID: 2089

Guest List for Senate Commerce & Labor Sub Committee Date Feb. 27, 2003

PLEASE LEAVE A COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

❖ PLEASE PRINT ❖

Name / Title	Representing	Phone No.	Bill No.	For	Against	Neutral	✓ If Speaking
KAREN DENNISON	Lake at Las Vegas Joint Venture	775 327-3060	SB100	✓			✓
Tami DeVries	NV Real Estate Division	(702) 486 4033 X222	SB106 SB136			✓	✓
Judy Cook	Cook & Company, LLC	324-4400	100 136			✓	✓
Michael Trudell	Caughlin Ranch Homeowners Assn	746-1499	SB 100 SB 136	SB100	SB136		✓
Sen. John V. Breslow Ref	ELK POINT COUNTRY CLUB INC	772 5881526	SB100 136	✓			✓
Shari O'Donnell	Signature Homes	702-385-5031	SB 100 SB136	✓			
Judy FARRALL	CAI-LAC	702 610-6126	SB100 SB136	✓			

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EXHIBIT B Committee on Commerce/Labor
Date: 2/27/03 Page 1 of 3

ORIGINAL—Secretary; YELLOW COPY—Chairman

EXHIBIT B

(Rev. 9-00)

(O) 425

Guest List for Senate Commerce & Labor Sub Committee Date Feb. 27, 2003

PLEASE LEAVE A COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

❖ PLEASE PRINT ❖

Name / Title	Representing	Phone No.	Bill No.	For	Against	Neutral	✓ If Speaking
Melody Luetkehans	NV Assoc Realtors	829-5911	SB100			X	
Julie Harris	LVMPD / Sheriffs & Chiefs						
Stan Olsen	LVMPD / Sheriffs & Chiefs						
Shirley McKellar	Associated Mgmt	696-7333	SB100				
William Magrath	Caughlin Ranch	775 788-2000	SB 100				

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ORIGINAL—Secretary; YELLOW COPY—Chairman

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EXHIBIT B

(Rev. 9-00)

(O) 425

2135-4412 (4-1398)

Guest List for: SENATE SUBCOMMITTEE ON TITLE 10 FOR SENATE COMMERCE & LABOR **Date** 02/27/03

PLEASE LEAVE COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

** PLEASE PRINT CLEARLY **

Name/Title	Representing	Phone No.	Bill No.	For	Against	Neutral	Check this box if Speaking
DONNA TOUSSAINT	LAKES ASSOC & WEST SAHARA	7022405754	SB100				X
Eldon Hardy	Ombudsman - C.I.C.	486-4033	SB100				X
Kevin Ruth	Thoroughbred Mgt	(702) 515-2042	4				X
MARK KAPLINSKY	HOMEOWNER	702-914-8000	SB100				X
MARGARET KAPLINSKY	HOMEOWNER	702-914-8000	SB100				
MICHAEL BUCKLEY	CAI	702-862-3357	SB100	✓			X
Gail Anderson	Real Estate Division	702-486-4033	SB100				X
JUDITH WHITE	BROKER/HOMEOWNER	702-459-7717					X
BETTY RAVENSO	RAVEN MGMT	702-792-0885	100				X
MICKI JOHNSON	NV. LAND TITLE ASSN	7027917000	100	✓			X
FRANK LA CONTE	HOMEOWNER	702-254-9261	100	✓			
DAVE DURITSA	SAFE HOMES NEVADA	702-657-8282	100/136		✓		X
Donna Gregik	LV Country Club Estates	8320329	100/136	✓			X
Allen West	RPMG INC	933-7764	100/136	✓			

NOTE: This meeting was video-conferenced to the Legislative Counsel Bureau, Las Vegas Office.

MINUTES OF THE SUBCOMMITTEE OF THE SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-second Session
March 3, 2003

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chairman Michael Schneider, at 3:31 p.m., on Monday, March 3, 2003, in Room 2135 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael Schneider, Chairman
Senator Randolph J. Townsend
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Kevin Powers, Committee Counsel
Laura Adler, Committee Secretary

Subcommittee meeting was on Senate Bill 100, and Senate Bill 136.

SENATE BILL 100: Makes various changes to provisions governing common-interest communities. (BDR 10-29)

SENATE BILL 136: Revises provisions governing assessment of fines by unit owners' associations. (BDR 10-897)

Transcription of subcommittee minutes is not required. The audio recording is available for purchase through the Legislative Counsel Bureau's Publications and Gift Shop.

DISCLAIMER

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

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

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

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

SENATE AGENDA

for the

COMMITTEE ON COMMERCE AND LABOR
SUBCOMMITTEE ON TITLE 10

Day Monday Date March 3, 2003 Time *Upon Adjourn Room 2135

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative website is http://www.leg.state.nv.us. For audio broadcasts, click on the link "Listen to Live Meetings."

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Senate Subcommittee on Commerce and Labor at (775) 684-1451.

(R#) Indicates the reprint number of the bill/resolution being considered.

PLEASE PROVIDE 25 COPIES OF YOUR EXHIBITS AND NOTES.

FIRST REVISED AGENDA

*This meeting will begin upon adjournment of Senate Human Resources and Facilities.

S.B. 100 Makes various changes to provisions governing common-interest communities. (BDR 10-29)

S.B. 136 Revises provisions governing assessment of fines by unit-owners' associations. (BDR 10-897)

Public comment.

***Note: Interested parties may observe the proceedings through a simultaneous videoconference in Room 4412 of the Grant Sawyer State Office Building, Las Vegas.**

EXHIBIT A Committee on Commerce/Labor

Date: 3/3/03 Page 1 of 1

Meeting ID: 2107

Guest List for Senate Commerce & Labor Sub Committee Date March 3, 2003

PLEASE LEAVE A COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

❖ PLEASE PRINT ❖

Name / Title	Representing	Phone No.	Bill No.	For	Against	Neutral	✓ If Speaking
Joanne L. Young	Self - Homeowner	342-0565	100	–			–
Audrey Buell	Homeowner	684/2961	100				
DONALD M. MINOLI	SELF - HOMEOWNER	342-0330	100				
Byron Morse	Homeowner	671-0761	100				
NORMAN ROSENSTOCK	ASSOCIATED MANAGEMENT	832-0888	100				
Shirley McKellar	" "	626-7333	100				
Jack K. Briggs	Elk Pt. Country Club Inc	588-1526	100/136				
Jim Flynn	CAI CAC - Associated Mgmt.	831-0888	100/136				
Kirby Randall	Self	775-588-7036	100/136				
Melody Luetkehans	NVAR	775 829-5911	100/136				
Pamela Scott	Howard Hughes	702-838-5511	100/136				✓
Karen Dennison	Lake at Las Vegas Joint Venture	775 327-3000	100/136	✓			✓
Michael Tindall	Ewing Irrigation HOA	775-746-1444	SB100 SB136	SB 100	SB 136		✓
Anne Gaskin	Elk Point Country Club	775 588-1073	SB 100	✓			
WILLIAM BRANHAM	Self	624-1775			✓		
Judy Cook	Cook & Company	100/136				X	

ORIGINAL—Secretary; YELLOW COPY—Chairman

EXHIBIT B

Committee on Commerce/Labor

Date: 3/3/03 Page 1 of 4

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(O) 425

Guest List for Senate Commerce/Labor Sub Committee Date 3-3, 2003

PLEASE LEAVE A COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

❖ PLEASE PRINT ❖

Name / Title	Representing	Phone No.	Bill No.	For	Against	Neutral	✓ If Speaking
David Smith	Self	775 786-4345	100	✓			✓
Marilyn Brainard	Self	626-1775	100		✓		✓
Tami DeVries	NV Real Estate Div.	7024804033 x222	100			✓	✓
TR Ashleman	SNHBA	702-866-2937	100	✓			

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ORIGINAL—Secretary; YELLOW COPY—Chairman

EXHIBIT B

(Rev. 9-00)

(O) 425

4412

2135-~~4406~~ (4-1398)

Guest List for: SENATE COMMITTEE ON COMMERCE & LABOR **Date** 03/03/03

PLEASE LEAVE COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

** PLEASE PRINT CLEARLY **

Name/Title	Representing	Phone No.	Bill No.	For	Against	Neutral	Check this box if Speaking
Shari O'Donnell	Signature Homes	385-5031	SB 100	✓			V/S needed
Bill Feliz	Feliz Management	239-1995	SB100	✓			✓
Judy Favrah	CAI	610-6128	SB100	X			X
Dan Newburn	Summerlin Baptist	363-5235	100	X			✓
Eldon Hardy	Ombudsman CIC	486-4033	100		X		✓
Donna Erwin	LV Country Club Est	7320329	100	X			✓
Judith White	Homeowner/Broker	459-7717	100				✓
MARK KAPLINSKY	HOMEOWNER	914-8000	100	✓			✓
MARGE KAPLINSKY	HOMEOWNER	914-8000	100	✓			
Gail Anderson	Real Estate Division	486-4033	100			✓	✓
PAM RIEBE	" " "	" "	"				✓
Michael Buckley	CAI	862-3397	100/136	✓			✓
AVE DURITSA	SAFE HOMES NEVADA	657-8282	100/136		✓		✓
Charles Stewart	Feliz Management/Main	6630909	SB100	✓			
Kevin Ruth	Thousand Mgt	515-2042	"			✓	

NOTE: This meeting was video-conferenced to the Legislative Counsel Bureau, Las Vegas Office.

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2135-~~4406~~ 4412 (4-1398)

Guest List for: SENATE COMMITTEE ON COMMERCE & LABOR **Date** 03/03/03

PLEASE LEAVE COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

** PLEASE PRINT CLEARLY **

Name/Title	Representing	Phone No.	Bill No.	For	Against	Neutral	Check this box if Speaking
Helen Wise	RPMG	933-7764	100 136				
Jackie Gillens	RPMG	933-7764	100 136		X		
Betty Rowendo	Raven Mgmt	792-0885	100 136				X
Kathy Pauley	Silver State Trustee Ser	221-8848	100 136			X	X if needed

NOTE: This meeting was video-conferenced to the Legislative Counsel Bureau, Las Vegas Office.

MINUTES OF THE SUBCOMMITTEE OF THE SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-second Session
March 6, 2003

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chairman Michael Schneider, at 8:39 a.m., on Thursday, March 6, 2003, in Room 2135 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael Schneider, Chairman
Senator Randolph J. Townsend
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Kevin Powers, Committee Counsel
Laura Adler, Committee Secretary

Subcommittee meeting was on Senate Bill 100, and Senate Bill 136.

SENATE BILL 100: Makes various changes to provisions governing common-interest communities. (BDR 10-29)

SENATE BILL 136: Revises provisions governing assessment of fines by unit owners' associations. (BDR 10-897)

Transcription of subcommittee minutes is not required. The audio recording is available for purchase through the Legislative Counsel Bureau's Publications and Gift Shop.

DISCLAIMER

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

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

SENATE AGENDA

for the

COMMITTEE ON COMMERCE AND LABOR
SUBCOMMITTEE ON TITLE 10

Day Thursday Date March 6, 2003 Time *8:30 a.m. Room 2135

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative website is http://www.leg.state.nv.us. For audio broadcasts, click on the link "Listen to Live Meetings."

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Senate Subcommittee on Commerce and Labor at (775) 684-1451.

(R#) Indicates the reprint number of the bill/resolution being considered.

PLEASE PROVIDE 25 COPIES OF YOUR EXHIBITS AND NOTES.

*Please note time change.

S.B. 100 Makes various changes to provisions governing common-interest communities. (BDR 10-29)

S.B. 136 Revises provisions governing assessment of fines by unit-owners' associations. (BDR 10-897)

Public comment.

* Possible Discussion of and Action on Measures Previously Considered

NOTE: Any person who proposes an amendment to a bill being heard by the committee must include a statement of the intent for the amendment. The proposal must be typewritten and must include a name and contact number.

Interested parties may observe the proceedings through a simultaneous videoconference in Room 4412 of the Grant Sawyer Office Building, Las Vegas.

EXHIBIT A Committee on Commerce/Labor

Date: 3/6/03 Page 1 of 1

Meeting ID: 2143

Guest List for SENATE COMMERCE & LABOR Committee Date 3/6, 2003

PLEASE LEAVE A COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

❖ PLEASE PRINT ❖

Name / Title	Representing	Phone No.	Bill No.	For	Against	Neutral	✓ If Speaking
Tami DeVries	NV Real Estate Div.	702 486-4033 x222	SB100 SB136			✓	✓
Audrey Bull	Homeowners	674-2961					✓
Virgil Morse	Home owners	674-0761					✓
Myrna Morse	Home owners	674-0761					
KAREN DENNISON	Lake at Las Vegas Joint Venture	775 327 3000	100/136	✓			✓
Pamela Scott	Howard Hughes Corp.	702-838-5500	100/136				✓
Clarice Lynch	Homeowner	775-634-6449	703				
Jerry Newcomer	Homeowner Univ Ridge	775 786-3000			✓		✓
Sen. John V. Brackett	EXPT. HO. Assn HO	(775) 588-1526		✓			✓
William Magrath	Caughlin Ranch Homeowners	775-788-2000					
Michael Tuckell	Caughlin Ranch HOA	746-1499	SB100 SB136	SB 100	SB 136		✓
Karen Bragg	EBMC	826-5920	SB100 SB136	✓			✓
Susan Keenan	EBMC	828-3664	SB100 SB136	✓			
Jim Flippen	Community Assoc. Institute	932-0998	SB107/136				
Ed Fick	City of Fallon	423-4507					
Melody Luetkehans	NV Assoc of Realtors	829-5911	SB 100/136	✓			✓

ORIGINAL—Secretary; YELLOW COPY—Chairman

EXHIBIT B Committee on Commerce/Labor Date: 3/6/03 Page 1 of 4

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(Rev. 9-00)

EXHIBIT B

(O) 425

Guest List for Senate Commerce / Labor Committee Date 3/6/03, 20

PLEASE LEAVE A COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

❖ PLEASE PRINT ❖

Name / Title	Representing	Phone No.	Bill No.	For	Against	Neutral	✓ If Speaking
Judy Cook	Cook + Company Ltd	324-4400	134 100			✓	
Julie Harris	LVMPD/Sheriffs & Chiefs						
Stan Olsen	" "						

ORIGINAL—Secretary; YELLOW COPY—Chairman

EXHIBIT B

2

(Rev. 9-00)

(O) 425

2135-4412 (4-1398)

Guest List for: SENATE COMMITTEE ON COMMERCE & LABOR SUBCOMMITTEE ON TITLE 10 **Date** 03/06/03

PLEASE LEAVE COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

** PLEASE PRINT CLEARLY **

Name/Title	Representing	Phone No.	Bill No.	For	Against	Neutral	Check this box if Speaking
Judi Booe		240-3753	SB 100	✓			✓
Sheldon Factor - Sr. V.P.	Sun City Summerlin	255-5400	SB 100		✓		✓
Richard Willer	Grandview HOA	254 0059	100		✓		✓
Eldon Hardy	Ombudsman - C.I.C	486-4033	SB100		✓		✓
MARK KAPLINSKY	HOMEOWNER	914-8000	SB100				✓
MARGE KAPLINSKY	HOMEOWNER	914-8000	SB100				
PAMELA RIEBE	RED	486-4321	SB100				✓
Michael Buckley	CAI	862-3397	SB100 136	✓			✓
GREG TOUSSAINT	LAKES ASS.C.	256-9998	100				✓
Sylvia Ping	Signature Homes	671-6002	100	✓			
JUDITH WHITE	HOMEOWNER/BROKER	459-7717	100				✓
GERRY NORTHFIELD	TWEST	257 4570	100				✓
Elaine C. McMannon	Real est. agents	362-4800	SB 100				✓
Gail Anderson	Real Estate Division	486-4033	SB 100				✓

NOTE: This meeting was video-conferenced to the Legislative Counsel Bureau, Las Vegas Office.

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2135-4412 (4-1398)

Guest List for: SENATE COMMITTEE ON COMMERCE & LABOR SUBCOMMITTEE ON TITLE 10 **Date** 03/06/03

PLEASE LEAVE COPY OF PREPARED HANDOUTS WITH THE COMMITTEE SECRETARY

** PLEASE PRINT CLEARLY **

Name/Title	Representing	Phone No.	Bill No.	For	Against	Neutral	Check this box if Speaking
Sydney Wickliffe	Dept of B & I	486-2750					
Terri Jamison	Citizens	228-5759	100			✓	✓
Kevin Roth	Thoroughbred Mgt	515-2042	"			—	
Marie Trauk	Grand Regency	260-1812	100				

NOTE: This meeting was video-conferenced to the Legislative Counsel Bureau, Las Vegas Office.

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MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-second Session
March 26, 2003

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:51 a.m., on Wednesday, March 26, 2003, in Room 2135 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Warren B. Hardy II, Vice Chairman
Senator Ann O'Connell
Senator Raymond C. Shaffer
Senator Joseph Neal
Senator Michael Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Courtney Wise, Committee Policy Analyst
Kevin Powers, Committee Counsel
Makita Schichtel, Committee Secretary
Laura Adler, Committee Secretary

OTHERS PRESENT:

David Smith
William A.S. Magrath II, Lobbyist, Caughlin Ranch Homeowners Association
Pamela Scott, Lobbyist, The Howard Hughes Corporation
Karen D. Dennison, Lobbyist, Lake at Las Vegas Joint Venture
Kathryn Pauley, Silver State Trustee Services, LLC
Karen Brigg, Lobbyist, Eugene Burger Management Company
David Stone, Nevada Association Services of Las Vegas
Shirley McKeller, Associated Management

Mark Kaplinsky
Tami DeVries, Legal Administrative Officer, Real Estate Division, Department of Business and Industry

CHAIRMAN TOWNSEND:
We have Senate Bill (S.B.) 325, as well as S.B. 438. These bills have a great deal in common.

SENATE BILL 325: Makes various changes to provisions governing common-interest communities. (BDR 10-176)

SENATE BILL 438: Makes various changes related to common-interest communities. (BDR 10-791)

Committee, you have a copy of a large document (Exhibit C. Original is on file in the Research Library.) that could only be put together for the committee in the time allotted. That document compares S.B. 100, S.B. 325, and S.B. 438, so you can quickly look at the common elements of each bill. This needs to be reviewed before tomorrow's hearing so we can process it. I think we should take limited testimony on S.B. 325 and S.B. 438 in the context of what is new, and not revisit old issues. We will then go into a work session where Senator Schneider will give us a report on bill drafting and his efforts.

Kevin Powers, Committee Counsel, and Scott Young, Committee Policy Analyst, because we already had testimony on it, I think it is important to highlight those things not in S.B. 100, and those issues of substance that are different between the two bills.

SENATE BILL 100: Makes various changes to provisions governing common-interest communities. (BDR 10-29)

SCOTT YOUNG, COMMITTEE POLICY ANALYST:
Probably the largest difference between S.B. 325 and S.B. 438 is that S.B. 325 has a commission provision, as does S.B. 100. However, the provisions relayed to the commission in S.B. 325 are more extensive. There are provisions for data collection and other details of the commission process that are spelled out in S.B. 325. There is also a sunset provision for the commission in S.B. 325 different from that in S.B. 100. There are provisions for association assessments in S.B. 325 that are not in the other two bills.

CHAIRMAN TOWNSEND:
Committee, we will deal with S.B. 325 section 51, and then come back to section 17.

DAVID SMITH:
I own four condominiums. I have been involved in construction defects litigation, mitigation with condo associations, served on the condominium association board, and a member of a common-interest community association (CIA). This is the first year I have come to testify. I like this bill because I have seen abusive boards, and this keeps a cap on them. The condominiums I own are valued between $75,000 to $150,000. What I would like to see with this bill is that boards or associations must adopt a policy of evenhandedness, rather than being selective according to personalities. You have to stop the boards from being dictatorial.

WILLIAM A.S. MAGRATH II, LOBBYIST, CAUGHLIN RANCH HOMEOWNERS ASSOCIATION:
I recognize there might be some bad boards out there. The difficulty in the limitation that Senator O'Connell's bill has causes the association to transfer the costs of a foreclosure for failure to pay dues to the members. We are not talking about fines or tyrannical boards fining neighbors out of vindictiveness. Subsection 12 of section 51, defines the cost of collecting to mean just about anything, including fees for filing, recording, and referral, as well as costs for postage and delivery.

CHAIRMAN TOWNSEND:
You have a concern about a cap that would affect the ability of an association based on a failure to pay dues to go to foreclosure?

MR. MAGRATH:
It would transfer the cost of that to the members, because this does not fairly reimburse the association.

CHAIRMAN TOWNSEND:
What if that part were excluded, but only had fines?

MR. MAGRATH:
If this only applied to fines, I would not have a problem.

PAMELA SCOTT, LOBBYIST, THE HOWARD HUGHES CORPORATION:
I would have to agree if it only applied to fines. The bottom line is the way that section exists now, a $20 letter on a $200 debt is almost a year of dues in Summerlin. I cannot send a certified intent-to-lien letter for $20. It hurts the people who have to cover the cost of every certified letter long before we ever get to the point of filing a lien.

KAREN D. DENNISON, LOBBYIST, LAKE AT LAS VEGAS JOINT VENTURE:
I would like to add to that in subsection 12, paragraph (a), it also excludes any costs associated with civil action. This would preclude going to small claims court and charging for it. I agree with Mr. Magrath and Ms. Scott.

KATHRYN PAULEY, SILVER STATE TRUSTEE SERVICES, LLC:
Caps and limitations on collection costs would impact chapter 649 of *Nevada Revised Statutes* (NRS) and NRS 99.040. Those are for collection or foreclosure companies, or any other service that does late letters for associations. There are six foreclosure laws I have listed in my handout (Exhibit D) as well as the federal Fair Debt Collection Practices Act. These allow the home owner recourse if they believed they were being unfairly billed for their delinquencies.

KAREN BRIGG, LOBBYIST, EUGENE BURGER MANAGEMENT COMPANY:
I agree with the group that $20 does not meet the needs. I think Senator O'Connell, during the last session, had concerns regarding foreclosure, and actually taking individual's homes. I have made a concerted effort over the past 18 months to monitor the foreclosure process, which goes quickly with some collection companies. Mr. Smith had a point that sometimes home owner associations aggressively pursue particular individuals, depending on the amount and size owing, while others are left to linger. As a company, most of our collections are in-house, therefore, we can work with individual home owners. As an extra step, we do a final foreclosure notice explaining what will happen and how they can lose their house. This gives the home owners an additional option to talk to the board prior to going to foreclosure. The boards need to consider those, and go into forbearance if needed in hardship cases.

CHAIRMAN TOWNSEND:
Mr. Smith brought up an excellent point that no matter what the law says, or the policies of the home owners association or the board, have matters applied equally. Is there anything in any of these bills, or in current law, that has

repercussions for not applying it? If a board does not apply things equally, that board is immediately replaced with another board.

MR. MAGRATH:
I am not aware of any specific rule or section of NRS 116 that requires boards to apply things equally. Let me give you an example of why we do not want to uniformly require that. Two years ago, Senator O'Connell described an unusual circumstance where a woman's husband passed away and previously he had paid all the bills. If an association were required to uniformly apply the rule, they would have to foreclose on the woman's home. There are some circumstances when the board may not want to foreclose on a particular person's home and be allowed some discretion. On the other hand, I recognize there is a problem if there is retribution. I think there needs to be some discretion so an elderly widow is not suddenly forced by law to make payments she cannot meet, and be foreclosed.

CHAIRMAN TOWNSEND:
We do not disagree. What we are trying to do is separate the issue of not paying your dues, which allows for foreclosure. That is one substantial issue, and the other is being inappropriate in your fines, not in your collection of an association assessment. The fine issue can become quite petty. Mr. Smith made the point that if you are going to be petty, be petty with everyone.

MR. MAGRATH:
The fines are a different issue. With respect to the dues, if in fact, this widow needs discretion and the association recognizes and privately understands these situations, they ought to have some discretion, and not be forced to foreclose on her and everyone else.

DAVID STONE, NEVADA ASSOCIATION SERVICES OF LAS VEGAS:
My company does assessment collection for a few hundred home owners associations, that are mostly in southern Nevada. I want to make it clear my company, and as far as I know my competitors, try to work with a home owner before the case gets to foreclosure, and the fees get exorbitant. Nobody wants to foreclose. Licensed collection companies want to work with home owners. We help enforce compliance with home owner assessments. My company enters into payment agreements with home owners on a regular basis. Once a home owner fails to make payments, a late fee is incurred. Then it is usually farmed out to a collection company. At that point the initial fee is $50 or $75. It is outlined in a letter (Exhibit E) I prepared for Judy Farrah. The number of

accounts my company processes that go into foreclosure are relatively small. The number of people living in home owners associations do pay their assessment on time.

MR. SMITH:
I can tell you from experience, having been on boards and attending board meetings, that some boards have problem people. The board members do not care, and they run up bills. I fought with my board members on behalf of home owners, telling them we need to talk to the home owner. Why turn it over to a collection agency? All they were doing was adding fees. The home owner was behind in dues, and those fees keep piling up. Instead, work with that person. A member of the Virginia Highlands Homeowners Association said, "We are neighbors. We need to get along, and help each other, instead of them against us." There are home owners association boards that do not care, and I want to make sure proper controls are placed on boards that misuse their power.

MR. STONE:
We encourage all our clients, meaning the home owners associations and management companies, to work with the delinquent owners prior to having overdue bills turned over to collection. I cannot tell you how many times this happens on a daily basis where a home owner comes to my office to work out a payment plan, and has had issues with the board. I ask them if there was an attempt to contact the manager, attend a board meeting, or talk to a board member, and 9.9 times out of 10, the home owner has not. The opportunity is there for those people who need special assistance, but most people never take advantage of that opportunity.

MS. PAULEY:
You asked previously if there are any provisions to protect the home owner from this happening. In NRS 116, it stipulates if an association is going to fine a home owner for anything or give any kind of penalty, it has to be in writing before it happens. We have encouraged every home owners association to make a collection policy and distribute it to their home owners. The home owners know there are consequences when they do not pay their bill. After 3 months of delinquent fees, the home owner receives an intent-to-lien letter, meaning there must be contact with the association to make payment arrangements, or the delinquent amount of fees will be sent to a lien company, or a lien will be placed on the house. There is protection within NRS 116. If there is a discrepancy through a board, where they pick and choose who they will fine, that is why we

are looking for a commission so unfair application of association documents can be reported to the commission or the ombudsman.

MR. MAGRATH:
I did find in the statute a law on this issue (Exhibit F). It is NRS 116.31065. Under subsection 5, it says, The rules adopted by an association "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."

CHAIRMAN TOWNSEND:
If a home owner finds out that is the case, where does the home owner go under NRS 116?

MR. MAGRATH:
The home owner will have to go to the ombudsman or to the commission, if in fact a commission is established. The law does exist.

Chairman Townsend:
That is the point. We have written every law in the world, and probably will adopt some more. The average person living in associations has a copy of this, but nobody is threatened enough. Most of you have raised either a child or a dog who have to know where the fence is because if they do not, they keep running. If the home owner thinks there is no retribution for their behavior they are going to keep doing it. I think that is the point Senator O'Connell and Senator Schneider have tried to make in proposing these bills. But the question is who is going to enforce them?

SHIRLEY MCKELLER, ASSOCIATED MANAGEMENT:
I find as a community association manager that all the boards I have dealt with have been fair to all home owners. I think it is a matter of management being able to work with home owners to let them know about their recourses, and to correctly advise the board. I do not think boards are as bad as people make them out to be.

CHAIRMAN TOWNSEND:
You are from around here, and that is the underlying problem with your argument. In northern Nevada, many of us see each other on a regular basis, but in southern Nevada, with so many new and growing communities, no one knows anyone. They also have different types of home owner associations.

Some are gated communities, planned unit developments, sub-associations, or neighborhood associations. Things are different, and unfortunately that is why we have to have these laws. If they had people like you, it would not be a problem. You would figure out how to make it work.

MS. MCKELLER:
I do feel the caps are unreasonable because you cannot do business efficiently.

MS. SCOTT:
I gave you a summary (Exhibit G) of all the steps Summerlin goes through, and you can see how the costs add up. The only soft cost in the entire list is the $3 per month late charge. I cannot tell how many $3 per month late charges we waive, because some people get upset the first time they get one. It is easy to get them back in line by waiving that $3 soft cost. However, the rest of the charges are not soft-cost charges to the association. Somebody is going to pay them. If the law could say we do not want to make a profit on collections, but we want to be reimbursed for all our hard costs, then perhaps have a cap on the monthly late charge which is a soft cost.

MS. BRIGG:
I think your point is well taken that the commission will help educate board members, and that will help with the problem of some of these boards. The other thing you need to look at is extending the process to allow home owners ample time to understand what is going on. We have to notify these home owners, perhaps on a yearly basis, by including with the collection policy an explanation of the process, what can happen, and how quickly it can move. What I have seen is a $20 assessment owed on an account that the home owner continues to not pay, it goes to intent and then to lien. Before long the cost is so high that the $200 owed becomes $1000 owed.

MARK KAPLINSKY:
There are other abusive practices such as associations that refuse to accept payment on the assessments, so they force the situation into foreclosure in an attempt to collect fines.

MS. BRIGG:
What I have seen is the management company or the board will elect to enter into a contract with a collection company. When the assessment becomes delinquent, it goes to the collection company. When the individual home owner comes into our office, we cannot take the check. The home owner will have to

work directly with the collection company. Sometimes they are down to the last day, and if the check does not get to the collection company on time, there are additional charges. Some of the collection companies are out of state. When the check arrives late, the collection company says they cannot accept the check, because they have already gone through another process that means more money to them.

MR. KAPLINSKY:
That is not exactly what I meant. For example, if a home owner owes a fine up to $500 or $1000, the unscrupulous board of directors cannot foreclose on a $1000 fine. Sometimes the board tries to turn it into a health, welfare, and safety issue, but other times they instruct the management company not to accept any more assessments. They refuse all checks for assessments, then, essentially, commingle fines with assessments. I understand it is in the law not to do that, but it is done often.

Another thing is the inherent conflict of interest between management companies that do their own collection. I know of specific cases where they are making money from conducting their own collections. They have no reason to work with the home owner.

CHAIRMAN TOWNSEND:
Let us go to section 17, page 4 of S.B. 325. This section concerns the collection and maintenance of data. Under the provisions in this bill, the commission would do that. Senator O'Connell and Senator Schneider have taken hundreds of complaints on this issue. We have been trying, over the past 6 years, to craft legislation to deal with this issue. Unfortunately, most of it has been by anecdote, and as a result it has been hard to follow the trend. Does anyone have a problem with this section?

MR. SMITH:
I do not have a problem, but I would break out units or associations of less than 5 years, 5 to 10 years, and 10 years and over. My research indicates new associations in northern Nevada are well run and developed, and do not appear to have a lot of problems. My condominiums are in older associations, and that is where I see the problem. I am horrified about what is going on in Las Vegas. I do not know what you are going to do, but if you solve that problem you are all geniuses. I would also break out the number of units. There are a lot of associations that have 5, 10, or 15 units, and those are not the problem. It is

the 75-, 100-, and 300-unit places, and there are some places in Las Vegas that are running $5 million and $7 million budgets.

CHAIRMAN TOWNSEND:
I think your point is well taken. Senator Schneider and Senator O'Connell, and in particular my colleagues from southern Nevada, need to work with the people here and in Las Vegas to figure out how we would separate types of associations by age and size. There might be ways to better approach that. Maybe that should be part of the commission's charge. I think it is an important element. Particularly the aged smaller ones where people have known each other longer and some of the medium sized that are older where some situations have now existed for a while. The newer ones seem better organized. They are following newer rules, and started from scratch.

SENATOR NEAL:
In listening to the discussion about trying to get a handle on the problem and the resolution, I was looking at NRS 116.31036 that calls for the removal of the executive board. Part of that statute says, "Not withstanding any provision of the declaration of bylaws to the contrary, the units' owners, a by two-thirds vote of all persons present and entitled to vote at any meeting of the units' owner at which a quorum is present." I would remove the quorum if that refers to the group of people who actually own the homes, and say if they have a problem at any meeting, they can change the structure of the board, and that would give the power back to the home owners. This would be the only change I would make.

MR. MAGRATH:
Is your intention that votes of only those people who appear at the meeting would count? Our association has 2000 members. We have never had more than 200 people at a meeting.

SENATOR NEAL:
Then those that show up and vote would be the controlling votes. As the statute suggests, it is a vote of two-thirds of those present.

MR. MAGRATH:
We have an election process that requires secret ballots to be mailed to everybody. If the same board members can be taken out of office simply by a dissident group, I would venture to say that any elected official would not want to be subject to the whims of the group of people who show up in protest. If

50 people are unhappy with your actions today, and 45 of them wanted to vote you out of office, I think you would prefer to go by the real election process.

SENATOR NEAL:
What we are talking about is a board that is not being responsive to the actual home owners in those communities.

MR. MAGRATH:
What if 1000 people do not show up at the meeting because they are satisfied with what the board is doing?

SENATOR NEAL:
They would not mind if the people present removed the board.

MR. MAGRATH:
Then you are forcing people to participate in democracy, and I do not think that is appropriate.

SENATOR NEAL:
What about people who have an investment, and they have a board that is out of control? How are you going to bring it back into control?

MR. MAGRATH:
Sometimes the board members are the elected representatives who have an obligation to the 1000 members to enforce the rules.

SENATOR NEAL:
Sometimes they are not fulfilling that obligation, and this is why we have these problems.

Mr. Magrath:
What if they are fulfilling their obligation by forcing 100 home owners to pick the weeds, and clean up the yards, and those 100 people vote them out of office?

SENATOR NEAL:
Then how do you read that section in NRS 116?

Mr. Magrath:
I believe you have to have a quorum present. A quorum has a certain definition in the law that requires you have people present.

SENATOR NEAL:
How do you understand the section I just read?

MR. MAGRATH:
The key is if you have a quorum present. A quorum means 50 percent of the entire membership of the home owners, or whatever the governing documents provide maybe 20 percent in the law.

MS. BRIGG:
The board is elected by the membership, and they have a responsibility for the good of the entire membership. Sometimes the decisions they make for the good of the entire membership are not good for a small group of people, which may come in and oppose that particular board.

SENATOR NEAL:
What I am talking about is when the board says, I like this individual, but I do not like that individual. So the rules of the organization are not being enforced fairly throughout the community.

MS. BRIGG:
I understand. I think that is why the commission needs to be put in place. We are talking about a small group that may disagree with a board and should not have the ability to remove the board. We have talked about that in a previous meeting during this session. We will have removal done by secret ballots.

SENATOR NEAL:
Let me ask you a question since you seem to have knowledge about these common-interest communities. When bylaws are first drawn up, who does that?

MS. BRIGG:
The developer usually had their attorney draw up the papers.

SENATOR NEAL:
After the papers are drawn up, then what happens? Does the community that is present adopt them?

MS. BRIGG:
No. If the bylaws do not work for that community, the community can amend those bylaws.

SENATOR NEAL:
If there are certain restraints put in the bylaws that would make it difficult, then those bylaws could not be changed?

MS. BRIGG:
Any bylaws can be changed.

SENATOR NEAL:
I understand. I am talking about individuals who may have a complaint and go before their board seeking relief, and they do not get it.

MS. BRIGG:
They can go to the ombudsman.

MR. MAGRATH:
I understand your concern, but the entire concept of common-interest communities requires at the beginning, a developer to come up with a common-interest scheme; a plan for the community that requires certain people to follow certain rules. It is how they pay for greenbelts, ground maintenance, and security. It is how the developer pays for the project. The attorneys for the developer always draw up those rules in the beginning. Every potential home owner who moves into that development is given a copy of those rules. They have a choice at that time to decide if they want to live under those rules, or go elsewhere. Senator Carlton said she bought somewhere outside. Senator Schneider said his wife told him she would never live in a common-interest community because there are too many rules. The rest of us choose to live there.

SENATOR NEAL:
If we change this law whereby those who show up at a scheduled meeting, and voted in two-thirds, you would have a larger number of people showing up because board members are going to notify people to come to the meeting.

MR. MAGRATH:
If you create that anarchy, you will not see many of us here in 2 years because some of us might have been voted out, all of the volunteers would have left. You may have many complaints because nobody will run the association.

SENATOR NEAL:
We have complaints now.

MR. MAGRATH:
You are going to have more complaints because you have eliminated the boards.

SENATOR NEAL:
No. We are not eliminating the boards, we just voted to change.

MR. MAGRATH:
No. You are allowing a small, vocal minority to eliminate the regular election process, that is wrong.

CHAIRMAN TOWNSEND:
Committee, with a show of hands indicate to me those of you who are interested in, and can support, the concept of a commission. Senators Carlton and Shaffer said they were not sure. Senators Schneider and O'Connell have to find the best components of that, and we will help them. I think this issue in S.B. 325 about regulations, the commission, data collection, and miscellaneous powers of the commission, are all important aspects as well as the things in S.B. 100. We need to find the best way to discover the commonalities and the direction.

Ms. DeVries, if we adopt a commission, what would be the ombudsman's role? Based on what you have seen come into that office, what role should an ombudsperson play relative to a commission?

TAMI DEVRIES, LEGAL ADMINISTRATIVE OFFICER, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS AND INDUSTRY:
I do not know if you recall the handout from last time, but I have created a flowchart (Exhibit H) that I have today. The ombudsman's office would be the point of first contact for anyone who has any kind of a problem within a community. At that level, they would attempt to assist or resolve whatever that problem may be through the work of the ombudsman or the office staff. If they find they cannot resolve the issue, or the issue has violations of law the issue

would be referred to our compliance section for an investigation. After the investigation is conducted, it would go to the commission for a hearing. The alternative is if the issue involves violations of covenants, conditions and restrictions (CC&Rs), or something the commission could not rule upon, it would be referred to the person within the ombudsman's office handling the alternate dispute resolution (ADR) process.

CHAIRMAN TOWNSEND:
What value is it to either party, if you have a commission, to have an ADR process?

MS. DEVRIES:
The ADR process should stay in place to handle issues involving conflicts in the CC&Rs.

CHAIRMAN TOWNSEND:
Can that be voluntary for the parties, if they both agree to it as opposed to one more step?

MS. DEVRIES:
Yes, that is the way it is now.

CHAIRMAN TOWNSEND:
Both parties agree because there is a conflict and they need to get it resolved.

MS. DEVRIES:
Yes, Sir.

CHAIRMAN TOWNSEND:
What distinct authority should the ombudsman or the staff have relative to when a complaint is received? Do they have authority that can only be appealed to the commission? What is your view on that?

MS. DEVRIES:
The ombudsman's office would actually have authority similar to what they have now to assist the home owners or board members that are coming to them, to understanding their role within the community, their rights and responsibilities, to try to bring all the parties together, and assist them to resolution. That is part of the new function of the office through education, assistance, and understanding their rights.

CHAIRMAN TOWNSEND:
If the premise is the purpose of finding and qualifying the role of the ombudsman relative to the potential commission, do you think the process is functionally going to work?

MS. DEVRIES:
Yes. That is the way we think it would work functionally within the Real Estate Division as shown on the flowchart (Exhibit H). The flowchart is on the front, and on the back it spells out the different responsibilities the ombudsman's office would have as opposed to the compliance section within the division.

CHAIRMAN TOWNSEND:
My recommendation to this committee is to find the basic components that are necessary to make the commission and the relationship with the ombudsman work for the parties involved. Because Senator O'Connell and Senator Schneider and other colleagues from the south suffer the greatest problems relative to this, I want to get the basics of this into one bill, and get it to the Assembly. In the meantime, check with our colleagues in the Assembly as to who can work with all of us as we work through the details. If they have to amend because we missed a detail, we can have that ready so we are not retrying the big issues, and can just deal with the small things.

If you look at S.B. 325, S.B. 100, and S.B. 438, one thing you will notice is the reference in each bill as to who is responsible for certain things. We need to be sure what works for all parties involved. We will go back through the bills to make the language consistent. For example, section 22 in S.B. 100, is section 26 in S.B. 325, and section 10 in S.B. 438. They are different references, but they do the same thing. One references the commission and one references the division. We need to make sure of the best way to do this. It is my understanding there would be layers. First to the ombudsman, then if needed to the ADR, then perhaps the commission, then the next level is either district court, or the Real Estate Division. The public needs to know how this works, and it has to be in print and mailed to home owners in associations.

SENATOR NEAL:
What would be the time line?

CHAIRMAN TOWNSEND:
What kind of timeline do you want it to have?

SENATOR NEAL:
Enough time after the ombudsman is contacted to go through all the steps.

CHAIRMAN TOWNSEND:
That is in all these bills. What do you think is fair?

MS. DEVRIES:
I think the timeline would depend on the complexity of the situation. There are certain timelines that need to be spelled out in statute as to notice time frames for hearings and other similar things. I went through all the bills, and have made suggestions on lobbyist Michael Buckley's amendment, which is being incorporated into S.B. 100. There are some time frames that need to be adjusted, and some reduced, to assist in a speedier process.

SENATOR NEAL:
To paraphrase the Chairman's statement of yesterday, I would hate to see us bogged down in the outskirts of the resolution.

SENATOR O'CONNELL:
Mr. Chairman, I think the most efficient thing we could do is use the time line that Ms. DeVries has developed. She deals with these issues on a regular basis and knows what is required.

CHAIRMAN TOWNSEND:
Mr. Powers, we are likely to have an amendment to S.B. 100 sometime within the next couple of days. There are things in the bill now that will not remain. Let me give you an example. Since we are amending the bill, and there are three bills with three names, should we make it a committee amendment and turn it into a committee bill? We should make a separate list of changes from what you are drafting, in particular section 17 in S.B. 325, which has to do with data gathering. This will help the process, since you are already drafting an amendment to S.B. 100 with multiple issues.

KEVIN POWERS, COMMITTEE COUNSEL:
"Certainly at this stage, drafting can incorporate many of these ideas that have been discussed today. I can save them for a later time as well."

CHAIRMAN TOWNSEND:
Let me ask Senator O'Connell and Senator Schneider, since they brought the two bills forward. There are certain things of which we are aware. That is a commission concept. Does the amendment to S.B. 100 change the commission in any way in which we are not familiar?

MR. POWERS:
"It does not. It is based on information that Michael Buckley had presented."

CHAIRMAN TOWNSEND:
Mr. Powers, I suggest, if you can, to include section 17 from S.B. 325, if that is all right with the committee, which deals with gathering data. Ms. DeVries, did you submit the timelines for the purpose of this amendment?

MS. DEVRIES:
Actually, I submitted them to Michael Buckley, since it was his amendment.

CHAIRMAN TOWNSEND:
Would you check with Mr. Powers to make sure, since Senator O'Connell said your expertise gives us a sense of the timelines? We will look at those timelines to make sure we are happy with them. Committee, now that we have this side-by-side comparison (Exhibit C), find things that have not been contemplated that have merit and substance to recommend for the final amendment. We will then have a list of things we did not find. As the bill goes through the Assembly side, Mr. Powers and Mr. Young can use that list to develop the best way to process those items.

SENATOR O'CONNELL:
I would like us to get a feel for section 51. I know the group is unhappy about subsection 12 where it would apply across the board, but I think it is important for us to establish the fines, and the capping of them. Does anyone have any opposition to section 51, subsection 3, on page 17?

CHAIRMAN TOWNSEND:
Is it your intent to deal with assessments that are ultimately able to go to foreclosure, or is your issue to deal with caps on fines?

SENATOR O'CONNELL:
Caps on fines. Deal with them first.

SENATOR SCHNEIDER:
I like caps on fines. We have to keep in mind the fines on the custom lots that have not been built out are huge. I do not have a problem with what is in the bill. Some of the developers say they want to be able to fine the people $10,000 to $50,000 or more as an inducement to get the property owner to build on these custom lots.

SENATOR O'CONNELL:
If there is no contractual agreement when the property is sold that there is a timeline when the property must be developed, then no fines. But if there is a timeline stipulation in the purchase agreement, we cannot go outside of an existing binding contract.

SENATOR SCHNEIDER:
When we wrote the existing law, we never considered custom lots. I think we have now capped those custom-lot fines at $500, and from what I have been told, that has created a problem. Some associations have fines up to $30,000 or more, and approached me on it. I told the association we threw out the net and brought in everyone, and they are in violation of the law. If you would like to exempt those in the bill, that is all right with me.

MR. YOUNG:
In conjunction with this discussion, the committee might want to look at section 31 in S.B. 100, and section 18 in S.B. 438, page 18 (Exhibit C). The last section on the page deals with enforceability of fines. Now go to page 27, section 42 of S.B. 100, and section 31 of S.B. 438. Pages 18 and 27 deal with the issue of fines and cumulative fines. You might want to keep in mind what is in the other two bills as you discuss S.B. 325.

MR. MAGRATH:
Senator O'Connell's bill discusses costs added to fines. I think we discussed earlier that I do not have a disagreement with limiting the collection costs that can be added to fines, and I think we have distinguished assessments. It is cheaper to park your big motor home in the street than to rent a space elsewhere. If you put a cap in, you are, in effect, rewarding the wealthier home owners who can afford to pay the fines to ignore the rule.

SENATOR HARDY:
I think that is the case in the circumstance brought up by Senator Schneider. I have a problem with someone moving into a community they anticipate being

developed over time under the assumption of contractual agreements and are not. I do not have a problem with huge fines in that case, because that has a negative impact of everyone's property values. I had that situation with my home owners' association when I moved in to it. There was property under litigation, and I was told that once it was resolved, they would move forward. For someone to sell a lot as land speculation would bring down the value of surrounding property. I would not want to see that included in the capping of fines.

MR. POWERS:

> Currently, as S.B. 100 is proposed and is being processed, one of the things the subcommittee decided to do was to incorporate A.B. 43 into the proposed amendment. What A.B. 43 does is take construction penalties out of the concept of being a fine. It creates a different category, and then allows those construction penalties to be imposed based on the separate category of construction penalties. So, the fines, other than construction penalties, can be dealt with differently.

CHAIRMAN TOWNSEND:
There are really three issues. There is either a contractual obligation to build when you buy the lot, or there is not, or it is silent and someone changes it after they have purchased the lot. You know what the rules are when you sign, or you do what you want because there is no contractual obligation, and the third thing is where the problem lies. We have to make sure that is handled. There are some places that do not have an obligation to build within a certain time that works well, because the lots are clear and clean and kept that way. There are those that do not have an obligation to build that are a nightmare with trash, weeds, and other things.

SENATOR O'CONNELL:
Are we okay with section 51 up through subsection 12 on page 18?

CHAIRMAN TOWNSEND:
Those are dealing with fines, and not with assessments.

MS. SCOTT:
I do not think that is clear at this point.

CHAIRMAN TOWNSEND:
It is not going to be associated with assessments; it will be associated with fines. The subcommittee has carved out this construction issue or vacant land issue. In S.B. 438, section 32, and in section 43 of S.B. 100, it covers the staggered terms of boards. In the case of S.B. 100, it provides for staggered terms of office.

MR. SMITH:
The other thing is the way the commission is set up now, I would not be eligible because I do not live in my condominium community, but I am a home owner.

CHAIRMAN TOWNSEND:
Are you saying under S.B. 100 you would not qualify?

MR. SMITH:
Under Senator O'Connell's bill it says you have to live in the residence, not just own it. I think you need to be an owner, but you do not have to be a resident. You could still be effective on the commission.

SENATOR O'CONNELL:
When we were going through this discipline the last session, we heard complaints because of developers who still had homes in the division, but were absentee owners. During the debate there was a lot of conflict, and it was thought somebody who lived on the premises would be much better.

MR. SMITH:
I agree with that. The thing a developer has a position, as a developer, to be on the commission, but I think it bars other people.

CHAIRMAN TOWNSEND:
If you ever served as a board member, then you would qualify under section 12, subsection 2, paragraph (a) of S.B. 325.

MR. SMITH:
What I am trying to make sure is that there are good, responsible home owners, because this will be a tough job. It will take a lot of hours and a lot of work, and there are good home owners that do not live in the complex, but are involved there. I want to make sure these people are not barred from serving.

CHAIRMAN TOWNSEND:
Under section 12 of S.B. 325 it says, "One member who is a unit's owner residing in this State… ."

MR. SMITH:
That one I will take. Before we get to the commission, I have a concept that we have a hearing group in both northern Nevada and southern Nevada made of developers, owners, board members, and professional managers that hear complaints from their respective areas. There may be 15 people in a pool. When there is a conflict requiring a hearing, the ombudsman would review the pool of names for a possible conflict of interest, then select people for the hearing. The hearing could be once a week or once a month. Those involved in the conflict are heard by this subcommission hearing group. If the issue cannot be resolved, it would go to the commission. I can tell you that just having a commission would not have time if they met every day to hear all the issues. The concept behind this proposal is that the issues in the north are different than the issues in the south, and that is why each hearing group would be made up of people from that area.

CHAIRMAN TOWNSEND:
Let me see if I can interpret this. You are saying that before an issue goes to the commission, there would be two groups of people geographically separated because of the geographic differences. That is a pool of people to pull from to hear a complaint before it ever gets to the commission where there are de novo issues, et cetera. Is that the kind of concept?

MR. SMITH:
It would be a pool, so if someone is from the same association as those with the complaint, you could pick another to serve. I think a group of five people who would be trained to talk to the home owner and the others involved to resolve the issue. If the group cannot solve the complaint, then it would go to the commission. I got the concept from lawyers who have a pool to serve on the disciplinary panel, and they rotate service.

MS. SCOTT:
I want to point out that I believe in the commission language there is an opportunity for the commission to appoint a hearing panel to deal with that kind of thing.

CHAIRMAN TOWNSEND:
I think his point is he wants people from the section of the community who would understand that a roof problem in northern Nevada is substantially different from a roof problem in southern Nevada, or snow removal issues in the north versus flood control issues in the south. Those are serious, separate issues that have geographic implications. That might be done within the context of what is currently in the commission proposal. I think his idea has merit, and we need to pursue it, because there is some common sense here.

MR. SMITH:
If this concept is adopted, and each side gets to look at the other and see where the abuses are, then maybe it will reduce the number of complaints.

CHAIRMAN TOWNSEND:
Mr. Powers, did you address the issue of the commission in redrafting the bill, or is it intact as it is?

MR. POWERS:
"The commission, I think, is being shaped as we speak now."

CHAIRMAN TOWNSEND:
I am talking about what you drafted. Does that affect the current S.B. 100 commission?

MR. POWERS:
"It does make changes to the commission."

CHAIRMAN TOWNSEND:
Then when we get that, we will deal with those changes.

MR. KAPLINSKY:
I would urge the Senators to consider a clause that allows the Governor to remove a commission member without cause. There may be people on the commission who are not doing the job, or doing something the Governor may not want them to do.

CHAIRMAN TOWNSEND:
The Governor has to establish it is for a cause, and then he can remove that member. You do not want to remove someone without cause, because that

becomes a personality issue, and you end up in federal court. Now we are adjourned at 10:27 a.m.

RESPECTFULLY SUBMITTED:

_____
Laura Adler,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chairman

DATE: _____

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Senate Bill 100 (2003 Legislative Session)		Senate Bill 325 (2003 Legislative Session)		Senate Bill 438 (2003 Legislative Session)	
Section No.		Section No.		Section No.	
1	*Technical*	1	Same	1	Same
2	*"Certificate" means a certificate for the management of a common-interest community issued by the Division pursuant to NRS 116.31139.*	2	*"Certificate" means a certificate for the management of a common-interest community issued by the Commission.*	2	*"Certificate" means a certificate for the management of a common-interest community issued by the Division pursuant to NRS 116.31139.*
3	*"Commission" means the Commission for Common-Interest Communities created by section 9 of this act.*	3	*"Commission" means the Commission for Common-Interest Communities.*	3	*"Community manager" means a person who provides for the management of a common-interest community.*
4	*"Community manager" means a person who holds a certificate or permit and provides for the management of a common-interest community.*	4	Same	4	Same
5	*"Division" means the Real Estate Division of the Department of Business and Industry.*	6	Same		
		5	*"Complaint" means a complaint of a violation of a provision of this chapter filed pursuant to section 28 of this act.*		
		7	*"Hearing panel" means the hearing panel designated by the Commission to conduct a hearing on a complaint pursuant to the provisions of section 15 of this act.*		
6	*"Management of a common-interest community" means the physical, administrative or financial maintenance and management of a common-interest community, or the supervision of those activities for a fee, commission or other valuable consideration.*	8	Same	5	Same
		9	*"Ombudsman" means the Ombudsman for Owners in Common-Interest Communities.*		
		10	*"Party to the complaint" means:* *1. The person filing the complaint.* *2. The person against whom the complaint is filed.* *3. The Division.*		
	"Permit" means a permit to engage in property management issued pursuant to the provisions of chapter 645 of NRS.	11	Same	6	Same
	Displaying the Flag *1. Notwithstanding any provision of the governing documents to the contrary, and except as otherwise provided in subsection 2, a unit's owner may display a*				

KENNY C. GUINN
Governor

SYDNEY H. WICKLIFFE, C.P.A.
Director

STATE OF NEVADA

GAIL J. ANDERSON
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
www.red.state.nv.us

PROCESS OF RESOVLING COMPLAINTS IN COMMON-INTEREST COMMUNITIES AFTER SB100 IMPLEMENTATION

Step No. 1

Contact the Ombudsman's office for assistance in understanding rights, responsibilities and roles units owners and board members have when living in common-interest communities.

Step No. 2

Apply the knowledge gained from the assistance in step no. 1 to attempt to resolve the matter on your own.

Step No. 3

If you are unable to resolve the matter on your own, you may file a complaint with the Ombudsman's office requesting that they assist you in resolving the complaint.

Step No. 4

The Ombudsman's office will:
- **facilitate communication** between opposing parties ;
- **seek information about the problems and review the facts;**
- **mediate discussions aimed at resolving conflicts;**
- **negotiate solutions to problems; and**
- **make a recommendation** on how to solve the complaint.

Step No. 5

The opposing parties may:
- **Accept the recommendation made by the Ombudsman's office** and resolve the complaint; **or**
- **If the complaint involves violations of NRS 116, may ask that the Ombudsman's office refer their file to the Compliance Section to have an investigation conducted and if the investigation results in a conclusion that violations exist have a formal Complaint for Disciplinary Action filed with the Commission for Common-Interest Communities; or**
- **If the complaint involves violations of the governing documents of an association, but not violations of NRS 116, file an ADR claim pursuant to NRS 38.300-360.**

Often times matters may have overlapping issues and you may have to file the complaint with the commission concurrently with the ADR claim (not possible in current version of SB100, Sec. 11).

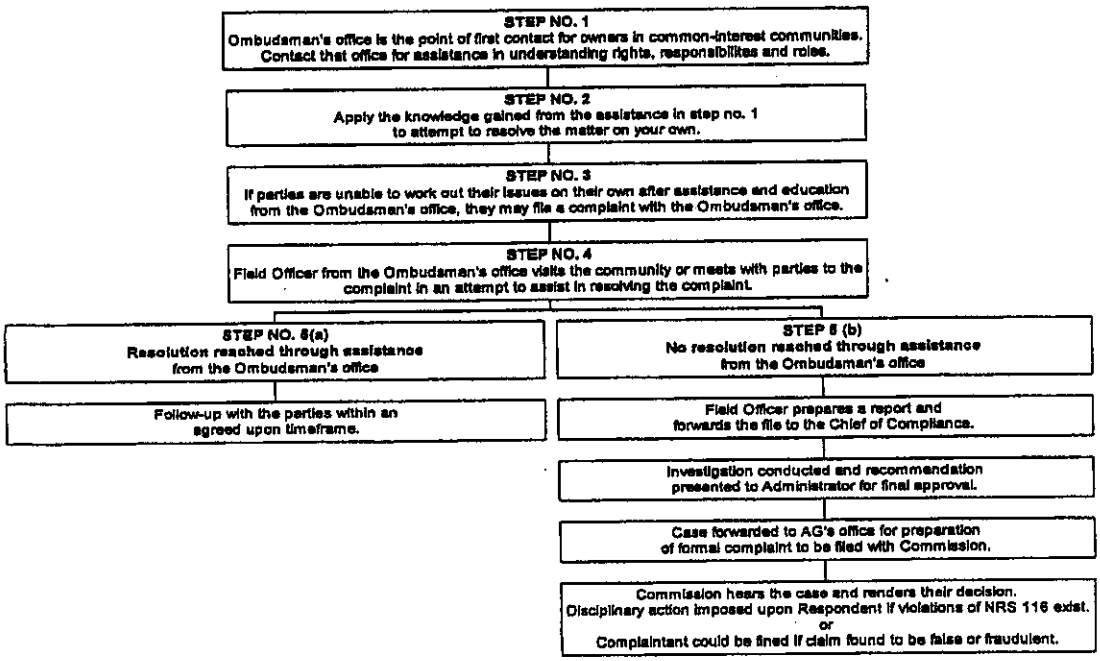


EXHIBIT H Senate Committee on Commerce/Labor

Date: 3/26/03 Page 1 of 2

2501 E. Sahara Avenue, Suite 102 Las Vegas, Nevada 89104-4137 Telephone: (702) 486-4033 Fax: (702) 486-4275

Ombudsman's Office

Point of first contact for homeowners and board members.

- **** Staff in Ombudsman's office informally and impartially work with homeowners and boards and assist them in resolving their complaints without cost and/or civil or disciplinary action by recommending a solution(s) to the parties.***
- **** Compile and maintain data relating to the number of liens foreclosed on units within common-interest communities for failure to pay assessments levied against those units.***
- **** Compile and maintain data relating to whether a study of the reserves of the association exists and if so, the date on which it was completed.***
- Staff in the Ombudsman's office and contractors **provide training** to homeowners and board members throughout the state to empower them with the knowledge they need to live harmoniously within their communities.
- Staff in the Ombudsman's office **prepare and distribute materials they publish** to assist homeowners and board members in understanding their rights, responsibilities and roles.
- Assist with the **ADR** process as outlined in NRS 38.300-360.
- Compile and maintain **a registration of each association** organized within the State.

*** Items in italics would be added duties to the Ombudsman's office through SB 100.**

Compliance Section

Investigates complaints not resolved by assistance through the Ombudsman's office where the parties have chosen the path to the Commission seeking disciplinary action.

- **Investigates complaints** referred to them by the Ombudsman's office after an attempt to resolve the complaint is unsuccessful. The Chief of Compliance makes a recommendation to the Administrator as follows:
  - The matter to be referred to the Attorney General's office and a **formal Complaint for Disciplinary Action be filed against the Respondent with the Commission for Common-Interest Communities;**
  - The complaint is **false or fraudulent** and that the Commission should consider **fining the complaintant;** or
  - The matter **does not involve a violation of NRS 116** and that an ADR claim be filed pursuant to NRS 38.300-360.

2501 E. Sahara Avenue, Suite 102 Las Vegas, Nevada 89104-4137 Telephone: (702) 486-4033 Fax: (702) 486-4275

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Second Session
March 31, 2003

The Committee on Government Affairs was called to order at 8:19 a.m., on Monday, March 31, 2003. Chairman Mark Manendo presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A was the Agenda. Exhibit B was the Guest List. All exhibits were available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Mark Manendo, Chairman
Mr. Wendell P. Williams, Vice Chairman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Tom Collins
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mr. Ron Knecht
Mrs. Ellen Koivisto
Mr. Bob McCleary
Ms. Peggy Pierce
Ms. Valerie Weber

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Walter Andonov, Clark County District No. 21
Assemblywoman Sharron E. Angle, Washoe County District No. 26
Assemblywoman Dawn Gibbons, Washoe County District No. 25
Assemblyman Josh Griffin, Clark County District No. 29
Assemblyman Don G. Gustavson, Washoe County District No. 30

Chairman Manendo added that a similar bill, SB 359, was currently moving through the Senate.

Assemblyman Walter Andonov, Clark County District No. 21, from Henderson, Nevada, said he fully supported this legislation. Especially at times like this, when our country was at war, people wanted to show their support for troops and for the United States, and it was not right that they could not display the flag on their own homes.

Assemblyman McCleary asked if they had considered adding language to include displaying the Service Star and the Gold Star emblems, in addition to the American flag. He said if you have a son or daughter who was in the service, you would display a service star; and if one were killed, you would display the gold star.

Assemblyman Griffin said that these emblems had not been included, but if the desire were there, he would be in favor making this change and of any act to show support for the country and the troops.

Chairman Manendo asked if there was a size limitation on the flags. Mr. Griffin said that there was not, but he would check the amendment.

Assemblyman Christensen thanked both the Assemblymen for coming to the Committee, and said he heard General Norman Schwarzkopf speak recently to legislators. Two things he said citizens could do to show support were to tie a yellow ribbon or fly the flag.

Assemblywoman Weber also thanked the two Assemblymen for bringing the bill, and said it was overdue. She wanted to know if there would be problems adhering to the proper decorum for flying a flag, and if the strict guidelines might provide homeowner associations an opportunity to fine residents for improper display.

Assemblyman Griffin said that the amendment would answer that question, and deferred to Assemblyman Andonov. He said there was some decorum on how to fly the flag, but as long as it was done properly, the bill would not be misused or misinterpreted.

Bill Gregory, Howard Hughes Corporation referred the Committee to the proposed amendment (Exhibit P), which he said would accomplish two things.

- First, it would mandate that the flag could be displayed consistent with U.S. Code, Title 4, Chapter 1, Sections 1 through 10. This

code specifies things like, the flag must not touch the ground, should be illuminated at night, and must be repaired or burned if it was tattered.

- Second, it would allow an association to adopt rules reasonably restricting the placement and manner of display of the United States flag by the unit's owner. This would not restrict flying a flag, but it would disallow extreme situations.

Chairman Manendo asked if Mr. Gregory was present during the S.B. 359 hearing. Mr. Gregory answered that he was, and he presented the same amendment. He said that S.B. 100 also contained similar language.

Chairman Manendo noted that Section 11 in S.B. 359 was different. Mr. Griffin said that they would work with anyone, including the Senate, and proceed at the direction of the Chairman. The Chairman said he would discuss the bill with the Chairman of the Senate Government Affairs Committee.

Chairman Manendo asked that a letter from Christy Malone (Exhibit Q) be included for the record and closed the hearing on A.B. 408.

Assemblyman Collins noted that he had reached resolution on the two bills regarding manufactured housing. He said those bills could go into a work session at any time.

Assemblyman McCleary said he had read the minutes and returned them to the Chairman. Chairman Manendo thanked Mr. McCleary.

Chairman Manendo thanked the Committee, and noted that there was no Floor Session tomorrow, and adjourned the meeting at 10:57 a.m.

RESPECTFULLY SUBMITTED:

_____
JoAnn Aldrich
Committee Secretary

APPROVED BY:

_____
Assemblyman Mark Manendo, Chairman

DATE: _____

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The Howard Hughes Corporation℠

An Affiliate of THE ROUSE COMPANY

March 28, 2003

To: Assembly Government Affairs Committee
Honorable Mark Manendo, Chairman
Wendell Williams, Vice Chairman
Committee Members: Kelvin Atkinson, Tom Collins, Ellen Koivisto, Bob McCleary, Peggy Pierce, Chad Christensen, Pete Goicoechea, Tom Grady, Joe Hardy, Ron Knecht, Valerie Weber.

Cc: Bill Gregory, Lobbyist
Dan Van Epp, President, Howard Hughes Corporation

From: Pamela Scott
Summerlin

Re: Suggested Amendment to AB 408

I would like to express my support of AB 408 and suggest that minor amendments be considered for this bill to make is consistent with SB 100, (an amendment to NRS 116 being considered by the Senate Commerce and Labor Committee) and to assure that our flag is flown with proper respect, consistent with the US Flag Code, Title 4, Sections 1-10.

My suggested amendments are as follows:

Page 2, Section 1, Subsection 4. Add the following language:

(c) Displayed in a manner consistent with US Code, Title 4, Chapter 1, Sections 1-10.

Page 3, Section 3, Subsection 4. Add the following language:

(c) Displayed in a manner consistent with US Code, Title 4, Chapter 1, Sections 1-10.

Page 3, Section 4: Add a new Subsection 2 as follows:

2. An association may adopt rules reasonably restricting the placement and manner of display of a flag of the United States by a unit's owner.

Page 3, Section 4:

Renumber Subsection 2 as Subsection 3
Renumber Subsection 3 as Subsection 4
Renumber Subsection 4 as Subsection 5

ASSEMBLY GOVERNMENT AFFAIRS
DATE: 3-31-03 ROOM: 3143 EXHIBIT P
SUBMITTED BY: ASSEM. JOSH GRIFFIN
PAGE 1 OF 2

Amendments to AB 408, cont.

Page 3, Section 4, Subsection 4 (new Subsection 5), add the following language:

(c) Displayed in a manner consistent with US Code, Title 4, Chapter 1, Sections 1-10.

Page 4, Section 5, Subsection 4: Add the following language:

[c] Displayed in a manner consistent with US Code, Title 4, Chapter 1, Sections 1-10.

Page 6, Section 8, Subsection 4, Add the following language:

[c] Displayed in a manner consistent with US Code, Title 4, Chapter 1, Sections 1-10.

Thank you for your consideration of these amendments.

EXHIBIT P
PAGE 2 of 2

MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-second Session
April 8, 2003

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 7:18 a.m., on Tuesday, April 8, 2003, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4401, 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Warren B. Hardy II, Vice Chairman
Senator Ann O'Connell
Senator Raymond C. Shaffer
Senator Joseph Neal
Senator Michael Schneider
Senator Maggie Carlton
Senator Raymond C. Shaffer

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Kevin Powers, Committee Counsel
Maryann Elorreaga, Committee Secretary
Makita Schichtel, Committee Secretary

OTHERS PRESENT:

Karen D. Dennison, Lobbyist, Lake at Las Vegas Joint Venture
Tammy Devries, Acting Deputy Administrator, Real Estate Division, Department of Business and Industry
Pamela Scott, Lobbyist, The Howard Hughes Corporation
David Smith, Lobbyist, Las Vegas Chamber of Commerce
William A.S. Magrath II, Lobbyist, Caughlin Ranch Homeowners Association
Michael S. Trudell, Lobbyist, Caughlin Ranch Homeowners Association
Karen Brigg

Kevin Ruth
John Briggs
Paul J. Enos, Lobbyist, The McMullen Strategic Group
Mark Kaplinsky
James L. Jackson, Lobbyist, Association of Health Insurers of America and Consumer Data Industry Association
David Stone
John McGlamery, Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General
Chris MacKenzie, Lobbyist, American Express

CHAIRMAN TOWNSEND:
We will begin the meeting with Senate Bill (S.B.) 100. Dan Jaggers sent a handout, "The Village News," to be part of the minutes (Exhibit C). Staff has provided a working document for this bill titled "Work Session Information Senate Committee on Commerce and Labor" (Exhibit D. Original is on file in the Research Library). Small changes such as defining the difference between a commission and a division will be addressed in further amendments. On page 16 of the work session document, a violation will now result in a $5000 fine, which was previously a $1000 fine. On page 22, line 11, Mr. Ashleman requested paragraph (b) be removed. Is that correct, Ms. Dennison?

SENATE BILL 100: Makes various changes to provisions governing common-interest communities. (BDR 10-29)

KAREN D. DENNISON, LOBBYIST, LAKE AT LAS VEGAS JOINT VENTURE:
Yes, we have a joint amendment proposed by Mr. Ashleman and me (Exhibit E).

CHAIRMAN TOWNSEND:
By removing paragraph (b) of subsection 1, the executive board and any master association would not have to approve the transient use of the unit.

SENATOR NEAL:
There is an exemption for hotels. If we remove paragraph (b) from page 22, line 11, are we saying hotels are not included?

CHAIRMAN TOWNSEND:
I hope not. Are we addressing time-shares, or units inside an association used for transient purposes?

MS. DENNISON:
We are only addressing units in an association used for transient purposes. This does not apply to condominiums or time-shares, but only to planned communities.

CHAIRMAN TOWNSEND:
I believe this was the issue dealing with the country club concern?

MS. DENNISON:
Yes. You are referring to Lake Las Vegas, a master-planned resort community. It also deals with owning hotels as part of the master association.

CHAIRMAN TOWNSEND:
On page 28, section 54 of the work session document, there is a question about removing the rural-agriculture residential, common-interest community exemption. The language was originally written as a result of a debate about larger developments with 40-acre parcels. The exemption applied if the parties behaved appropriately. It was suggested we leave the exemption in, but add a provision stating they must operate under the open meeting law. In this amendment, the exemption was left in place.

MS. DENNISON:
We want to keep the exemption in place. If a community were operating a water system, they would have to comply with all provisions of chapter 116 of *Nevada Revised Statutes* (NRS) if they were not exempt.

CHAIRMAN TOWNSEND:
Do we have anyone here to represent rural associations?

SENATOR SCHNEIDER:
Sam McMullen represented an association in Fernley. There was an issue in Elko with Spring Creek.

CHAIRMAN TOWNSEND:
Are you receiving any complaints from any rural associations?

TAMMY DEVRIES, ACTING DEPUTY ADMINISTRATOR, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS AND INDUSTRY:
I do not believe so.

MS. DENNISON:
I would like to leave in the exemption. I do represent an association which operates a water system on the Carson River. It would be unduly burdensome for them to have to comply with all provisions of NRS 116.

CHAIRMAN TOWNSEND:
We will leave the exemption in as we pass this bill to the Assembly. Are there any other technical suggestions?

PAMELA SCOTT, LOBBYIST, THE HOWARD HUGHES CORPORATION:
The language in section 62, subsection 5 of the work session document, needs a technical adjustment to meet our intent. A manager, whether employed by the association, a management company, or by a declarant, could not sit on the board of directors if they managed the community. Nor could a manager for a sub-association subject to a master board sit on that board. Current language suggests a direct employee to an association would not be able to sit on the board, not a management company employee or declarant.

CHAIRMAN TOWNSEND:
Mr. Powers, do you understand the issue of defining employees so we do not have a conflict of interest?

KEVIN POWERS, COMMITTEE COUNSEL:
"Yes. We will have to adjust the language."

CHAIRMAN TOWNSEND:
In prohibiting people from serving in two capacities, we only mention employees, and not someone from a management company inside a sub-association serving on a master association.

MS. SCOTT:
Correct. It does not apply to all managers; just the direct employees of the association.

CHAIRMAN TOWNSEND:
We want to broaden the language so there is no conflict of interest.

DAVID SMITH, LOBBYIST, LAS VEGAS CHAMBER OF COMMERCE:
I would like to add a person with a financial interest in the company, whether employee or not, cannot serve as a member of the executive board. What about association managers who live in the complex? They would have access to all records that the board members have, which are not privy to home owners. An association manager would be above other home owners by having this information.

CHAIRMAN TOWNSEND:
We have not dealt with the issue of financial interest in our amendment. Financial interest would also cause a conflict of interest. A part-owner in a management company might not be employed by the company.

MR. SMITH:
A developer who owns part of a management company, but is not an employee of the company, could sit on the board. I know of a management company that has three partners, one of whom lives in the development he manages. As it stands, a person can claim they are not an employee, so they are exempt and can sit on the board, with an inside position.

WILLIAM A.S. MAGRATH II, LOBBYIST, CAUGHLIN RANCH HOMEOWNERS ASSOCIATION:
Do not make the language so broad that a manager cannot live in the association. We would love to have a manager live in our association.

MR. POWERS:
"Are we addressing a controlling financial interest, or any financial interest?"

MR. SMITH:
I suggest any financial interest of 10 percent or more.

CHAIRMAN TOWNSEND:
If a person has a financial interest, they should declare that interest.

MICHAEL S. TRUDELL, LOBBYIST, CAUGHLIN RANCH HOMEOWNERS ASSOCIATION:
On page 28, lines 5 to 7 of the work session document, costs of educating the board are not specified. Are these costs implied in the language?

MR. POWERS:
"I believe those costs are covered. The duties required of the commission are set forth in other sections of the bill. To carry out those duties would be the cost and expense of the commission."

MR. SMITH:
I am disappointed the fines were reduced to $1000.

CHAIRMAN TOWNSEND:
We do not wish to prohibit people, but to make them aware. Once educated, they can make the appropriate decision.

KAREN BRIGG:
I am with Eugene Berger Management Corporation. On page 53, beginning on line 14 of the proposed amendment, there is some confusion on the requirements of a quorum.

MS. DENNISON:
A person would be prohibited from voting for nonpayment of dues. You would only count those eligible votes to elect the executive board.

MR. MAGRATH:
If an association has 2000 members, of which only 500 members vote, a section of this bill allows those 500 votes to count, or the person with the most votes wins. I hope it does not mean 20 percent of the votes that may be cast for the election of a board member count, since there is no quorum requirement. Are we saying 20 percent of the lower number is sufficient? I think the intent is to take 20 percent of the votes that may be cast in the entire election. If the intent is to include everyone eligible to vote, that is fine.

MR. POWERS:

> A good starting point would be to look at existing law in subsection 1. It addresses the 20 percent quorum requirement. Subsection 2 tracks the existing language. Depending on how the existing language has been interpreted, the subsection 2 provisions would be interpreted the same way. If the existing language has been sufficient to operate the homeowners' association, then subsection 2 does not change any component of subsection 1.

MR. MAGRATH:
I just want ensure the intent is clearly on the larger number, not the smaller number of votes counted.

CHAIRMAN TOWNSEND:
The question is whether the 20 percent of votes are those votes cast, or only those votes which might be eligible.

SENATOR O'CONNELL:
The term eligible needs to be clarified.

MR. MAGRATH:
If the bill used the word eligible, it would be clearer.

MR. POWERS:
"To be clear, on page 53 line 12, we are changing 'entitled' to 'eligible'."

MR. SMITH:
When the home owner goes through title closure and receives his Covenants, Conditions and Restrictions (CC&Rs), he is entitled to be provided with NRS 116. Many CC&Rs are out of date. The title company needs to provide a copy of rules and regulations, CC&Rs, and NRS 116. A budget must be done before escrow closes.

CHAIRMAN TOWNSEND:
We could add a requirement for a title company to give a copy of the home owner's CC&Rs, to include not necessarily a copy of NRS 116, but at least a notice informing buyers of NRS 116.

SENATOR HARDY:
I agree. Many people are unaware their CC&Rs are governed by State law. They think homeowners' associations are a stand-alone entity. The reason I brought forth S.B. 136, I had referenced NRS 116 and recognized these problems. I agree there could be a reference of NRS 116 given at title closure.

KEVIN RUTH:
I am here on behalf of Community Association Institute/Legislative Action Committee. Perhaps the appropriate area to add this language would be in the seven-questions segment of the bill on page 78 of the work session document,

which addresses living in a homeowners' association. This is currently required as part of the seller's package.

CHAIRMAN TOWNSEND:
In NRS 116.41095, it explains what a potential buyer needs to know before he purchases property in a common-interest community.

MR. POWERS:
"On page 78, lines 9 and 10, it specifically refers to the laws of the State."

CHAIRMAN TOWNSEND:
It reads, "You have certain rights regarding ownership in a common-interest community that are guaranteed you by the State." It then lists those rights, followed by seven questions. Then the bill requests the buyer's initials and the date.

JOHN BRIGGS:
I am here for Elk Point Country Club. On page 70, line 4 deals with personnel records, "except for those records relating to the salaries and benefits of those employees." I am going to submit an amendment to the Assembly, which will not block out all employee information except relating to salaries and benefits. Our club has a problem obtaining work logs. This is a technical issue which we hope to resolve.

PAUL J. ENOS, LOBBYIST, THE MCMULLEN STRATEGIC GROUP:
I am with the The McMullen Strategic Group representing the Humboldt River Ranch Homeowners' Association. We are pleased you have left in the proposed amendment, on page 29, lines 6 through 9, the section dealing with county populations of 50,000 or less.

MS. SCOTT:
On page 18, line 6 of the proposed amendment, I would like to add to "which is attached to an exterior common element" the word "limited" between exterior and common. Our intent is flagpoles can be placed on patios and balconies. Existing language implies they could also be placed on a three-story building roof. On line 9, we need to add "limited" before "common element." Limited common elements are those the home owner has direct control over. In condominiums and multi-story buildings, patios and balconies are described as limited common elements, as the owner has exclusive use of those areas. The

roof of a three-story building would also be a common element, but not a limited common element.

If you live in a house, you can put a flagpole on the porch or wherever you like, because your unit includes the entire lot. In a condominium, the unit includes the interior of the unit and the limited common element, which is the patio or balcony.

MR. POWERS:
"The term limited common element is defined in NRS 116. It is has specific statutory meaning."

SENATOR SCHNEIDER:
Perhaps Ms. Scott could meet with interest groups to make sure the technical concerns heard today are included in a proposal.

CHAIRMAN TOWNSEND:
No, I want to move this bill to the Assembly. Ms. Devries has identified the unintended interchanging of the words commission and division. I would like to get the technical suggestions to Mr. Young, who will determine if technical or policy changes are needed. We will then address those changes and move this bill on to the Assembly.

SENATOR SCHNEIDER:
If anyone has technical concerns, the time is now to bring those forward.

MR. TRUDELL:
Is it your intent for the hearing commission personnel to receive per diem expenses? On page 5, lines 15 to 18 do not specify that they do receive per diem expenses.

CHAIRMAN TOWNSEND:
On page 5, line 14 of the proposed amendment, when we discuss independent hearing officer, are we including the people from the Department of Administration?

MR. POWERS:
"Those people would be employees of the commission or the division. As State employees, they should be entitled to the per diem travel expenses that every other State employee is entitled to."

MS. DEVRIES:
The members of the hearing panel would be appointed by the commission, and would be entitled to the per diem costs.

CHAIRMAN TOWNSEND:
Senator Schneider and other members interested in these issues will meet with Mr. Young after he has received all technical changes. Any substantive changes will be brought back to the committee.

SENATOR O'CONNELL MOVED TO AMEND AND DO PASS S.B. 100.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

MR. MAGRATH:
I would like to thank your staff. Mr. Scott and Mr. Young created a working document which we all appreciate.

MARK KAPLINSKY:
On behalf of home owners in Las Vegas, we appreciate the work. This is a great effort.

CHAIRMAN TOWNSEND:
We will now hear S.B. 379.

SENATE BILL 379: Establishes various provisions relating to identity theft. (BDR 52-266)

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The Village News

Dedicated to Better Communication

Minutes and Comments from your Association Meeting of February 2003

Member's Forum: Comments & Suggestions.

Don Lamers was appointed to fill the vacancy created by the resignation of Board Member Jennifer Rice, who had moved away. Don has been active on the committee to update the C, C, & R's in compliance with Nevada laws and to look into the Matich Pool situation with City of Reno.

John Powers of 4700 Rio Poco registered a complaint about a dish antenna about to be installed in front of his unit. He included an E-mail from FCC Consumer Center Response outlining the specific FCC Rule & Regulation.

A letter to the board, from Board Member Robert Scoville, detailing the FCC rules and regulations was read. The matter will be referred to the Committee that is currently updating the C, C, & R's.

A Question regarding installation of Building Letters was raised. The Board President reported that a problem in fitting the new letters is causing a delay, but they will all be installed shortly.

Question brought up regarding light standards for the new mailboxes. The problem will be to arrange the financing.

Approval of Minutes:

The minutes of the meeting of January 16th were approved as read.

Financial Report:

The financials were read by Marcie Mylan and approved as read.

Committee Reports:

Roger Wescott reported on the Landscape committee, not much going on as yet.

Old Business:

President's Message:

We have had several instances of serious damage to the outside plumbing by persons who attempted to turn off the water themselves. Do NOT attempt to do so; the charge to you could be substantial.

The amount of dog feces on the greens is intolerable. I would like to call your attention to the common area between Building N and the creek. It could be that some people are still letting dogs run unattended. This situation can be corrected only with your help and cooperation. Thank you.

Dan Jaggers

EXHIBIT C Committee on Commerce/Labor
Date: 4/8/03 Page 1 of 4

The Village News

Property Manager's Comments:

A 48-hr advance notice is necessary to avoid a 2-hour minimum charge of $40 for turning off your water! Weekend charges, for other than an emergency, will be billed at overtime rates. You may report an emergency at any time of day or night, but be advised that an emergency caused by an occupant will be billed to unit owner!

I might suggest that complaints sent me via E-mail would save us both a lot of time. I assure you that any such message would get my prompt attention. I will see to it that problems are directed to the person or persons who are in a position to handle it. Address your message to cindywebster@ebmc.com Thank you.

Cindy Allen- Webster

Arturo's Corner:

The Building Letters should be installed by the time that you read this. We had to removed the stone walkway that ran from the clubhouse area to the shop; they had been lifted to a dangerous level by tree roots. Grass will be planted where the stones used to be. Most of the lawns have been aerated and thatch removed to prepare for activation of sprinkler system. We are on schedule for the spring season.

Arturo Hurtado

Editor's Comments:

Three messages received via E-mail

1) **Received from Robin Mathews, a suggestion for a Spring Cleanup Day. It sounds like a great idea. I will bring this matter up before the Board.**
2) **A note of appreciation from Phil Hutchings. Thanks Phil, more and better communication is the name of the game!**
3) **A 3-line Japanese style of poetry called "Haiku", by a contributor who prefers to remain anonymous. I am advised that in Haiku, the 1st and 3rd lines consist of 5 syllables, while the middle line consists of seven.. Following is the example submitted, I wish that I could do as well.**

"Shimmering waters
on the pond signals changing
seasons, spring will bloom."

Hopefully, action regarding lighting standards for the new mailboxes can be initiated. I will request that it be on the agenda at the earliest opportunity. It is also my opinion that the TV antenna-dish situation should be remedied, the sooner the better.

The election of Board Members took place at the March Annual Meeting. Don Lamers, Marcie Mylan, and David Smith were elected to the Board, the latter by a write-in vote. Board President Dan Jaggers had made the decision to not seek re-election.

It is my understanding that although Mr. Smith owns several units at Donner Creek, he does not live here. It is my personal opinion that a Unit Owner living on the premises might be more cognizant of problems particular to this Community than one who does not, I could be wrong on this. It is also my understanding that some Common Interest Communities feel the issue important enough to specifically require that Board Members reside in the community involved.

The next Annual Meeting will take place immediately following the regular meeting of April 17th. This meeting requires but 20% attendance in person or by proxy, because a quorum was not met at the Annual Meeting of March 20th.

It would be ironic indeed if, at the coming April 17th meeting, the membership voted to make this issue part and parcel of our C, C, & R's, which are currently being re-written in order to comply with Revised Nevada Common Interest Law. Please make your best effort to attend this meeting, but if you are unable to do so, be certain to sign and send in your proxy naming a person to represent you.

I am not soliciting your proxy, but if you are unable to attend, and if your beliefs are as mine, feel free to indicate me or any other Director or Unit Owner.

We welcome suggestions, criticism, poems, essays, newsy-news items, etc., etc., etc. Please keep it short and keep it clean. Direct written items to Newsletter-Editor, 5005 Reggie Road, or E-mail to Editor21@sbcglobal.net

Important Notice!

The buildings, trees, and shrubs will be sprayed for pests on May 7th & 8th. Please remove all personal items from patios & entrances. Also, please be certain to close all windows.

Robert Scoville

David Smith

From: Bob Scoville [rscov@sbcglobal.net]
Sent: Sunday, April 06, 2003 4:38 PM
To: Mikeal Smith; David Smith; Don Lamers; Marci Mylan
Cc: Cindy Webster
Subject: Re: ASSOCIATION NEWSLETTER

Micheal, The Village Newsletter provides a format for Member's Forum, Board Actions, President's Message, Property Manager's Comments, Arthur's Corner, and Editor's comments. None of these features, including Editor's Comments, require an official majority-opinion of the Board to publish in the newsletter. Editorial Opinions requiring the approval of a Governing Body may be a function of some other forms of government, but not so here in our good old U.S.A; you are wrong to think so. You are free to express you opinion, but if you want it published, please send it to editor21@sbcglobal.net .

WORK SESSION INFORMATION

SENATE COMMITTEE ON COMMERCE AND LABOR

Tuesday, April 8, 2003

BILLS UNDER CONSIDERATION

The following measures will be considered for action during the work session of April 8, 2003, as time allows, or continued to the committee's next regular meeting. In some cases, possible amendments are noted; these were either suggested during testimony or submitted in writing and do not necessarily have the approval of the committee, but are merely compiled here to assist the committee in its deliberations.

Information on the following bills is contained herein:

Senate Bill 100 p 1A

Senate Bill 136 p. 88

Senate Bill 379 p. 106

Senate Bill 399 p. 107

EXHIBIT D Committee on Commerce/Labor

Date: 4/8/03 Page 1 of 107

SENATE BILL 100 (BDR 10-29; Senator Schneider et al.; heard 2/20; subcommittee 2/27, 3/3, 3/6; work session 3/26; NACT)

AN ACT relating to common-interest communities; allowing a unit's owner to display a flag of the United States within the boundaries of his unit; creating the Commission for Common-Interest Communities to hear and take action on complaints related to such communities; requiring community managers to be certified by the Real Estate Division of the Department of Business and Industry; limiting the circumstances under which an association may commence a civil action; revising the amount of a fine that may be imposed for a continuing violation of the governing documents of an association; requiring the removal of a member of the executive board of an association to be conducted by secret ballot; revising the circumstances under which an association may foreclose on its lien for unpaid assessments; changing the time within which certain information must be provided to a prospective purchaser of a unit; making various other changes concerning common-interest communities; and providing other matters properly relating thereto.

Committee Counsel has prepared an 87-page draft amendment that was distributed to the Committee yesterday and made available to interested parties yesterday. A copy is included behind **TAB A**.

SB100

PROPOSED AMENDMENT TO SENATE BILL NO. 100

PREPARED FOR SENATE COMMITTEE ON COMMERCE AND LABOR
APRIL 6, 2003

PREPARED BY THE LEGAL DIVISION

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

Amend the bill as a whole by deleting sections 1 through 66 and adding new sections designated as sections 1 through 94, following the enacting clause, to read as follows:

"**Section 1.** Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 48, inclusive, of this act.

Sec. 2. ***"Certificate" means a certificate for the management of a common-interest community issued by the Commission.***

Sec. 3. ***"Commission" means the Commission for Common-Interest Communities created by section 13 of this act.***

Sec. 4. ***"Community manager" means a person who provides for or otherwise engages in the management of a common-interest community.***

Sec. 5. ***"Complainant" means an aggrieved person who is deemed to be a complainant pursuant to section 31 of this act.***

Sec. 6. ***"Division" means the Real Estate Division of the Department of Business and Industry.***

Sec. 7. ***"Hearing panel" means a hearing panel appointed by the Commission pursuant to section 19 of this act.***

Sec. 8. ***"Management of a common-interest community" means the physical, administrative or financial maintenance and management of a common-interest community, or the supervision of those activities, for a fee, commission or other valuable consideration.***

PROPOSED AMENDMENTS TO SB 100
(April 8, 2003)

Proposed amendment submitted by:

Karen D. Dennison, Esq.
Hale Lane Peek Dennison and Howard
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
Phone: 775-327-3000
Fax: 775-786-6179
E-Mail: KDennison@HaleLane.com

Amend Section 35:

Sec. 35. ***1. If the Commission or the hearing panel, after notice and hearing, finds that the respondent has committed a violation, the Commission or the hearing panel may take any or all of the following actions:***

(a) Issue an order directing the respondent to cease and desist from continuing to engage in the unlawful conduct that resulted in the violation.

(b) Issue an order directing the respondent to take affirmative action to correct any conditions resulting from the violation.

(c) Impose an administrative fine of not more than ~~[$5,000]~~ $1, 000 for each violation.

2. If the respondent is a member of an executive board or an officer of an association, the Commission or the hearing panel may order the respondent removed from his office or position if the Commission or the hearing panel, after notice and hearing, finds that:

(a) The respondent has knowingly and willfully committed a violation; and

(b) The removal is in the best interest of the association.

3. If the respondent violates any order issued by the Commission or the hearing panel pursuant to this section, the Commission or the hearing panel, after notice and hearing, may impose an administrative fine of not more than ~~[$5,000]~~ $1,000 for each violation.

4. If the Commission or the hearing panel takes any disciplinary action pursuant to this section, it may order the respondent to pay the costs of the proceedings incurred by the Commission or the hearing panel, or both, including, without limitation, the cost of the investigation and reasonable attorney's fees.

5. Notwithstanding any other provision of this section, if the respondent is a member of an executive board or an officer of an association:

(a) The association is liable for all fines and costs imposed against the respondent pursuant to this section; and

(b) The respondent may not be held personally liable for those fines and costs.

Amend Section 54:

Sec. 1. NRS 116.1201 is hereby amended to read as follows:

116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this state.

2. This chapter does not apply to:

(a) Associations created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community; ***or***

(2) Facilities for flood control. ~~[;~~ ~~or~~

~~(3) A rural agricultural residential common interest community.]~~ ***(3) A rural agricultural residential common interest community.***

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that ~~[the]~~ ***this*** chapter does apply to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted ~~[,]~~ only if the declaration so provides or ***if*** the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this state, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this state by any party unless exempt under subsection 2 of NRS 116.4101.

(d) ***A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 50,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.***

(e) Except as otherwise provided in this chapter, time shares governed by the provisions of chapter 119A of NRS.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units' owners of the association;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;

(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992; or

(d) Prohibit a common-interest community created before January 1, 1992, ***or a common-interest community described in section 46 of this act*** from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. ~~[For the purposes of this section, the Administrator]~~ ***The Commission*** shall establish, by regulation, the criteria for determining whether an association ~~[is created for the limited purpose of maintaining the landscape of the common elements of a common-interest community, maintaining facilities for flood control or maintaining a rural agricultural residential]~~ ***or a*** common-interest community ~~[.]~~ ***satisfies the requirements for an exemption from any provision of this chapter.***

MINUTES OF THE
SENATE COMMITTEE ON FINANCE

Seventy-second Session
April 30, 2003

The Senate Committee on Finance was called to order by Chairman William J. Raggio, at 8:09 a.m., on Wednesday, April 30, 2003, in Room 2134 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator William J. Raggio, Chairman
Senator Raymond D. Rawson, Vice Chairman
Senator Dean A. Rhoads
Senator Barbara K. Cegavske
Senator Sandra Tiffany
Senator Bob Coffin
Senator Bernice Mathews

GUEST LEGISLATORS PRESENT:

Senator Michael A. Schneider, Clark County Senatorial District No. 11
Senator Ann O'Connell, Clark County Senatorial District No. 5
Assemblyman Jason D. Geddes, Washoe County Assembly District No. 24

STAFF MEMBERS PRESENT:

Gary Ghiggeri, Senate Fiscal Analyst
Mindy Braun, Education Program Analyst
Julie Walker, Committee Secretary

OTHERS PRESENT:

Dino DiCianno, Deputy Executive Director, Department of Taxation
Rick Bennett, Lobbyist, University of Nevada Las Vegas
The Honorable Deborah A. Agosti, Chief Justice, Supreme Court
Ron Titus, Court Administrator and Director of the Administrative Office of the Courts, Office of Court Administrator, Supreme Court
The Honorable Mark Gibbons, Associate Justice, Supreme Court
The Honorable Robert E. Rose, Associate Justice, Supreme Court
The Honorable Nancy M. Saitta, Eighth Judicial District, District Courts of Nevada
The Honorable James W. Hardesty, Second Judicial District, District Courts of Nevada
William A. S. Magrath II, Lobbyist, Washoe County Access to Justice Foundation
Waine Pressel, Executive Director, Nevada Legal Services
Andrew A. List, Lobbyist, Nevada Association of Counties
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
David Smith
Shari O'Donnell, Lobbyist, Plaster Development Co., Inc. dba Signature Homes

ANDREW LIST, LOBBYIST, NEVADA ASSOCIATION OF COUNTIES:
Counties pay for all district court costs, including technological upgrades, except for judges salaries. The Nevada Association of Counties supports this bill. The district courts would receive $8 of the increased fees for technological upgrades.

SENATOR RAGGIO:
I believe someone was going to address how the filing fees compare with other states, and also how the trial court filing fees compare with other states.

MR. TITUS:
I do not have the information on the trial courts. In the area of other supreme courts, the range is from $50 to $300 or $400. There are a dozen states that have fees between $200 and $250 for Supreme Court filings.

SENATOR RAGGIO:
Please make that information available to the staff, and see whether you can get information as to how proposed filing fees would compare with the other western states.

MR. TITUS:
I will do that.

SENATOR RAGGIO:
The hearing is closed on S.B. 106. I did indicate that staff will work with you on some accommodation on the two bills we are talking about to see whether adjustments can be made.

SENATE BILL 100 (1st Reprint): Makes various changes to provisions governing common-interest communities. (BDR 10-29)

SENATOR MICHAEL A. SCHNEIDER, CLARK COUNTY SENATORIAL DISTRICT NO. 11:
This bill unanimously passed out of the Committee on Commerce and Labor and the reason I am here today is for review of the fiscal note. The bill creates a commission for homeowner associations. The Governor would appoint five members to a commission. The commission would react and hear problems between those living in the association and the boards governing the association. It would sit in the capacity of arbitrator or judge.

The industry, homeowners, property managers, and realtors are here today in support. Two years ago another similar bill was passed; the money was there at the time, and we have even more money there now. Each unit of a homeowner's association pays $3 per year into the ombudsman's account. That is the money used to fund this commission. The ombudsman's office has been effective in the past, but the ombudsman has no authority and cannot make a resolution to problems in homeowner's associations, so this commission will have the power to come in and remove board members and discipline people in homeowner's associations. That is how the money will be used.

GAIL J. ANDERSON, ADMINISTRATOR, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS AND INDUSTRY:
We are very supportive of the bill. We have not been able to assist and resolve complaints within the constraints of the ombudsman's office. With the passage

of S.B. 100, that will change. The commission for common-interest communities will assist greatly in an objective party hearing disputes regarding aspects of NRS 116 compliance in following those requirements.

SENATOR RAGGIO:
You provided a brief history and also a revised agency fiscal note. Apparently, in 1997 the office of the ombudsman was created and that required additional staff, a full-time ombudsman, and a half-time administrative assistant. In 1999, the duties of the ombudsman were revised and there were additional responsibilities. Then 2.5 staff members were added at that time to the office. Is that correct?

MS. ANDERSON:
That is correct.

SENATOR RAGGIO:
This bill creates the commission as Senator Schneider referenced, and you now have a fiscal note here. Would you review that for the record? Why do you need some additional staff when staff has been added to deal with the problems?

MS. ANDERSON:
The addition of the commission involves staffing to run the commission as far as scheduling and making all arrangements and taking care of legal requirements for the open meeting law, both pre- and post-aspects, described in the position of administrative assistant III at the bottom of the first page of the revised fiscal note. In addition, S.B. 100 gives the office of the ombudsman additional authority to assist in resolving complaints, and now the ombudsman is the person who answers all questions and phone calls dealing with problems. There is a program officer I who is in charge of the alternative dispute resolution and mediation program. He answers questions and tries to mediate informally.

The additional staff in this fiscal note are program field officers who will be available and assigned as requested. They will visit homeowner association meetings to review records and be proactive in the community. We cannot meet the current requests for help. There is support staff existing now, but they are not people who can answer questions and listen to the kinds of problems and issues encountered. In the fiscal note on page 1, there is an administrative assistant II position, necessary to handle the additional workload for the claims that will be created in dealing with the subsidization of the alternative dispute resolution (ADR) process that is proposed in S. B. 100, and that will be further defined by a regulation adopted if this becomes law.

SENATOR RAGGIO:
You estimated in the fiscal note some 300 claims can be assumed to occur, and there is a cap of $500 on these claims. What kind of claims are these?

MS. ANDERSON:
These are disagreements, disputes, often between a homeowner and a board, on how something is being handled or not handled. Those generally are the claims that we will try to get the parties together, through the ombudsman office or talk separately to each side and reach some resolution and compromise. Sometimes that does not happen. In NRS 116, before someone

can go to a civil lawsuit, they must go through an alternative dispute or mediation process, and that is part of trying to avoid a court situation lawsuit.

SENATOR RAGGIO:
Senator Schneider, what would be an example of some kinds of claims that would be filed against a homeowner's association that would be mediated in this manner?

SENATOR SCHNEIDER:
One example might be a leaky pipe in your condominium unit in which the internal pipes are the responsibility of the condominium association. Many times the board members will say they will not pay for that. People begin fighting over that, and it runs into thousands of dollars. Another example: people leave their garage doors open beyond the accepted time and they get fined, or they leave their garbage cans out. Those seem like minor problems, but they evolve into great battles in these homeowner's associations. In Las Vegas in particular, almost every home built is in an association. The people moving in from out-of-state do not understand homeowner's associations. They do not understand that you cannot paint your house a certain color, you must keep the lawn cut, or you could be sued or fined if there is a brown spot in your yard. We are trying to alleviate the craziness.

SENATOR RAGGIO:
What is the $500 payment? What does that compensate for?

MS. ANDERSON:
There is a filing fee and the arbitrators charge an hourly fee. There is a proposed cap per claimant in the fiscal note, and that would be adopted by regulation.

SENATOR RAGGIO:
How many positions are necessary?

MS. ANDERSON:
There are six positions in the fiscal note, two administrative assistants, two program officers, a compliance audit investigator, and an accounting assistant.

SENATOR CEGAVSKE:
The concerns of some of the homeowner's associations who contacted me indicate that there are just a few delegates who cast votes for hundreds of members. They claim that limits the power of voting. I would like an explanation of that.

SENATOR SCHNEIDER:
What you speak of is delegate voting. In large associations, delegates are elected to represent smaller homeowner associations. There is a problem with delegate voting in the eyes of many homeowners. In many cases a delegate is never even voted on by the homeowners. Sometimes delegates are appointed by the board, which then appears they are under the power of the board, and this delegate voting is not for board of directors nor secret written ballots, but for voting on budgets, expense items, and policy items in associations. Many times homeowners feel left out of the mix because of the delegate voting system.

SENATOR CEGAVSKE:
Is that in the present bill?

SENATOR SCHNEIDER:
That is correct, and I think the chairman is hoping that this commission will help some of the problems go away and we will look at it over the interim.

SENATOR RAGGIO:
In your fiscal note, Ms. Anderson, there is a required cost from the Attorney General's office that is also covered by fees. All of these are covered by the fees, is that correct?

MS. ANDERSON:
That is correct.

SENATOR RAGGIO:
None of this budget is General Fund money. This all comes from the fees that were referenced.

MS. ANDERSON:
That is correct.

DAVID SMITH:
I am on a homeowner's board and have been involved in construction defect litigation and arbitration. I support this bill.

SHARI O'DONNELL, LOBBYIST, PLASTER DEVELOPMENT CO., INC., DBA SIGNATURE HOMES:
Our company builds both multi-family and single-family homes. My position is to maintain a relationship with the homeowners' associations for up to 10 years after completion of the homes. The bill would ensure that the assessment is set correctly and adequately funded for the bigger expenses. We are obligated under NRS 116 to turn over important documents about the association that are helpful to the association and its future management. The reason I bring these things up is before getting a commission if I, as a developer, failed to pay my assessments, and that came out in an audit, litigation would have to take place to recover. This bill will address two things: one, it will help educate the public and raise the level of our performance; and, two, it will resolve the issues quickly.

SENATOR RAGGIO:
This committee is primarily interested in the fiscal note on this, but we appreciate the input.

MR. MAGRATH:
I am the past president of the Caughlin Ranch Homeowner's Association in Reno. I am in full support of S.B. 100.

ANNE GERKEN, HOMEOWNER AND MEMBER OF THE ELK POINT COMMUNITY ASSOCIATION, LAKE TAHOE:
I am in full support of S.B. 100 and would willingly pay the $3 or even more. Because of several problems, one having a lien put on my residence, another not being able to view records, I have experienced the ADR process. Though

settlement agreements have been reached, there are breaches of the agreements, and now I am pursuing my concerns by contacting the office of the ombudsman. That is why I support S.B. 100, because it would give the ombudsman the authority needed to terminate these problems.

SENATOR CEGAVSKE:
To clarify my understanding, this is not General Fund money. Is this fiscal note what it will cost them?

SENATOR RAGGIO:
This is the new fiscal note as to the new positions that will be required as a result of creating the commission, and staff assures me that we are not dealing with General Fund money. This is all funded by fees, and there is a reserve in the existing budget that should be adequate.

SENATOR CEGAVSKE MOVED TO DO PASS S.B. 100 (1st REPRINT).

SENATOR MATHEWS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

*****

SENATE BILL 58 (1st Reprint): Makes various changes relating to hazardous materials. (BDR 40-943)

SENATOR RAGGIO:
This bill was heard previously in the Committee on Natural Resources and it is here because of a fiscal note.

VERNE ROSSE, DEPUTY ADMINISTRATOR, CORRECTIVE ACTIONS, FEDERAL FACILITIES AND WASTE MANAGEMENT PROGRAMS, DIVISION OF ENVIRONMENTAL PROTECTION:
The purpose of S.B. 58 is twofold: Sections 1 through 13 authorize the State Environmental Commission to adopt regulations requiring laboratories, which conduct analysis for hazardous waste and for hazardous waste and regulated substances contaminating soil and water, to be certified. Certification assists the division in assuring that hazardous waste is managed in an appropriate facility and assures that environmental clean-ups are complete. In sections 14, 15, and 16, the commission is authorized to adopt regulations governing above-ground and over-water petroleum storage tank systems used to supply fuel at a marina. Presently there are no design, construction, or maintenance requirements for above-ground tank systems. Implementation of such requirements is expected to reduce the costs of environmental clean-ups and expenditures from the state petroleum fund. The fiscal note submitted, which is to be supported by fees assessed against the laboratories, is for the cost. There is no General Fund impact, nor fiscal impact on the regulation of the above-ground tank systems. We encourage your support.

DR. ROGER SHOLL, LABORATORY DIRECTOR, ALPHA ANALYTICAL, INC.:
We are strongly in support of S.B. 58, including the amendments. There will be no financial impact on the General Fund. The program is currently, and will continue to be, entirely fee-supported.

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Second Session
May 14, 2003

The Committee on Judiciary was called to order at 7:55 a.m., on Wednesday, May 14, 2003. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

Note: *These minutes are compiled in the modified verbatim style. Bracketed material indicates language used to clarify and further describe testimony. Actions of the Committee are presented in the traditional legislative style.*

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. John Oceguera, Vice Chairman
Mrs. Sharron Angle
Mr. David Brown
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Jerry D. Claborn
Mr. Marcus Conklin
Mr. Jason Geddes
Mr. Don Gustavson
Mr. William Horne
Mr. Garn Mabey
Mr. Harry Mortenson
Ms. Genie Ohrenschall
Mr. Rod Sherer

GUEST LEGISLATORS PRESENT:

Senator Michael A. Schneider, District No. 11, Clark County

Senate Bill 100 (1st Reprint): Makes various changes to provisions governing common-interest communities. (BDR 10-29)

Senator Michael A. Schneider, District No. 11, Clark County:
Again, the Senate Committee on Commerce and Labor brings you a lengthy bill that is very complicated. I would like to give the Committee a brief overview of how we got to this point. In the 1997 Legislative Session, I brought forth a bill [S.B. 314 of the Sixty-ninth Legislative Session] after I met with constituents regarding homeowners associations (HOAs). I found out all the problems that were in HOAs. We drafted a large bill and were able to pass what was called the "Homeowners Associations' Bill of Rights." It affected *Nevada Revised Statutes* (NRS) Chapter 116 quite extensively and we created the office of the Ombudsman for Owners in Common-Interest Communities. Yet, every session we have had to return and readdress this issue. Also in 1997, the Legislature passed a bill stating that HOAs, although corporations for the tax benefits, are governments. We put it in the statutes to acknowledge that we recognize these as being governments. Since they are governments, they have a different set of laws and they must operate like governments with open meetings. It's been very successful.

Homeowners associations were spinning out of control in many areas. Although those in the audience did not realize it at the time, they are here today in support of legislation to affect HOAs. I know that it's an issue for HOAs across the nation, not just in Nevada, where HOAs have lost control and need direction. I recall an evening in 1997 when Mr. Carpenter and I had dinner with members of the Spring Creek Homeowners Association from Elko, Nevada. At that time, Mr. Carpenter believed that "frontier justice" would preclude Elko from the necessity of being included in the 1997 legislation. The next session, Mr. Carpenter was back requesting that the Spring Creek HOA be added into the legislation because they would not live up to their word about open meetings, et cetera.

[Senator Schneider shared a number of HOA worse case scenarios of "frontier justice" with the Committee.]

I also have a proposed amendment (Exhibit C) to this piece of legislation that has to do with delegate voting in HOAs. In HOAs and large master-planned communities there are two different layers: the master association and the sub-association. In many of the large associations, delegate voting is allowed, where the sub-association sends a delegate to vote on issues affecting the master association. What we are proposing is that the delegate should be elected by written secret ballot just like regular board members. This has been a tough process to propose, but elections are performed in the same manner as

we are elected: written secret ballot, the ballots are opened, and available for review.

Chairman Anderson:
Do any Committee members have any questions for Senator Schneider regarding his piece of legislation [S.B. 100] or his history in developing it? He is considered to be the master of this particular section of the law.

Senator Schneider:
I have traveled the country speaking in different state legislatures about this. I am trying to allow you to become the experts so that you can handle this in my place.

Assemblyman Mabey:
How are you going to avoid the possible fraud associated with receiving extra secret written ballots?

Senator Schneider:
It's an envelope system with each envelope numbered.

Assemblyman Mabey:
How would you make sure that all envelopes returned were counted?

Senator Schneider:
That's the problem of open government. It's up to the homeowners association. I will allow some of the property managers to explain the system they use; it's a very good system. We have struggled with that over the last several sessions. The double-stuffed envelope system has worked very well where it is numbered, coded, and even color-coded. They eliminate the fraud by doing that.

There is a difference between property manager and an association manager, which I had to learn several years ago. That's a totally different profession. We have created separate licenses for them in the Real Estate Division, which requires separate training and education.

[Chairman Anderson excused Senator Schneider to return to the Senate.]

Michael E. Buckley, Attorney, representing the Community Association Institute (CAI) Legislative Action Committee:
[Introduced himself and submitted Exhibit D and Exhibit E.] I have been involved with this issue since 1991, when it first passed. *Nevada Revised Statutes* Chapter 116 actually began in the Assembly Committee on Judiciary; it was one of the first consumer protection laws that we had in Nevada.

It originated from a uniform act, which we reviewed and modified for Nevada. It has been back to the Legislature every session since the statute was adopted in 1991 with different tweaks and fixes to the law. In 1993, we amended the provision regarding plats. In 1993 or 1995, the Community Association Institute (CAI) promoted ADR (alternate dispute resolution) for HOAs so that you wouldn't have to go to court if you had a dispute, but you could go through arbitration; in fact, you had to go through arbitration. The idea was to lessen the costs. In 1997, as Senator Schneider indicated, the Ombudsman for Owners in Common-Interest Communities was created. The Ombudsman is funded through a $3 per unit fee on every association in the state. One of the provisions in S.B. 100 will try to better capture and ensure that everyone is paying that fee.

Chairman Anderson:
Believe it or not, 1991 was my freshman year and my first year on the Assembly Committee on Judiciary. I have been on this ride since it began; Mr. Carpenter predates that. Mr. Carpenter and I believe this is, indeed, a never-ending story.

Michael Buckley:
Another fix was reserve studies, which originated through the CAI, where associations had to not only have reserve studies, but fund reserves. Most of the new homes in Nevada are located in common-interest communities, particularly in Clark County. We believe that Nevada is in the forefront of community association laws. The Ombudsman is doing a tremendous job of educating and getting the word out. Currently the Real Estate Commission, Real Estate Division, Department of Business and Industry, has ultimate authority over associations. It licenses permit holders and certificate holders. As mentioned by Senator Schneider, it is recognized by the real estate industry that association management is a completely different profession than buying, selling, or leasing real estate, both commercial and residential.

The first proposal of this bill is to create the Commission for Common-Interest Communities. When NRS Chapter 116 was created, it was completely self-administered; there was no state agency, the Attorney General and the counties did not help, not even the Real Estate Division helped. The Ombudsman was the first state intervention in associations. The Ombudsman is a person who tries to educate people and work out problems by getting both parties talking to each other. There are a number of theories behind the Commission:

- To obtain a prompt result from a state body that has authority.

- Not costly since the plaintiff in the proceeding is the Real Estate Division.

- Involve experts in the industry.

- Consistent rulings, with ADR and different arbitrators we currently get different results.

- Promote guidelines on operating associations the best way possible.

[Michael Buckley continued.] I will walk you through the bill. While it is Senator Schneider's bill, we think it is our bill too, since we have spent so much time working on it. It reflects a lot of the ideas of all the different facets of the industry from the association managers, the developers' attorneys, association attorneys, and the homeowners.

The first 12 sections of S.B. 100 are definitions; a number of these are restatements of existing law. I would point out that in Section 2 there is a reference to a "certificate" which is a licensed manager. That is different from a property manager. A person who holds a property manager license issued by the Real Estate Commission has a permit, so we have a "certificate" and a "permit." In order to be a community manager, the defined term in Section 4, you need to have a certificate, a permit, or an exemption. The defined term, "management of a common-interest community" is the licensed area. The new terms are the definition of "commission," a "complaint," "hearing panel," "party to the complaint," and "respondent." I will go through these when we get into the process.

Section 13 relates to the Commission for Common-Interest Communities itself, consisting of five members appointed by the Governor. It would involve all aspects of the industry:

1. An owner who has been a board member
2. A community manager
3. A developer
4. A CPA (certified public accountant)
5. An attorney

All of these professions have input into association law. At least three members would be from Clark County. Of course, the Commission members must have common-interest community experience. They would serve three-year terms.

In Section 14, the Real Estate Division would provide education for the commissioners.

[Michael Buckley continued.] Section 15 provides that the officers of the Commission would be elected: a chairman, vice chairman, and secretary. The Commission must meet once each quarter, or more frequently, if they desire.

Section 16 contains an important concept making it clear that the Real Estate Division administers NRS Chapter 116 but the overall supervision would belong to the Commission for Common-Interest Communities. The Commission could delegate back to the Real Estate Division; there is an administrative set-up within NRS Chapter 116. Both the Commission and the Real Estate Division are authorized to adopt forms, procedures, and regulations. These regulations would be published and be available to the public.

In Section 18, the Commission is given the assistance of the Attorney General for advice and opinions.

Section 19 authorizes hearing panels. The Commission can designate one or more people, independent hearing officers, to hold a hearing on a dispute. The hearing panel decisions can be appealed by the parties to the complaint, or the Commission itself can review the opinion.

Section 20 permits teleconferencing and videoconferencing of the Commission.

Section 21 protects the members of the Commission from civil liability if they act in good faith.

Section 22 is an important section, although it is really a restatement of what is already in existing law. Basically, the Commission will maintain statistics and information on common-interest communities. As Senator Schneider stated, you do hear horror stories about associations. This bill will provide that the Commission will be a resource to the Legislature providing real information and statistics. In Section 22, subsection 3, page 6, the Commission will provide education guidelines, which is important since we have conflicting legal opinions on how to conduct meetings and elections or how to enforce governing documents; the Commission would promote best practices on how to run an association. The Commission would also promote educational programs for management and ADR.

Section 23 permits the Commission to establish standards for subsidizing ADR. When the Ombudsman office was created, the $3 fee was used for two things: The [salary of the] Ombudsman and to subsidize ADR. I don't think that has ever happened because the Ombudsman did not know how to do it. The bill will now authorize the Ombudsman to establish standards by which any ADR would be funded. It also expands what those funds could be used for, such as educational

programs. The Ombudsman could tell you that this has been a real success story for the Ombudsman, getting out and explaining to owners and board members what NRS Chapter 116 is, how it works, and what the law is.

[Michael Buckley continued.] Section 23 would also allow the Commission to accept grants. Sometimes you run into a problem with an agency when somebody wants to make a gift of money or materials to be used for different purposes in that field, and this would allow that.

Section 24 provides that the Commission has the oversight and licensing responsibility over the Division's licensing of certificate holders. This is a restatement of existing law, transferring [this task] to the Commission rather than just the Real Estate Division.

Sections 25 and 26 are federal law requirements regarding court-ordered child support payments.

Section 27, page 8, defines an important concept of "violation." The idea of the Commission is that its jurisdiction deals with a violation of NRS Chapter 116, the regulations, or an order, rather than the internal affairs of CC&Rs (covenants, conditions and restrictions).

Chairman Anderson:
Let's stop and ask questions on the first 26 sections.

In Section 15, we are talking about the Commission meeting. Is it possible that the Commission could be a full-time position with the commissioners meeting every day? [Michael Buckley replied negatively.] I don't see any back end to the frequency of their meetings, so they could meet theoretically five days a week for the whole duration receiving $80 a day and per diem.

Michael Buckley:
The model for the Commission for Common-Interest Communities is the Real Estate Commission. The Real Estate Division will be administering and servicing as the administrative assistant to the Commission for Common-Interest Communities. The Real Estate Division already works with the Real Estate Commission. Tami DeVries is in Las Vegas and can explain how they would assist the Commission for Common-Interest Communities. I think it is strictly a part-time job.

Tami DeVries, Real Estate Division, Nevada Department of Business and Industry:
[Introduced herself.] We anticipate, and our fiscal note reflects the same, that this Commission for Common-Interest Communities would meet approximately six times a year. We have modeled that on the Real Estate Commission, which does meet approximately six times a year at this time.

Chairman Anderson:
The chairman and vice chairman would not be meeting more frequently than that?

Tami DeVries:
No, they are governed by the Open Meeting Law, so they would have to meet in accordance with that law.

Assemblywoman Angle:
I am unclear as to the funding process for this. Would this come out of the Ombudsman's fees? Is that where all the funding will come from?

Michael Buckley:
Yes, this is self-funded through the Ombudsman's fee.

The process of the Commission for Common-Interest Communities starts with a violation. The intent of the Commission is only to deal with violations of NRS Chapter 116, not violations of CC&Rs, unless the violation of the CC&Rs also constitutes a violation of law.

In Section 28, the Commission has jurisdiction over any person involved in associations including: owners, board members, officers, developers, managers, and tenants.

For example, a developer is required to turn over certain items when the control period ends in the association. So if the developer did not relinquish control to the association, the Commission would have authority to pursue that violation.

Section 29 points out that these are additional remedies, they are not exclusive remedies, all existing rights and remedies under law and the CC&Rs are preserved. It also makes it clear that the Commission does not intervene in the internal activities of the association.

Section 30 is the complaint/violation process, which starts with an affidavit. The affidavit is filed with the Real Estate Division. Everyone was concerned that the Commission not just be a place to go to right away if you have a

problem, so in order to file an affidavit with the Real Estate Division that alleges a violation there must be evidence that the complainant has attempted to resolve it. There has to be proof that he or she has notified the person or association that has violated the law. After at least two attempts to resolve it and it can't be resolved, then the complainant can swear out an affidavit that the resolution process has failed. There is a statute of limitation of one year.

[Michael Buckley continued.] Section 31 deals with the second step after the affidavit has been filed. The matter is then referred to the Ombudsman who will, in the first instance, try to resolve the matter. If that fails, in Section 31, subsections 3 and 4, the matter is referred to the Real Estate Division for investigation. In Section 31, subsection 5, if the Real Estate Division believes that grounds exist to proceed further, the Real Estate Division files the complaint with the Commission.

Section 32 involves the hearing procedure, which has to start within 90 days, although the Commission can grant continuances. There is a service of the complaint with evidence on the respondent. Section 32, subsection 4, limits new evidence that can be presented. The idea is that everything will be up-front quickly and that is what the Commission rules on.

Section 33 permits representation by counsel, but again, remember that the real parties are the Real Estate Division as the plaintiff and the alleged violator is the respondent.

Section 34 deals with decisions by the Commission, which must be done within 20 days. The idea is to get to the Commission and obtain a quick decision. The findings must be committed to writing within 60 days.

Section 35 is a key section because it deals with the remedies that are available if the Commission finds there has been a violation.

- Subsection 1(a), the main remedy, is a cease and desist order.

- Subsection 1(b) is an order directing the respondent to take affirmative action.

- Subsection 1(c) is a fine of not more than $1,000.

- Subsection 2 addresses when the violator is a member of the board or an officer, the Commission can order that he or she be removed from office if there has been a knowing and willful violation.

- Subsection 3 says that if there is a violation of the cease and desist order, there could be a fine of $1,000.

- Subsection 4 allows the Commission to order the respondent to pay the costs.

- Subsection 5 is the indemnification.

I proposed amendments (Exhibit D and Exhibit E) yesterday and actually I'm not even sure that we need Section 35, subsection 5. Section 4, subsection 5, says if the board member or officer is judged in violation of the law and has to pay a fine, the association pays it. That is already part of the law of indemnification. Normally a corporate officer is indemnified by the association, by the corporation, for all his acts as an officer and director. There are exceptions to that if the officer or director is guilty of knowing and willful violations. I proposed that the association not indemnify an officer who knowingly and willfully violates the law.

William Magrath, Homeowner:
[Introduced himself.] I have been working with Michael Buckley, Karen Dennison, and many others in the room for the last nine years on these processes. I am a homeowner and member of the Caughlin Ranch Homeowners Association, which has 2,200 members; it is one of the largest HOAs in Reno. I have been on the board for 12 years, elected in open public elections with secret ballots, et cetera. With respect to the indemnification issue, I raised this issue because all members of the board are volunteers. Everybody who serves on these boards is a volunteer, and we have some very talented people volunteering. If they fear that they might be subject to a fine or that they might be caught into a fine process, I think most of those people who are smart will resign or will say, "I don't want to fiddle with it. I am not going to volunteer my time and put my family or my assets at risk."

This provision specifically indemnifies them. It gives me, as a board member or president of a board, an opportunity to go to a good person who would be serving on the board and say, "You're protected." If somebody makes a mistake or our counsel makes a mistake advising us, and the Commission ultimately rules that we are at fault, then under those circumstances you are indemnified, so you are not at risk. My fear is that if we start eliminating the good board members or put them at risk, we are going to have bad board members. It's the bad boards that are causing the problems that Senator Schneider has heard as complaints. I agree with Mr. Buckley that there are probably times where certain individuals deserve some punishment, but my fear is that you will kill the source or pool of qualified candidates for these volunteer positions if you leave it ambiguous so that anybody could possibly be

fined. That is why I think it is important that Section 35, subsection 5, remain in the bill.

Assemblyman Mortenson:
If you fine an association—let's just say, an individual homeowner has a complaint about the association and he goes to the Ombudsman, where the Ombudsman finds there is something substantial and he fines the association. The money the association uses to pay the fine came from the guy who complained, so if he complains, he is picking his own pocket. I wonder why we would even bother to have a fine situation when the only people who can be fined are the complainers?

Michael Buckley:
If an association is fined, all of the members collectively will each share in their tiny pro rata share of that fine. Ultimately, if they find out that their dues are being increased because the board or board member is not following the law, they will turn those officers or board members out through the elective process. Much of the testimony that has come from individual complainants over the last three months before the Senate Committee on Commerce and Labor said, "We need to have some teeth; we need to have something in this bill so that the Commission, when it finds a violation, can fine somebody if they believe that's appropriate." I know ultimately that the association, somebody, has to pay it, but it does create a pinch, which will hopefully cause that conduct to be deterred. There had to be something placed in the bill. Others have argued against no fines, but I think it is a reasonable amount. It will ultimately be communicated back to the members because they will pay that on a pro rata basis. You are correct; it will include the complainant.

Assemblyman Mortenson:
I have an HOA in my district, which is composed of about 15 houses; that's going to be a big bite on those people. I happen to know their association treasury runs about $0, so if a person complains to the Ombudsman, it goes through the process, the fine comes down, and he has to pay for what he complained about.

William Magrath:
The best way to look at that is the Commission sets the fine. The bill states, "a fine not to exceed $1,000." If there were a small association, I would hope that the commissioners would take that into consideration. If 6 of the members of a 15-member association are complaining, it seems to me that if the fine got back to them, the Commission would take that into consideration.

Assemblywoman Angle:
When you collect these fines, where do they go, back to the Ombudsman? Do they go to the Commission? Where will the fines ultimately end up and what will they be used for?

Michael Buckley:
The fines go into the Commission's fund.

Gail J. Anderson, Administrator, Real Estate Division, Nevada Department of Business and Industry:
[Introduced herself.] Fines and penalties that are collected go into the General Fund per our budgets.

Michael Buckley:
Just a technical note, following up on the issue of indemnification, I made a note on my amendment (Exhibit D) to cross-reference to Section 63, subsection 4, page 31, because that does provide for indemnification but it excludes if the board member "acted with willful or wanton misfeasance or with gross negligence." So at the very least, Section 35, subsection 5, page 13, and Section 63, subsection 4, page 31, need to be made consistent.

Section 36 is a neat idea; one of the remedies available to the Commission is to order that the association have an audit. A lot of these problems are financial so the Commission can order an audit. The Commission can also, for good cause, require the association to hire a professional manager. Sometimes you see these as a lending requirement that an association have a professional manager. Oftentimes, associations with problems are those that don't have a professional manager.

Section 37 simply allows the Commission to obtain an injunction in state court, inside or outside of Nevada, without a bond. It specifies how the Commission would get an injunction.

There are a number of other sections in S.B. 100 that go through conforming changes; I will try to go through those quickly.

Section 51, page 18, simply changes the references from the Real Estate Commission to the Commission for Common-Interest Communities.

Section 53, page 20, provides for funding of the Commission by the Ombudsman's account and the account is renamed the Account for Common-Interest Communities.

Section 70, page 41, deals with conforming changes regarding manager licensing, in other words, transferring [the task] over to the Commission. The Commission is given the authority over both permit and certificate holders. There is an attempt to have consistent regulatory authority over both types of managers.

Section 71, page 43, is simply a conforming language change, as is Section 74, page 45.

Section 74 also permits fines for associations that fail to register on time with the Real Estate Division.

An amendment (Exhibit F) was brought by John V. Briggs. It is another technical change in S.B. 100 related to the fees paid by associations that are registered under NRS Chapters 78 or 82; most associations are nonprofits. There are a couple of old associations that are under NRS Chapter 81, so there should be an amendment to bring in associations that might be incorporated under some old nonprofit law.

Vice Chairman Oceguera:
Who is Senator Briggs?

Michael Buckley:
He is a retired California State Senator and a homeowner in Elk Point, Zephyr Cove, Lake Tahoe, Nevada.

That proposal would make references to other nonprofit statutes in Nevada to pay the $3 fee.

Section 86, page 57, is conforming changes regarding the Commission for Common-Interest Communities' account. It gives oversight of the account to the Commission.

Section 88, page 60, is the appointment of the initial Commission members.

Section 89, page 60, gives authority to existing officers and agencies to carry out the provisions of the act before the effective date.

Section 90, page 60, transfers funds from the Ombudsman's account to the Commission account.

Section 91, page 60, is an additional changeover provision.

Section 93, page 61, is the effective date. The Commission would go into action on January 1, 2004. Other provisions are effective October 1, 2003.

The last provision of the bill that I would like to address quickly is Section 38, page 13, which is the flag amendment. I believe this was passed in a number of other bills that permits unit owners to display the American flag in accordance with the Federal Flag Code. There are limits on the size of the flag, height of the pole, and the number of flags.

Assemblywoman Buckley:
I wanted to get more clarification about the funding mechanism. The Commission seems to be paid by the $3 assessments. What's the proposed budget? How is it going to affect the Ombudsman's office? Can you give us those details?

Michael Buckley:
I would defer to Tami DeVries or Gail Anderson.

Gail Anderson:
There is a fiscal note attached to Senate Bill 100. The fiscal note indicates that for fiscal year (FY) 2004, there will be a budget of $523,000, for FY2005 it will be $568,000. The fiscal note has been reviewed through the Senate Committee on Finance and approved. The fiscal note outlines some additional staffing positions related to carrying out the business of the Commission.

Assemblywoman Buckley:
Is it included in The Executive Budget?

Gail Anderson:
No, it was not included at that time. Senate Bill 100 changed from what was originally presented and came out of the Senate Committee on Commerce and Labor. We revised our fiscal note numerous times to reflect the changes as they were made.

Assemblywoman Buckley:
Are you seeking a General Fund appropriation?

Gail Anderson:
No. This is entirely funded by the Office of the Ombudsman for Common-Interest Communities' self-funded budget.

Assemblyman Buckley:
The $3 fee is still the cap?

Gail Anderson:
That is correct.

Assemblyman Buckley:
Did the Senate Committee on Finance approve the positions? Is it now in The Executive Budget?

Gail Anderson:
The Senate Committee on Finance did approve it; my assumption is that it is in The Executive Budget.

Assemblywoman Buckley:
Has the Governor approved the creation of this Commission? He was heard to say a week ago that he was not approving any more commissions. Did somebody check with him?

Gail Anderson:
To the best of my knowledge, this has been communicated through the Office of the Governor as to where the bill was going.

William Magrath:
According to the Ombudsman's report, there are approximately 249,000 doors, or separate units, each of which would pay the $3 fee, so you are looking at approximately $750,000. To my surprise, I found that many associations have not registered. This bill will hopefully remedy that, so that there will be additional income to help support both the Commission and the Ombudsman. This $3 fee will be assessed to each individual member of each association.

Karen Dennison, Attorney, representing Lake at Las Vegas Joint Venture:
[Introduced herself.] I also serve on a State Bar committee which is a subcommittee for the review of NRS Chapter 116. Since Mr. Magrath needs to leave for a hearing, he would like to give his testimony.

William Magrath:
[Reintroduced himself and submitted Exhibit G.] Senator Schneider mentioned that there were some associations spinning out of control. It's true that there were some in Nevada, but as I mentioned earlier and the statistics, which this bill will help the Ombudsman and Commission gather, prove that of the roughly 250,000 units in Nevada, there were only 1,000 complaints. They were vocal complaints, but if you look at the statistics you will see that about 99.6 percent of the units did not complain.

I think you should be proud of the laws that have been passed over the last multiple years that have taken care of many problems. The Ombudsman also reported in his survey that 92 percent of the people who live in HOAs are very satisfied and love their association. It takes care of its common elements: pools, greenbelts, parks, et cetera. The only reason I say that is because I mentioned early there are many volunteers on these boards, and my fear and concern is that if the laws are written too strictly you will drive out the volunteers. You will end up with boards that are not responsive to the people or may be single-issue boards. The biggest problem is that once that starts to occur, the complaints will rise. Once the boards are not made up of good volunteers, it will be a problem.

I strongly support the combined bill that is before you. I say that because last session you may recall Senate Bill 421 of the Seventy-first Legislative Session was passed through the Senate after many months. Unfortunately, it came to the Assembly very late and on the last day of the session; it did not pass. So all the efforts that went into the last session stopped dead. This session the bill draft request started with many of the components of S.B. 421 of the Seventy-first Legislation Session and eliminated provisions related to construction defects and other problems present in the old bill. Now, after many months of testimony from homeowners and members of the industry, it has developed and evolved into this current bill, S.B. 100. It's a good bill.

There are some sections that specifically involve Caughlin Ranch, particularly Section 43. Let me explain. If you have a developer of a large common community that sells off individual segments to a successor developer, those successor developers were claiming that they were not bound by the law, they were not the original declarants. This law now brings the successors into the law. It forces those successors that build parks and greenbelts to create reserve studies and fund those reserves so that when the homeowner takes over in those individual communities they are not burdened with the huge expense of an unfunded reserve.

Another area, Section 73, talks about park tax refunds. Park tax refunds are allowed by law to be used inside areas in common-interest communities, large subdivisions, to build parks within that community. In Caughlin Ranch we have a public park, which is owned by Caughlin Ranch. Our crews maintain it and mow the lawns; it is a beautiful public park in the city of Reno paid for with my dues. My association owns the land, but it is open to the public. In that particular case, the playground equipment costs money, over the years will deteriorate, and will need to be replaced. This bill now allows that the park tax that comes in from current sales of new units can also be used to replace that existing deteriorating park equipment. Under the current law some people

interpret the law to say it can only be used for the original improvement. We think it is important that the new units that come on-line help pay for those current park areas.

[William Magrath continued.] Amongst the entire group present today, there are going to be multiple amendments that will be technical amendments. I have submitted an amendment (Exhibit G). Let me explain two unique problems that exist.

1. If you are a member of a homeowners association and you want to look at the books and records, some associations say, "They are not here. They are at our lawyer's or accountant's offices." One association member told me that he couldn't look at the books and records unless he posted $450 in advance as a credit for the time for the accountant to sit and watch the books. What I've proposed on page 49, line 3, is a suggestion that "the executive board must not require a unit owner to pay in excess of $10 per hour to review any books, records, or other papers of the association." Mr. Buckley, who is a craftsman in drafting legislation, pointed out that the $10 per hour might become fixed in the law, and maybe it should read, ". . . not pay in excess of $10 per hour, unless a different amount is set by the Commission." But it certainly should not be. I should not, or you should not, be required to pay $250 for a lawyer to sit and watch you as you copy the books because some associations are using this as a method of hiding their books and records. They are really playing games with the statute.

2. Some boards and associations refuse to tell the members how many hours their crews are working. They will tell them what their salary is but not what their hours are. As a result, people don't feel that they are getting "their dollars for their bucks," so I have added, "hours worked" in that amendment. I believe it has the approval of all others who were here.

Finally, we met with the Nevada Trial Lawyers Association (NTLA) who had reviewed this bill in its entirety and were concerned about a tiny, particular section. It is my understanding that the NTLA has proposed technical language that would exclude an attorney's contract from the disclosure requirements. We as a group do not have any difficulty with that. Those amendments are appropriate; we have reviewed and approved them. It is my understanding that the NTLA concerns about the entire bill have now been resolved, which is good news to us. This is a good bill and we certainly want to see this bill become law so that every homeowner who has a complaint will now have an instant remedy, once they have attempted to resolve it with the association, with the Commission.

Assemblyman Buckley:
On the $10 an hour, I support that concept; charging $150 to $300 an hour does frustrate the ability of a homeowner to access their records. I am wondering about the $10, more from a philosophical than a financial point of view. Shouldn't someone have the right to review these records? It is one thing if someone is abusing it and wants to sit there for a month, although you would hope people would have more of a life than that; but from a philosophical point of view, shouldn't somebody have the right for free to inspect the records of the association?

William Magrath:
I would agree with you that philosophically that's correct. I was trying to figure out a minimal clerical wage that would be applied to somebody standing there, so that if you run into that problem that somebody wants to sit there for a month to go through the records, the rest of the members don't bear that cost. I have spoken with the gentleman who met the demand for $450 up front; he felt $10 was appropriate. It might also eliminate some people "willy-nilly" wanting to go through the records.

Assemblyman Mortenson:
Did I hear you correctly that you want to amend the law so that these impact fees, or whatever they are called to construct new parks, will also be used to maintain parks?

William Magrath:
No, this is not for maintenance of parks. The amendment in Section 73 is intended to allow those funds in limited circumstances to be used to purchase new equipment, not to maintain. We are not talking about mowing the lawns, if in fact the park equipment . . . Caughlin Ranch is over 20 years old. If the equipment wears out and we have to buy new equipment in a public park area, it's our belief that those public park tax funds should be allowed to be used for that purpose. Currently under the law, our fear is that it says "new improvements," and we could build a new playground piece of equipment and tear the old one down, but that seems to be ridiculous. I am simply asking that this one section be allowed to be amended to allow for that replacement, so long as it is an item that is part of the reserve study. These funds are not used for maintenance items; they are used for capital items only.

Assemblyman Mortenson:
Parks seem to be the lowest priority among local governments in our state. In the south we have less than 2 acres per 1,000 [people] where the national average is about 10 acres. This ruling that they can only use impact fees, and I am not sure that I am using the right terminology there, construction tax. To

only use it to construct new parks to me was "a little light in the sky" that helped the problem. If you allow local governments to go back and start reconstructing or replacing, they should be shamed into doing that rather than use the new money to construct those new facilities.

William Magrath:
I don't disagree with that. What we are talking about is public park areas that are maintained by HOAs yet are open to the public. The funds under discussion are only capital items; it's not maintenance, it's not cleaning or maintaining or mowing the lawn. It's simply for these large expense capital items; a park tax should be used for those purposes. Otherwise the HOA and the individual homeowners will individually pay for those items in their dues.

Assemblyman Mortenson:
I don't want to see public money paying for HOAs' replacement equipment. I understand you said it was a public park. What kind of ratio would you say, the people that visit this park, is homeowners from the HOA and public, not members of the HOA?

William Magrath:
From my experience from having visited that park, it is an open area so it's not behind gates, I would venture to say that it is 50-50. The homeowners themselves are also paying their public taxes to the local community, so in effect, they are paying a double tax within their HOA. They are paying their dues to maintain the park and they are paying their city or county taxes. Those who are outside the HOA are simply paying their municipal taxes. The individual bills for each single unit, we're talking about $1,000 per unit from 200 units, that is $200,000. Those funds, if there is an agreement reached with the City, should be allowed to be used not to maintain but to replace important equipment that is a capital expense.

Assemblyman Mortenson:
I just hope it doesn't become abused.

Assemblywoman Buckley:
On your proposed amendment, with regard to the fines that can't be imposed unless the respondent has knowingly and willfully committed a violation, is that the same standard whereby fines can be assessed against a homeowner?

Michael Buckley:
First of all, it's not the standard for fines. Whether a fine is assessed is simply whether there has been a violation. This deals with when the association must indemnify the board member or the officer who was fined by the Commission.

The association shouldn't have to indemnify the "bad board member," that's the idea. It's not the same standard; it's a completely different issue than a homeowner who violates the CC&Rs.

Assemblywoman Buckley:
What is the standard, and is it always based upon an individual? No, it has to also be based upon the board's collective action.

Michael Buckley:
That's my understanding. The board has to assess the fine for violation.

Assemblywoman Buckley:
Are we going to have the same standard where the Commission can assess a fine against a board, as the board assessing a fee against a homeowner? I think we should consciously make the decision that we are not making it easier for the Commission to fine a board than we are a board fining a member.

William Magrath:
I believe it is the same identical standard, to a certain extent, a bit of a strict liability standard. You may recall that Senate Bill 136, offered by Senator Hardy, has already been heard by this Committee. That bill provides a new procedure, which requires due process before any fine can be assessed to a homeowner. If the homeowner wants, they are entitled to a hearing in front of the board or the executive committee. Of importance is that the burden of proof would be a preponderance of the evidence. If the Commission finds, by a preponderance of the evidence, that a board or a board member has violated the law, that is a violation. If the HOA finds the same for the homeowner, that would be a potential fine. That would be an identical standard.

Mr. Buckley's comment indicated that a separate standard of who gets indemnified requires a knowing violation. Senate Bill 136 also requires and emphasizes what the law currently states that before you can impose a fine, you must give notice to that person who is going to be fined. In effect, each association should be reminding their members to comply with the law and that they could be fined, so the member is given a warning in advance rather than innocently violating the law.

Karen Dennison:
I will walk the Committee through the rest of the bill starting with Section 39. The last half of the bill reflects the collective testimony, not only from this session but also from last session, of various homeowners, board members, community managers, and lawyers who have had their input into this bill. It deals with the administration of common-interest communities and the

procedures that should be followed for conducting meetings, keeping records, and things of this sort. There are also some purchaser disclosure provisions in the latter half of the bill, an extension on the foreclosure period for homeowners' liens, and some provisions relating to common elements.

Sections 39 through 42 deal with the conduct of the executive board and the conduct of community managers.

Section 39 covers a situation where an owner has filed a complaint against the board. This requires that the board actually put that complaint on the agenda for the next regularly scheduled meeting so the board can take action on the matter. This dovetails back to what Michael Buckley talked about which is the attempt to resolve. This should be one of the first attempts to resolve a dispute before it gets to the Ombudsman's office.

Section 40 is a conflict of interest provision, which states that a board member, officer, or community manager cannot accept gratuities or other compensation that would improperly influence him or her.

Section 41 protects a homeowner from retaliatory action. If the homeowner has made a complaint against the board, the board cannot retaliate.

Section 42 prohibits board members from accepting compensation for goods or services. Section 42, subsection 2, recognizes that there needs to be certain declarant exceptions. Often a declarant, during a declarant control period, will furnish goods and services to an association as part of the declarant subsidy. Another exception is contracts between the declarant and the association, which are already covered in NRS 116.3105. That section allows the owner-controlled board, after a declarant turnover of control to the owners, to terminate any contracts with the declarant without cause. Finally, Section 42, subsection 2(c), allows the declarant to appoint employees of the declarant to the board. Employees often serve as members of the board during the initial stages of development.

Section 43 addresses common elements that are constructed after declarant control turnover. Bill Magrath has adequately covered that section.

[Chairman Anderson made comments related to the "Day of 1000 Cookies" when Ben Graham and his family provide cookies for all the members of the Legislature. Chocolate chip cookies were distributed to the Committee members.]

Karen Dennison:
Section 44 is identical to A.B. 319, which passed this Committee and deals with transient commercial use. You don't need any additional testimony on that subject.

Section 45 is a provision of very limited application. In older communities, which have a very imputable distribution of common element costs among the owners, this provision would only apply in counties [with populations] over 400,000 and also to master associations that were created before January 1, 1975. It allows the board of directors to reallocate common area maintenance costs.

Section 46 deals with delegate voting; you heard a little bit about that from Senator Schneider in his amendment (Exhibit C). Section 46, subsection 1, allows delegate voting effective October 1, 2003, in large communities consisting of at least 1,000 units. Section 46, subsection 2, deals with delegate voting documents created before October 1, 1999. If an HOA was created before October 1, 1999, any size community could have delegate voting because there are existing communities that do have it. I would like to point out that delegate voting is only allowed if a declaration, the governing documents of the association, permit it.

Section 47, which deals with construction penalties, is identical to Section 1 of S.B. 136, which you heard last week. Again, I will assume no further testimony is required.

Section 48 deals with conflicts between two NRS chapters. The ones we are dealing with now are NRS Chapter 116, and NRS Chapter 82, which is the chapter under which most associations were formed. John Briggs submitted an amendment (Exhibit F) to also provide that if you were formed under another section of the NRS as a homeowners association, any conflicts with NRS Chapter 116 would be resolved in favor of NRS Chapter 116.

Sections 49 and 50 are technical corrections or amendments.

Chairman Anderson:
Do you support John Briggs' amendment? Do you think it doesn't conflict with what your working group had intended?

Karen Dennison:
Yes, I should have said it was a friendly amendment, a good catch by Mr. Briggs.

Section 51 was covered by Michael Buckley.

Section 52 deals with the Ombudsman and was covered by Michael Buckley, as was Section 53.

Section 54 is the next important section; it addresses a problem with rural communities. There was a particular problem in Humboldt County where lots were sold, people bought lots just to use the recreational amenities—a lake. As a consequence, no homes or very few homes were built. This amendment would have limited application; it would apply to situations where 50 percent or less of the lots have homes on them. The community would have to be created prior to 1992 and be in a county with a population of less than 50,000. If all those criteria are met, that community is outside of NRS Chapter 116; it's no longer governed by NRS Chapter 116.

Chairman Anderson:
Does that include Mr. Carpenter's Spring Creek in Elko, Nevada?

Karen Dennison:
I think that could be it. Actually I think it was Humboldt Estates.

Chairman Anderson:
Does it harm Mr. Carpenter's Spring Creek in Elko County? [Ms. Dennison indicated no.] We are trying to get them to pay attention to some parts of this.

Karen Dennison:
The next section is Section 54. Section 54, subsection 5, allows the administrator to adopt formal exemption procedures. There are certain communities that are exempt from this act; one is a rural agricultural community. Now it is a self-determining exemption; this would allow the administrator to have a formal exemption procedure.

Sections 55 and 56 are technical corrections, as is Section 57.

Section 58 is an important section and it received quite a bit of testimony during the last session with respect to owners wanting to put in improvements to their units for disabled persons, for security purposes, and for energy-saving purposes. This would allow those owners to do that subject to any architectural review that is required by the governing documents.

Sections 59 and 60 are technical corrections.

Section 61, subsection 1(b), deals with limitations on fines. There is an amendment to be proposed by the CAI on this.

Assemblywoman Buckley:
I wanted to go back to the improvements for individuals with disabilities. An association may not unreasonably restrict items needed to improve access. I want to make sure that wording is appropriate because I don't want to see, "Your ramp should be at a different slope." I don't know why the association would be subject to ADA (Americans with Disabilities Act) or the Fair Housing Act (FHA) . . . So I am just wondering how this conforms to either the FHA or ADA standards.

Karen Dennison:
If I may hazard a guess, we don't believe that it violates either of those two [standards]. We could, however, follow up with some information for you after this hearing if you so desire.

Assemblywoman Buckley:
What if the governing documents violate FHA or ADA? What if an HOA states, "We have a 60-day review period," and in the meantime someone wants to get their wheelchair up their steps, they have every right to do so.

Karen Dennison:
I would assume that any law contrary to homeowners association documents would prevail and would govern over those procedures if they were architectural procedures or some kind of time-sensitive procedure.

Michael Buckley:
This is a good example of where the Commission comes in because if there is a problem now, the Commission could order the association to comply.

Assemblywoman Buckley:
I don't disagree; I don't want to put anything in statute that would presumably give an association authority to act in violation of the Fair Housing Act and someone's ability to get a ramp into their own home.

Michael Buckley:
I don't think any of our group opposes that; I think that was the intent of this. If we need to make any changes, that is fine with us.

Assemblyman Carpenter:
I would like to go back to page 22, lines 5 through 12. Would you explain what that means again?

Karen Dennison:
Section 54?

Chairman Anderson:
I believe Mr. Carpenter is referring to Section 54, subsection 5, where "the Commission shall establish, by regulation, a criteria for determining whether an association or common-interest community satisfies the requirements for an exemption from any provisions of this chapter."

Karen Dennison:
The Commission will determine what the exemptions will be. For example, landscape communities maintaining facilities for flood control or rural residential communities, these are terms that need additional explanation. This provision allows the Commission to establish, by regulation, the criteria for determining whether an association satisfies one of these exemptions.

Assemblyman Carpenter:
My concern is if it were already in statute, then how would the Commission, by regulation, establish it.

Michael Buckley:
I will give you an example. One of the exemptions, in Section 54, subsection 2(a)(1), page 21, is referred to as a landscape maintenance association. There is a lot of discussion over what exactly the limits are. The idea of a landscape maintenance association is if it's just maintaining a wall, if the association is required by the City to maintain a wall, you shouldn't have to be covered by all the provisions of NRS Chapter 116. But what if it's a street or if it's a passive park facility? There are questions as to where to draw the line. The same thing would be true for facilities for flood control. It only comes up when there is a question of whether a particular association would claim an exemption and there is some issue as to whether they would qualify for that.

Karen Dennison:
I believe we were on Section 61. Section 61, subsection 1(b), deals with limitations on fines. It clarifies that the existing caps do not apply to interest, late charges, and the like. Section 61, subsection 4, is the more important provision; it places limitations on what can be charged to an owner in respect to interest, late charges, and collection costs. I believe there is a CAI amendment (Exhibit D) on this, which we consider a friendly amendment. Pamela Scott will propose a clarification amendment to this section (Exhibit I).

[Chairman Anderson asked that Ms. Scott's amendments (Exhibit H and Exhibit I) be distributed.]

Pamela Scott, Senior Property Manager, Community Association Management, Summerlin, The Howard Hughes Corporation:
[Introduced herself and submitted Exhibit H and Exhibit I.] My amendment to this is really a clarification. In the summary that was done by the Legislative Counsel Bureau (LCB), it indicates that the intent of this section was not to limit what is incurred as the cost to collect, but to limit what could be charged back to a homeowner because an association has absolutely no control over what a title company charges for documents or what the post office charges to send registered mail. Those are the things that are not controllable, so my amendment (Exhibit I) suggests that the word "incur" change to "charge to the unit owners" and that collection agencies, community managers, and other persons or entities simply be removed from this. It is the association that assesses that charge against the owner.

Karen Dennison:
Sections 62 through 64 deal with boards of directors of homeowners associations. Section 62, subsection 3, provides for staggered terms. Section 62, subsection 5, deals with certain disclosures that candidates have to make. Section 62, subsection 6, prohibits community managers and members of their families from serving on boards. Section 62, subsection 8, provides when delegates cast votes for board members, it must be an open process; it's not a secret process because obviously the people that these delegates represent would like to know how they vote. Section 62, subsection 9, provides that a quorum is not required for the election of boards. There has been a lot of testimony given on the Senate side with respect to the fact that in certain associations that have quorum requirements, they are not able to get enough people to return their secret ballots in order to elect a board. This would remedy that situation.

Chairman Anderson:
I received a complaint that by changing the voting requirement, we would be potentially changing the process so it would no longer be "one person, one vote" within the HOA. Is there a potential for a board to "load up" the voting requirements?

Karen Dennison:
It is just like any public election. Those who choose to vote will vote. Oftentimes you don't get a majority of the voters voting. Everyone gets a secret ballot; everyone is entitled to return their secret ballot. If they choose not to vote for the board, that's their prerogative, but we need to have governing boards for these associations to function.

Section 63, subsection 2, provides for the secret ballots for removal of board members just like the election of board members. Section 63, subsection 5, clarifies that even when a board member is removed, disciplinary action may be taken against that board member.

Section 64 requires that bylaws of an association provide procedural rules to conduct an election. Part of the procedure could address the question brought up earlier on the balloting and how one ensures that no one stuffs the ballot box.

Section 65, subsections 5 and 6, talk about the minutes for homeowners associations and what must be included for the meetings.

Section 66 talks about the meetings of boards and how their minutes must be taken.

Assemblywoman Buckley:
Section 56, does this have something to do with Lake Tahoe?

Karen Dennison:
Which subsection?

Assemblywoman Buckley:
Someone just said that there was something in this bill that would give a special break to Lake Tahoe and I am trying to track down that rumor.

Karen Dennison:
I believe it is simply a technical correction changing the words "does not conform" to "that violates" and removing the words "created before January 1, 1992." I know of no testimony on any Lake Tahoe project that would benefit by this provision.

Assemblywoman Buckley:
What about the whole bill? Is there some sort of special break for Lake Tahoe anywhere in this bill?

Karen Dennison:
The only thing that I can think of is that certain provisions only apply to counties [with populations] of 400,000 or more. Parts of Lake Tahoe would be in Washoe County, while others would be in Douglas County.

Assemblywoman Buckley:
So you don't know of anything?

Karen Dennison:
No, I don't.

John V. Briggs, Retired California State Senator; and resident of Elks Point, Zephyr Cover, Lake Tahoe, Nevada:
[Introduced himself.] There is nothing in this bill that was put in to favor any development at Lake Tahoe that I am aware of, I can assure you.

Karen Dennison:
Section 67 deals with a hotly contested issue, which is when an executive board of an association can go into executive session, excluding the owners. The statute specifically provides that owners may attend and speak at board meetings except when they are in executive session. Section 67, subsections 2 and 3, clarifies that contracts cannot be entered into by the board in executive session, they must be done out in the open.

I do know that there is an amendment to be proposed, which we do not oppose, from the Nevada Trial Lawyers Association. Mr. Maddox is in Las Vegas and will be submitting that amendment (Exhibit J) to this section dealing with contracts between an association and an attorney, which are privileged contracts. I don't know if you want to take that amendment at this time.

Robert Maddox, representing Nevada Trial Lawyers Association:
[Introduced himself and submitted Exhibit J.] The way that Section 67 is presently worded would require an association board that is contemplating legal action against a developer or member of the association to have to negotiate an agreement for legal services in front of the person the association is contemplating suing. That is something that would go against the time-honored concept of attorney-client privilege.

We are proposing to amend Section 67, subsection 2 (Exhibit J), to exclude contracts with an attorney from the prohibition of dealing with contracts in an executive session. We also propose to amend Section 67, subsection 3, by striking the last sentence that would say, "The provisions of this paragraph do not permit the executive board to meet in executive session to take any action regarding a contract with the attorney for the association." There is also an amendment in the first sentence that would allow the association to consult with an attorney, the attorney may not yet have been hired, so we strike the words "for the association" for purposes of protecting the attorney-client privilege and allowing the board to consult with an attorney in closed session.

The bottom of the first page of the letter (Exhibit J), I ask you to disregard. Where it says "Section 67, subsection 3, et cetera . . ." it was left over from a prior letter and should be disregarded.

To finish this, we propose an amendment to Section 79, which simply follows up on our amendment to Section 67, so that it would preserve the attorney-client privilege as it applies to a contract between the association and an attorney.

Chairman Anderson:
As I understand it, [you are amending] Section 67, subsections 2 and 3, [with] deletion and inclusion language, and then at Section 79, subsection 1, page 49, lines 40 through 45, and page 50, lines 1 through 9. Ms. Dennison, do you consider these to be acceptable to your groups?

Karen Dennison:
Bob Maddox has discussed this, as has Bob Crowell, with many of the people who are here testifying today. We have absolutely no problem with these amendments.

Chairman Anderson:
Questions for Mr. Maddox?

Assemblyman Carpenter:
How would homeowners in this association then find out what was going on in a lawsuit or whatever kind of action there might be? The reason I bring this up is that there was a case in Spring Creek, Elko, that had to do with buried tanks, leaking tanks, and things like that. The people were very upset because they could not find out what was going on in the situation. They seemed to be blaming the association and its attorney for what was happening. As it ended up, the association, and it goes back to the homeowners, had to pay a fairly large sum of money to settle the lawsuit. I am just wondering how the people in the association would find out if these things were kept secret.

Robert Maddox:
The provisions that we are talking about here simply have to do with negotiating an agreement between the attorney and the association. It doesn't address the obligation of the association board to keep the membership of an association current regarding ongoing litigation. The privilege still applies in terms of meetings between the association board and the attorney, but typically the association boards put out newsletters or conduct board meetings where the membership is entitled to be present and to ask questions about ongoing legal matters.

Assemblyman Carpenter:
I think that is one of the problems when we have these meetings. They would bring up the attorney-client relationship and it didn't seem like anybody could find out what was going on. I know this is a situation sometimes in the cities and counties related to ongoing controversy, but it just seems to me that this then can cause a lot of problems with the association, its members, and the board where these things are kept secret and nobody has a way to find out exactly what's going on.

Robert Maddox:
The problem really is that the Nevada Supreme Court has determined that members of a nonprofit corporation, such as what most homeowners associations are, are strangers or third parties. The association is run by the board of directors and it's the board of directors that act on behalf of the association. Unless members are separately represented by the same attorney for the association, when they are present during a meeting, it's just the same as having any stranger off the street. Maybe we really need to be looking at this broader issue of members who should really be treated the same as board members for purposes of preserving the attorney-client privilege because the members of the association are so much affected.

Given the current state of the law, if a discussion between the board and the attorney takes place in front of the members, and the members are not separately represented by the same attorney, it's the same as though the people you are suing are present. The concept of attorney-client privilege is that if you waive it in part, you might be waiving it entirely. That, unfortunately, is why we deem it necessary to try to protect the attorney-client privilege so that clients can have the ability to have confidential discussions with an attorney of their choice. Right now, the problem is that if members of the association are present, the attorney-client privilege is deemed waived as to anything that is discussed. Perhaps we need to look at the concept of attorney-client privilege applying to the members of the association as well as to the board of directors so that the members can participate in that discussion. While we are not proposing that, it is not a bad thing to do.

Assemblyman Carpenter:
I just bring it up because I think that sometimes in public bodies the attorney-client relationship is abused and we all need to be aware of that so that it doesn't proceed down the road so that the members of the association are really at loggerheads with the board and it leads to hard feelings. What happened in Elko was that members of the board were voted out. We need to be careful with that. I understand the attorney-client relationship, but we need

to be aware of that if you are invoking this so that it doesn't cause unintended consequences.

Michael Buckley:
I had a thought and a suggestion for Assemblyman Carpenter. I would point out that in Section 66, top of page 36, subsection 6, "at least once every 90 days, unless the documents impose more stringent standards, the executive board shall review at one of its meetings . . . (f) the current status of a civil action." It was the intent that this is done in an open meeting and wouldn't necessarily have to involve any attorney-client privilege matters, but simply informing the members of the status. I think there is already a duty there for the board to keep its members up-to-date without necessarily violating the attorney-client privilege.

Karen Dennison:
Section 68 deals with quorums and has been the topic of much testimony related to the inability to obtain quorums. Section 68, subsection 1, provides that the quorum requirement is 20 percent unless the governing documents provide otherwise. You would have to amend your governing documents if you had a higher quorum requirement. Section 68, subsection 2, is more important, perhaps, in that it allows for a fallback position if a quorum is not present for a meeting. If the quorum requirement in your documents is more than 20 percent, you notice a meeting of the owners but you don't get the quorum required to hold that meeting, what you can do is adjourn the meeting, and if at the second meeting you still don't get your required quorum, that quorum is automatically lowered to 20 percent, but you can only discuss and act on those matters that were on the agenda for the original meeting. This was proposed through collective discussions of those who are actually hands-on in the management of these associations and have difficulties getting quorums that are higher than 20 percent.

Assemblyman Carpenter:
On page 33, right at the bottom, the bill talks about getting a copy of the minutes or summary of the minutes to a unit owner but that they have to pay for the cost. Why would you want to charge someone to get a copy of the minutes? I don't think that the city council or board of commissioners charge. Why would homeowners be charged to get a copy of the minutes?

Karen Dennison:
I believe that most homeowners associations charge copying costs. Perhaps that would be better left to some of the managers to explain what is done in practice. The law does allow them to charge the cost, not any profit, on this particular matter.

Chairman Anderson:
That is current law. I do believe that local governmental bodies do charge for actual copy cost to people who come and ask for copies after the fact. They usually print free "before" and then "after" there is a charge to do it. That's an Assembly Committee on Government Affairs kind of question.

Karen Dennison:
Section 69 deals with a form of proxies and housekeeping items.

Sections 70 and 71 were discussed by Mr. Buckley.

Section 72 clarifies where the association budget has to be kept.

Section 73, which addressed the tax credits for park facilities, was discussed by William Magrath.

Section 74 was discussed by Mr. Buckley.

Section 75 is a technical correction.

The next important section is Section 76, which deals with co-op liens. Co-ops are not at all common in the state of Nevada but I had occasion recently to use a co-op form for an affordable housing project, which was a mobile home park purchased by the owners through the co-op form. What I wanted to make sure was that we could use the same lengthy foreclosure procedures in a condominium or a planned community that you can use for a homeowners association lien foreclosure. The way the current law reads now, it could be read to say that the declaration couldn't provide for the period of time an owner has to cure, but you would have to rather go into the Uniform Commercial Code which could be as short as 10 days. This brings co-ops on par with condos and planned communities in the lien foreclosure process.

Sections 77 and 78 are important because they lengthen the period of time that an association must wait before they can hold a sale of an owner's unit. This is lengthened by 30 days so it would go from 90 days, which exists under current law, to approximately 120 days. This also puts homeowners associations' lien foreclosures on a par with deed of trust foreclosures, which are approximately 120 days from initial notice to the sale of the property.

We have amendments to Section 79 already discussed. Sections 79 through 81 deal with records that must be kept by the association and where they must

be kept. With that, I will turn over [the explanations of] Sections 82 and 83 to Melody Luetkehans, who represents the Nevada Association of REALTORS.

Melody Luetkehans, General Counsel, Nevada Association of REALTORS:
[Introduced herself.] Our membership deals basically with the disclosure requirements when a unit within a homeowners association is sold. Previously those disclosure requirements were to be given to any potential buyer who walked through the unit. Some of those disclosure packages were approximately two inches to three inches thick. At this time, we have modified the language to say that a seller can reasonably give a purchaser the disclosures after they have executed the purchase agreement but before that purchase agreement becomes binding on the purchaser. We have requested modification of that language which is reflected in the bill.

The second portion, [Section 83], includes the reserve studies as one of the documents that can be made available to a potential purchaser. Currently a homeowners association is required to provide a certificate to the seller. The certificate isn't just a single piece of paper; it's a series of documents regarding the homeowners association. It includes a copy of the declaration and the monthly assessments. Heretofore it hasn't been required to provide a copy of the reserve study; now you can provide a summary of that reserve study. However, if the potential purchaser wishes to see the full reserve study, that's now available to them.

Karen Dennison:
That concludes my presentation.

Chairman Anderson:
Questions from members of the Committee? I would like to see us process this bill. It's a real big hope that we get it moving along. I am sure there will be work for the Committee to do next session, but I would at least like to get this one taken care of now since we have been working on it for two [sessions] in a row.

James Flippen, Vice President and Community Association Manager, Associated Management, Inc.; and member of the Community Association Institute Legislative Action Committee:
[Introduced himself.] I think the bill was very well presented and I wanted to express that the bill is a consensus of many years of work of many professionals in the industry. I am an association manager and I am here to express my support for Senate Bill 100. While it may not be perfect, the bill provides reasonable legislation and law that will benefit homeowners associations and their owners by clarifying issues that are not currently or

properly addressed or not addressed at all. The bill further supports and enables a more fair administration of associations and the owners that live in the communities.

Shari O'Donnell, Community Relations Director, Signature Homes:
[Introduced herself and submitted Exhibit K.] I don't think I have anything further to contribute other than to say, "Absolutely, this bill has my full support." I won't belabor all the benefits of the bill.

Betty Ravendo, Owner/Manager, Raven Management and Consulting Services:
[Introduced herself.] The Community Association Management Executive Officers (CAMEO), a newly-formed organization of business owners and management companies in the Nevada area, consists of the owners and key managing executives of property management companies and community management companies who manage common-interest communities throughout the state of Nevada. In a recent survey of member companies, it is a fact that our group manages more than 200,000 homes in southern and northern Nevada. For the most part, we are supporters of the bill, but there is one particular area of concern.

The purpose of the bill has always seemed to be to enhance communication between the homeowners and their board of directors in an effort to make the enforcement of the documents more harmonious. In a lot of cases, the previous bills and this current bill will accomplish that.

[We are concerned about Section 65 that covers] the minutes of a board meeting. As managers, we deal with the everyday operations of these associations. The way that Section 65, subsections 6 and 8, is worded on page 32, requires—minutes are records of actions taken by the body, not comments made by anyone, including members of the board. CAMEO has serious concerns of defamatory remarks that may be made at a meeting or written comments requested to be attached that may be sent to potential buyers during the escrow period. The way this section reads is it requires that the substance of what the homeowners addressed to the board in open forum be documented in the minutes and that attachments of their narrative be entered into the record as well at their request. This can present serious problems because in many cases these narratives could be both slanderous and defamatory due to disputes between homeowners and their board.

I recently had an occasion where I was requested to provide the last minutes of a meeting of a new association I had just taken over. The open forum minutes were extremely detailed to the point that there were ten different disputes that were openly discussed in this narrative. I was hesitant to attach that to the

package that was to be sent to the prospective owner because I couldn't help thinking that had I been that prospective owner I would be very suspect of buying a home in a community where there seemed to be so many obvious disputes, which oftentimes represent only a small number of homeowners.

I would just simply request, and I apologize for not having any wording for a proposed amendment, that the word "summary" be replaced with the word "substance" and the requirement that it be attached to the minutes be eliminated. I see that this is problematic in enhancing communication between homeowners and their boards. It could also jeopardize the positions of homeowners who are trying to sell their properties.

In answer to an earlier question regarding secret ballots, I can only speak for my own company, but most of our members of CAMEO work in a similar situation where we take the owner of record and put their name on the outside envelope that is mailed back with the sealed secret envelope. These are noted as they are sent in so that we can only receive one from each homeowner. Then these envelopes are actually opened in open forum. It's not foolproof, I don't think any system is, but it is well-monitored and has been successful for us.

Regarding the other question posed relating to the charge to inspect records, this becomes necessary in most cases because when homeowners come into the community association management office to inspect the records, these records may have already been archived. If the homeowner wants to review their own personal homeowner file, letters and correspondence, this process of interview has to be monitored and it can take several hours depending on the nature of the documents that they want to review and the number of copies they want made. The time that is involved must be compensated somehow; in most cases it will be charged to the association. If we did not put a value on that time, I think that the right of the homeowner to inspect could become abusive and costly to the association.

Chairman Anderson:
You appear to be substituting the homeowners association officers for some of the county and city clerks' offices and other kinds of governmental agencies that a public city would have. Since the homeowners association acts in a quasi-governmental format, this really is trying to maintain the same opportunity to find out what's going on in a homeowners association as would be going on at a city council meeting or county commissioners' meeting. I would be perplexed that if for some reason I couldn't go to the county commissioner or city meeting then I would want to be able to review the minutes if I knew something happened in the meeting that dealt with my particular parcel or street. Don't you think that a homeowners association should have that same

opportunity? [Betty Ravendo indicated that they do.] Isn't that what it is trying to get to? I was thinking of that part [of your presentation] where you wanted them to only take down the substance of the remarks that is required and you wanted us to delete that.

Betty Ravendo:
I was addressing only the area of the meeting that is open forum for the homeowners to come and address any questions or issues that they have to the board. Unlike county meetings, we do not transcribe our meetings. We take minutes to reflect the actions taken by the board and narratives leading up to actions. During the homeowners' forum, we typically address the substantive issues addressed in open forum. If the discussion in open forum leads to proposed actions to be taken, that would indeed be put on the agenda for the next meeting and would be detailed in the minutes.

Chairman Anderson:
Are you going to put something into writing for the Committee? It is my intention to take this up at a work session tomorrow if we are going to get this out [of Committee].

Betty Ravendo:
We can have that for you.

John Briggs:
I support the bill in its totality. I would like to address briefly the last comment. I am opposed to giving the board of directors any discretion regarding entering into the minutes what they think might have been said. I could spend two hours on the subject, but if it is said by somebody, that's their problem. If the board publishes that, that's not their problem. I think it ought to be as verbatim as it could possibly be. I urge you to pass the bill.

Mark Kaplinsky, Homeowner:
In the interest of time, I am throwing away my presentation since most of the points have been discussed. I would like to comment briefly on the different points made this morning. First, I would like to thank those who drafted this bill; I think you have done a brilliant job. [Introduced himself.] I have been a board president and non-professional manager of a homeowners association in Las Vegas. I have completed hundreds of volunteer hours with the Ombudsman's office; we have been videotaping the educational sessions.

Just to comment on some of the issues brought up. I know that some of the Committee members have brought up the issue of fines, whether they should be applied, and who should pay them. I think this bill is more clever than that, it's

the ability of the Commission for Common-Interest Communities to remove the bad members; that's the key power. Sure I would love to fine them, make them pay for their crimes, but just getting them off the board is the real aim. I am hoping when the Commission is finally formed that it doesn't go the fine route; that hurts the innocent homeowners. Just get the bad members off the board, keep them off the board, and, if need be, appoint a property manager to be the remedy to the problems. I think that will take care of just about every problem that I have ever heard of.

The second point is about the election ballots. I have had a lot of experience running elections; I have run three of them. It's a very well-crafted, intricate process, however, there are one or two holes still. Hopefully, I will soon close those or at least make suggestions about that. Ultimately, what I would like to see is a nonpartisan interest, third party, maybe the Real Estate Commission itself, conduct elections so that nobody who has a stake in the election has anything to do with the counting of the ballots.

Mr. Magrath mentioned that 92 percent of the homeowners were happy with their associations, but that means 8 percent are not. Of a million homeowners—that's 80,000 [unhappy] homeowners—and, unfortunately, I am one of those. We have a board who will not turn over our records and if this bill doesn't pass, I am going to be out $10,000 to $15,000 in legal fees just to find out if our board is stealing our money because there is no other way of doing it.

The reason that the current mechanisms of mediation and arbitration don't work is because the courts, the mediators, and the arbitrators work with the boards and homeowners as if we are under the rules of corporations. Associations are not corporations, they are governing bodies that are closer to municipalities. I know this has been discussed. Only this Commission for Common-Interest Communities will be able to address the issues as a municipality, or at least those elements that are a municipality. Therefore, they could remove bad board members who continue to abuse, which is why I think this bill is so good.

Finally, I would agree with the speaker from CAMEO. What I would recommend for the minutes is that—to state the problem, I go to a meeting, I will see in the minutes that, "Mr. Kaplinsky made an idiot of himself." I don't think I was an idiot. If anybody really cares about it, let them produce a written statement and include that with the minutes and let that become the official record of the organization and nothing more. They will never get it right, they will never be able to transcribe it right, they will never agree, and perhaps it will give the person that is making that comment a chance to cool down. Maybe they won't put all that information in because the homeowners that I know would end up with a slander suit anyway.

I urge the committee to pass this bill and I thank you very much for allowing me to speak.

Chairman Anderson:
Unless you have something specific that you are offering that hasn't been addressed, it is a good time to say, "Me, too," so that we can move on to the other part of the agenda.

Terri Janison, Homeowner:
[Introduced herself.] I came to discuss specifically amendment [Section] 46 of S.B. 100. Other than that, I think the bill is very good. I am a homeowner who is part of that 8 percent who is dissatisfied at this time with our association. I had sent your Committee previously a more detailed description of why I am against this amendment, but I would like to reiterate again, even as I listened this morning, I keep hearing over and over again that it's the association, it's the management company, it's the property manager, it's CAI, and, yes, even the homeowners. Well, it should be the homeowners first. I would like to thank the Committee because you have at least stepped up and keep readdressing the fact about the concerns of the homeowner.

Section 46, regarding delegate voting, is not homeowner-friendly. If you are elected on the Assembly Floor, you get one vote. When we vote in an election for you, we are given one vote. If a homeowner chooses not to vote in an election, the delegate should not be given the right to represent those people. If there are 100 homes in a development and 40 decide to vote in person or by proxy, then the other 60 will be voted by the delegate? I think that is the most undemocratic thing that could happen in unfairness to a homeowner. The association I live in has over 16,000 homes in it alone. Their concern is apathy? My statement back to them, if that's the case, you need to work harder to get the homeowners involved and not be apathetic. It's not to give you more power as an association, management company, or an association board to amend the CC&Rs, elect the board, or whatever you feel the need is for that power. As a homeowner, I strongly disagree with Section 46.

Chairman Anderson:
Questions for Ms. Janison? Thank you for raising your concerns.

Amber Williams, Homeowner:
[Introduced herself.] I have lived [under the rules of] a homeowners association for the past three years, two and a half years as a board member, and it was one of the most enlightening experiences of my life. I found that I had to know law and accounting in a way that I don't think a layperson is prepared to; it's

extremely complicated. I am in favor of S.B. 100, but I have seven brief comments:

1. The underlying fact that hasn't been brought up is that we are talking about people's constitutional rights. When I bought into a homeowners association (HOA), I never had a clue that my constitutional rights could be violated. I know that is a real complicated issue, I am not a legal scholar, but I know that it happens.

2. Regarding the whole issue of what is private and public, Nevada has done a wonderful job. I think that NRS Chapter 116 and the Commission [for Common-Interest Communities] are great ideas, but we are really dealing with a public institution. These are governments, they collect fines, taxes, assessments, they make major decisions over people's lives, and they make zoning decisions in some cases, so I really think that we have to understand that this is public and get away from the idea that we are dealing with a private corporation. We are dealing with people living in their houses. Most studies show that HOA's property values do not increase at the same rate as non-HOA houses. I think that is very significant. Senate Bill 100 applies ethics and it will benefit everybody—realtors, homeowners, and lawyers—it will make the whole community work better.

3. Talking about complaint statistics—only 1,000 or 1 percent—and 92 percent are happy—well, I had a talk with Eldon Hardy, whom I respect highly, but the way that survey was done that showed 92 percent of the people were happy is extremely flawed. I have done scientific research and the way the survey was conducted would never pass any scientific study; it was flawed and the statistics are unreliable. If anybody were making judgments based on those statistics, I would ask you to examine the survey.

Chairman Anderson:
You need to be specific to the bill, since we are trying to process the bill. We have been hearing this bill for two and a half hours; we are at the point where you should focus on what is in the bill.

Amber Williams:
4. The other thing I had a problem with is Section 61, subsection 4, about past due fines. I think that Nevada would be going backwards to add that in. This has happened in other states where there is a very small fine, such as $50 or $100, and then several thousand dollars of attorney fees are added on top of that, making it arduous for the homeowners to pay or it's very threatening and harassing. I ask that be deleted and go back to what we had.

5. The election procedures are essentially public elections and people should not be involved that have a stake in the outcome.

6. Who is the client? I have been told that the president of the association is the only client. I have been told that it is the board of directors, and I have been told it is the association. I don't see anything wrong with negotiating a contract with a lawyer in public. I do think that there may be legal issues that should be handled by the board in private; I don't see how the negotiation of the contract could not be public.

7. The minutes are an interesting issue. I actually think that the people who speak at the meetings should be documented and I also think that they should be indemnified just like a board member. For what they say that goes in the minutes, they are protected, so that they can freely speak. I think people have a right to know. If I was buying into an association, I would want to see the minutes and I would want to know what the issues are.

Chairman Anderson:
Questions for Ms. Williams?

Tami DeVries:
I have no further comments.

Gail Anderson:
[Submitted Exhibit L.] The Real Estate Division supports Senate Bill 100. Specifically, it adds a very important component to the authority of the Office of the Ombudsman [for Owners in Common-Interest Communities]. Section 52 states the Ombudsman will investigate disputes and assist in resolving disputes. This authority has not been there and it will help a great deal in our office. We realize there is probably some pent up demand and there is a process we have established for dealing with complaints and assessing what complaints will need to go before the Commission for Common-Interest Communities. I have provided that in written testimony (Exhibit L) dated May 13, 2003. We support this bill and have been actively involved in working on this legislation throughout the process in this session.

Chairman Anderson:
Is there anybody in Carson City who has not been heard who feels they need to get themselves on the record? Is there anyone in the south who did not sign in who needs to get themselves on the record?

Eldon Hardy, Ombudsman for Owners in Common-Interest Communities:
[Introduced himself.] I would just like to say a few words about our office and how we feel. We are supporting this bill strongly because we recognize the need from our experience of taking at least 1,000 calls per month asking for acceptance. We have a staff of four people. I believe that at least half of the people of Nevada live in associations. We want a process in place to give these people a feeling that there is a source to get a resolution; this Commission for Common-Interest Communities will do it with the hearing panels and so forth. We know that it's important that people realize what they are getting into when they buy into an association; that's covered in the section dealing with disclosures. Everybody should have the right to know what's going on with their corporation, their company, and their largest investment in their life, which is in an association run by the boards. This bill is providing an avenue to uplift people's spirits and let them feel like there is an option and opportunity to get resolution of complaints. Our office is excited that we can go beyond what we have been able to do in helping to resolve these issues before they become life-changing matters. I want you to know that we want to be involved only more so and in a more positive manner.

Chairman Anderson:
[Chairman Anderson accepted into the record Exhibit M submitted by Michael Schulman, Attorney, Wolf, Rifkin, Shapiro & Schulman, who was not present to give testimony.] This person showed up yesterday and prepared an amendment relative to Sections 61, 62, 67, and 79.

Michael Buckley:
I am familiar with John Leach and Michael Schulman who are also members of the Community Associate Institute Legislative Action Committee. I am not familiar with the change for Section 61, subsection 4. Section 61, subsection 5, was the same change that Pamela Scott proposed. I actually put together a quick amendment on Section 62, subsection 8, that was discussed. When an association sends out a ballot we thought the law ought to provide that a homeowner have at least 15 days to return it. I think that is what most associations do.

Chairman Anderson:
Ms. Scott's amendment is the same as Section 61, subsection 5? Section 62, subsection 8, would deal with 15-day return? You would suggest that one? [Mr. Buckley indicated yes.] How about the amendment for Section 61, subsection 4? Do you perceive that to be acceptable?

Michael Buckley:
I would have to think about that. I don't know the context where that is given. What they are doing is uncapping these charges for certain fines.

Chairman Anderson:
The removal of the language in Section 67, subsections 2 and 3?

Michael Buckley:
Section 67 was handled by Mr. Maddox's amendment, as was Section 79, subsection 1, on the last page.

Assemblywoman Buckley:
I wanted clarification on the costs of collecting. I like the specificity of the amendment as proposed by Pamela Scott of the Howard Hughes Corporation, although I have some concerns with the collection fees. I don't practice in this area of law, but I had someone come in who was going to lose their home. They were on social security, so they came to legal aid because they had a decorative toilet in their front yard as a planter with petunias and they got charged a huge fine for an unsightly object. So picturing this "toilet bowl woman" who is capped with the fee, that is why we passed that in previous sessions, but now the $100 fine has a $100 collection fee and a $50 recording fee. Could you address that for me?

Pamela Scott:
This does not add fees. This was requested by Senator Ann O'Connell. As most of you already know, you may file a lien for outstanding penalties that have not been paid for violations, but you cannot foreclose that lien under the law. Senator O'Connell's concern was that the cost to file liens is in the $300 to $400 range; it does cost the association that amount. She did not want someone who has a $100 or $200 outstanding penalty to be charged those costs, since there is a scale at 10 percent. Some associations are going to protect themselves by filing that lien. I personally have never done that, but others do. The idea is that you cannot pass those charges on, whether you have incurred them or not, that's the association's business judgment. You cannot hit someone with fees who has a disputed penalty as late charges on the penalty itself. However, it does not address monthly assessments.

Assemblywoman Buckley:
Now you can't charge the cost of collecting, but under the new bill, even with the amendments, you can?

Pamela Scott:
No, I was not clear. You can pass late charges and costs of collecting onto the homeowner at the present time. This is intended to limit the amount you can pass on.

Assemblywoman Buckley:
Right now, the limit is the fine not to exceed $100 or a total of $500. The new language about the limitations does not apply to the charges, and costs are being added. It looks like new language, not existing language in Section 61 on page 27.

Pamela Scott:
I believe that fines are defined as assessments under the existing law and you can pass the collection costs on for assessments. It was Senator O'Connell's intent under this bill to separate the two issues. Where you have a homeowner who is not paying their monthly assessment, which is basically what supports your association, you have to have the ability to collect those and you still can pass those costs on. If it's over a fine, you cannot pass the costs on. That was her intent, if the language does not say that I will have to defer to LCB on that.

Assemblyman Mortenson:
We heard testimony regarding the "one person one vote"; I have been looking for that section and I can't find it. [Michael Buckley indicated Section 46.] Is there a problem that if there is apathy and under-voting in a community the homeowners association can have larger than "one vote"? What was the concern?

Pamela Scott:
The concern related to delegate voting, which is a representative form of voting similar to "we elect you and you vote for us on matters." Several large associations in Nevada use this; they all have slightly varying rules on how they operate. Testimony referred to the Summerlin North Homeowners Association, which provides for delegate voting. Each subdivision or neighborhood elects its delegate at a meeting that is called for that purpose. That delegate has the ability to cast all of the votes for the neighborhood. At the time that there is a matter to be voted on by the entire association, a designated proxy is sent to every homeowner within Summerlin and those proxies are returned to the delegate. Discussion on apathy relates to many homeowners who do not return that proxy, and the governing documents for the Summerlin North Homeowners Association provides that if the homeowner does not return the document then the delegate for that neighborhood may cast in any way he sees fit the votes of the homeowners who did not return their proxy. For example, if there are

100 people in the neighborhood and 30 send back the ballot proxy, the delegate must vote the proxies in exactly the manner that the homeowners have directed him to do. The other 70 are left to the discretion of the delegate to cast.

Assemblyman Mortenson:
I guess I would have concern also. It seems to me that if only 30 vote, the votes should reflect what those people voted, rather than 30 for them and 70 for one individual.

Pamela Scott:
I do understand that; I am telling you exactly how those documents read. I will tell you that if the majority of the persons in that neighborhood cast their ballots in one manner, then the delegate must cast all the ballots for the neighborhood in that manner, no matter what his feelings are on the issue.

Chairman Anderson:
It deals with the original governing documents of the homeowners association as a voting methodology, because of the large nature of the homeowner group.

Assemblyman Mortenson:
But if 30 percent vote one way and they are actual voters, and 70 percent don't vote, as I understand what you are telling me, the representative can cast something that reflects 30 percent in this manner and he gets 70 percent personally to cast however he feels. Do I understand correctly?

Pamela Scott:
Yes, basically, I think you do understand it, but it is similar to any other representative form of government. You may get 25 letters from constituents opposing something that you, as their representative, feel is good for all of the people. You will therefore cast that vote that may not agree with the 25 that did correspond with you.

Michael Buckley:
I just wanted to add that this was discussed in the Senate. Summerlin is just one way of delegate voting; there are many different kinds. It really depends on the documentation that is recorded before you buy in. We tried to think of some way to address it, but there are so many different ways, we couldn't come up with a way to satisfy everyone's concerns.

Assemblyman Carpenter:
I need to propose an amendment (Exhibit N) to S.B. 100. On the original version this amendment was in there, but it got lost in the shuffle. Spring Creek—they need to abide by the Open Meeting Law.

Chairman Anderson:
I would never leave Spring Creek out of our discussion. [Chairman Anderson read the amendment language from Exhibit N.]

In addition, I will make part of the record a letter from David Stone (Exhibit O) relating to two items of concern regarding the Commission and Section 61, so that when we look at this in our work session tomorrow we will see if we can process S.B. 100.

We have quite a few amendments to deal with, most of which we apparently agree to. It is my understanding that the construction defect study is also going to be on the work session tomorrow, although they are still working it out.

Let's close the hearing on Senate Bill 100, and turn to our Work Session Document (Exhibit P).

I have set aside time for Thursday evening (May 15, 2003) and Friday evening (May 16, 2003) for the Committee, recognizing that we do have some bills that are exempt, including this bill (S.B. 100).

Senate Bill 122 (2nd Reprint): Makes various changes regarding malpractice insurance and actions. (BDR 57-265)

Allison Combs, Committee Policy Analyst:
Senate Bill 122 was heard on Monday, [May 12, 2003], and it makes various changes regarding medical malpractice insurance and actions. There was testimony in support of the measure indicating that the bill's provisions were designed to address factors contributing to the state's medical malpractice crisis. There were some concerns raised by the Insurance Commissioner regarding the potential impact of the bill on her office. There were no proposed amendments to the bill.

Vice Chairman Oceguera:
As indicated it appeared that there were several people in support of this bill. The Insurance Commissioner was neutral; I would recommend a Do Pass.

Chairman Anderson:
The Chair will entertain [a motion] on the recommendation of Mr. Oceguera.

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

Proposed Amendment to SB 100
Section 46

Add new subsections (4) and (5) to Section 46 as follows:

4. Not withstanding any provisions in the declaration, the election of any delegates or representatives must be conducted by secret written ballot. The secretary or other officer of the association specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the units owner.

(a) Only the secret written ballots that are returned to the association in the manner prescribed on the ballot may be counted to determine the outcome of the election.

(b) The secret written ballots must be opened and counted at a meeting called for the purpose of electing delegates or representatives. A quorum in not required to be present when the secret written ballots are opened and counted at the meeting.

(c) A candidate for delegate or representative may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association in the manner prescribed on the ballot before those secret written ballots have been opened and counted at a meeting called for that purpose.

PROPOSED BY: Mike Schneider

ASSEMBLY JUDICIARY
DATE: 5/14/03 ROOM: 3138 EXHIBIT C
SUBMITTED BY: Senator Schneider

May 13, 2003

To: Assembly Committee on Judiciary

From: Michael Buckley, Jones Vargas

Re: SB 100- Proposed Amendment
Section 36, Subsection 5, page 13, lines 1 – 14

5. Notwithstanding any other provision of this section, unless the respondent has knowingly and willfully committed a violation, if the respondent is a member of an executive board or an officer of an association:

(a) The association is liable for all fines and costs imposed against the respondent pursuant to this section; and

(b) The respondent may not be held personally liable for those fines and costs.

The intent of this amendment is to protect the association in the same manner as is typical in corporate indemnifications, i.e., the officer or director who knowingly violates the law should not be indemnified by the association.

See also Sec 63(4) – p. 31, line 34.

ASSEMBLY JUDICIARY
DATE: 3/14/03 ROOM: 3138 EXHIBIT D
SUBMITTED BY: MICHAEL BUCKLEY

SB 100 AMENDMENT

Submitted by: Michael Buckley
May 13, 2003

Amend Section 62, page 30

Add to line 15, after "unit's owner" and before period:

"**and permit the ballot to be returned within no less than 15 days**"

ASSEMBLY JUDICIARY
DATE: 5/14/03 ROOM: 3138 EXHIBIT E
SUBMITTED BY: Michael Buckley

Senator John V. Briggs, Ret.

May 14, 2003

SENATE BILL 100 (1ST REPRINT

Amendment proposed by John V. Briggs
Elk Point Country Club, Inc. Zephyr Cove, Nevada

Problem: Page 18, lines 14-17 cites NRS116 prevails as the governing chapter where is a conflict with NRS82 with no direction as to NRS81.010-160 and NRS78.

Elk Point Country Club, Inc., formed in 1925, is governed NRS81.010-160 and remained so when NRS.82 was enacted in 1991.

Elk Point never elected to be governed by the provisions of NRS82 (see NRS82.056). Thus, Elk Point is governed only by NRS116, NRS81.010-160 and NRS78.

Solution: On Page 18, Line 15 add 78, 81.010-160 so it will read:
by chapters 78, 81.010-160, and 82

Line 16, add 78, 81.010-160 so it will read:
provisions of this chapter and the provisions of chapters 78, 81.010-160, and 82

The addition of NRS81.010-160 makes it clear that NRS82 DOES NOT apply to NONPROFIT COOPERATIVE ASSOCIATIONS so that NRS116 is the primary prevailing chapter.

The addition of NRS78 makes it clear that NRS116 prevails over general incorporation law NRS78.

No other changes are proposed.

ASSEMBLY JUDICIARY
DATE: 5/14/03 ROOM: 3138 EXHIBIT F
SUBMITTED BY: John Briggs

P.O. Box 12578 Zephyr Cove, Nevada 89448 (775) 588 1526 Fax (775) 588 2906

5-14-03

Senate Bill 100 (1st Reprint)

Amendment proposed by William Magrath,
Caughlin Ranch Homeowners Association (Reno, NV) 775-788-2000

Problem #1: **Executive Boards can frustrate the ability of a unit owner to review the association's books, records, and other papers, by "maintaining" these records at the office of the Association's attorney or accountant. Then the Executive Board conditions review of the records upon the payment by the unit owner of the attorney or accountant's "hourly rate." This frustrates access to the records since these "hourly rates" can range from $150.00 to $300.00 per hour. While it is reasonable to require a person to be present during the review of the records, the member should only have to pay a reasonable rate of $10.00 per hour (i.e. a part-time or clerical worker's wage rate) to review or inspect the records.**

Solution & Proposed Amendment For Problem #1. **Shown below in *red italics and underlined*, an additional sentence has been added to limit the hourly rate which an association or executive board can charge a unit's owner for the review of association books, records, and other papers.**

Problem #2. **Some Executive Boards refuse to disclose the number of hours worked by personnel employed by the association. Unit owners should be able to learn how many hours are being worked in exchange for the salaries paid by the association.**

Solution & Proposed Amendment for Problem #2. **Shown below in *red italics and underlined*, NRS 116.31175(1)(a) is amended to require disclosure of hours worked by personnel of the association.**

48-40 **Sec. 79.** NRS 116.31175 is hereby amended to read as
48-41 follows:
48-42 116.31175 1. Except as otherwise provided in this
48-43 subsection, the executive board of an association shall, upon the
48-44 written request of a unit's owner, make available the books, records
48-45 and other papers of the association for review during the regular

---

49-1 working hours of the association[.] , ***including, without limitation,***
49-2 ***all records filed with a court relating to a civil or criminal action***
49-3 ***to which the association is a party. The executive board must not require a unit owner to pay in excess of $10.00 per hour to review any books, records, and other papers of the association.*** The provisions of this
49-4 subsection do not apply to:
49-5 (a) The personnel records of the employees of the association[;]
49-6 , ***except for those records relating to the hours worked, salaries and benefits of***
49-7 ***those employees;*** and
49-8 (b) The records of the association relating to another unit's
49-9 owner [.] , ***except for those records described in subsection 2.***
49-10 2. ***The executive board of an association shall maintain a . . .***

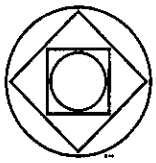
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ASSEMBLY JUDICIARY
DATE: 5/14/03 ROOM: 3138 EXHIBIT G
SUBMITTED BY: William Magrath

NO OTHER CHANGES ARE PROPOSED TO SECTION 79.

The Howard Hughes Corporation[SM]

An Affiliate of THE ROUSE COMPANY



May 13, 2003

To: To: Assembly Committee on Judiciary
Honorable Bernie Anderson, Chairman
Honorable John Ocequera, Vice Chairman
Committee Members: Barbara Buckley, Jerry Claborn, Marcus Conklin, William Horne, Harry Mortenson, Genie Ohrenschall, Sharron Angle, David Brown, John Carpetner, Jason Geddes, Don Gustavson, Garn Mabey, Rod Sherer

From: Pamela Scott
Summerlin

Re: SB 100

I would like to go on record as supporting SB 100, including the provisions for a Common-Interest Commission within the Real Estate Division of the Department of Business and Industry.

Since its adoption in 1991, NRS 116 has evolved tremendously as a consumer protection statute. Each session has brought forth additional protections and regulations, including educational and certificate requirements for common-interest community managers and the formation of the office of the Ombudsman to assist homeowners and boards to understand their rights and responsibilities as members of an association.

A survey done by the Ombudsman's office this past year has shown that 92% of homeowners in associations enjoy living in their association. While a 92% "approval rating" is pretty spectacular, we are all painfully aware that the other 8% often find dealing with their associations to be a frustrating and time consuming process since the only means of enforcing NRS 116 is through the courts. The formation of the Common-Interest Commission will help to expedite this process and hopefully keep these matters out of the already clogged legal system.

In addition to enforcement issues, this Commission will have the ability to gather data regarding associations and how they "live", recommend future legislation, oversee the education and issuance of certificates for managing common-interest communities, provide education for homeowners who serve on their boards of directors and assure that reserve studies and funding are being addressed to protect the assets of these communities. It is a concept whose time has come and we thank you for your consideration of this Commission.

ASSEMBLY JUDICIARY
DATE: 5/14/03 ROOM: 3138 EXHIBIT H
SUBMITTED BY: Pam Scott

The Howard Hughes Corporation℠

An Affiliate of THE ROUSE COMPANY

May 13, 2003

To: To: Assembly Committee on Judiciary
Honorable Bernie Anderson, Chairman
Honorable John Ocequera, Vice Chairman
Committee Members: Barbara Buckley, Jerry Claborn, Marcus Conklin, William Horne, Harry Mortenson, Genie Ohrenschall, Sharron Angle, David Brown, John Carpetner, Jason Geddes, Don Gustavson, Garn Mabey, Rod Sherer

From: Pamela Scott
Summerlin

Re: SB 100 – Proposed Amendment
Section 62, Subsection 5, page 28, lines 13 – 21

5. As used in this section:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association~~, a collection agency, a community manager and any other person or entity engaged to collect a past due fine~~ may reasonably ~~incur~~ **charge to the units owner** for the collection of a past due fine. The term does not include any costs incurred by an association during civil action to enforce the payment of a past due fine.

The intent of this amendment is to clarify that dollar amounts outside the outlined caps cannot be charged to the units owner in the associations attempts to collect fines. Associations, collection agencies, managers, etc. have no control over the costs to record documents, postage for certified mail, charges for documents from title companies, etc. They can only control which of those costs they will pass through to the homeowner who has been fined for violations.

ASSEMBLY JUDICIARY
DATE: 5/14/03 ROOM: 3138 EXHIBIT I
SUBMITTED BY: Pam Scott

May 13, 2003

Honorable Bernie Anderson
Chairman, Assembly Committee on Judiciary
re: SB100 Proposed Amendments

Dear Chairman Anderson and Members of the Committee:

On behalf of the Nevada Trial Lawyers Association, we have discussed with the proponents of SB100 amendments to Sec. 67 and 79 of SB100. The amendments are necessary so as to preserve the attorney-client privilege on behalf of homeowners associations needing legal advice. The proposed amendments to Sec. 67, paragraphs 2 and 3 (amending NRS 116.31085) are as follows:

Sec. 67. NRS 116.31085 is hereby amended to read as follows: . . . .

2. An executive board may not meet in executive session to enter into, renew, modify, terminate or take any other action regarding a contract, ~~including~~ excluding ~~without limitation~~ a contract with ~~the~~ an attorney ~~for the association~~. If the executive board takes any action regarding a contract, except a contract between the association and an attorney, the contract must be made reasonably available for review by the units' owners of the association.

3. An executive board may meet in executive session **only** to: (a) Consult with ~~the~~ an attorney ~~for the association~~ on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive. ~~The provisions of this paragraph do not permit the executive board to meet in executive session to take any action regarding a contract with the attorney for the association.~~

. . . .

Sec. 67, Subsection 3, page 37, lines 18-38, which amends 116.31085(2) should likewise be deleted.

The intent of this amendment is to place this proposed amendment in the proper section of the Code (NRS 116.31175) and to protect attorney-client privilege materials. This proposed amendment is related to the following amendments and is discussed in more detail below.

ASSEMBLY JUDICIARY
DATE: 5/14/03 ROOM: 3138 EXHIBIT J
SUBMITTED BY: Bob Maddox

Section 79, Subsection 1, page 49, lines 40-45 and page 50, lines 1-9:

1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association, including, without limitation, all contracts of which the association is a party, except for any contract between the association and an attorney, and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the salaries and benefits of those employees; and

(b) The records of the association relating to another unit's owner, except for those records described in subsection 2.

As drafted, the current amendment provides that all association contracts must be available for review, inspection and copying. The intent of this series of proposed amendments is to assure that the homeowner has the right to review, inspect and copy any contract entered by the association, unless the contract is protected by the attorney-client privilege. These amendments will also place the amendment in the proper section of the Code, namely NRS 116.31175 which governs the availability of books, records and papers of the association.

Thank you for your kind consideration.

Sincerely,

ROBERT C. MADDOX & ASSOCIATES

ROBERT C. MADDOX

RCM:crn

NTLA\NTLA\Bernie Anderson ltr51303

May 13, 2002

TO: Assembly Judiciary Committee: Assemblypersons Anderson, Ocequera, Angle, Brown, Buckley, Carpenter, Claborn, Conklin, Geddes. Gustavson, Horne, Mabey, Mortenson, Ohrenschall, Sherer

FROM: Shari O'Donnell, Community Relations Director, Signature Homes

RE: SB 100

Thanks to Nevada's lawmakers, homeowners in our State who live in Associations have been afforded the valuable consumer protections contained in NRS Chapter 116. (The provisions of NRS 116 govern the creation, management and operation of Common Interest Communities, more commonly known as Homeowners Associations.) However, for some time now Association Board members and homeowners have sought an effective, efficient, consumer friendly way to enforce NRS 116..

I believe the Common Interest Community Commission (CICC) proposed in SB100 will provide this sought after enforcement mechanism. Last session the Ombudsman was able to provide Legislators with a snap shot of the issues that Homeowner Association members and boards brought to his office, the negative impact these issues had on those living in Associations when these issues are not resolved, and the level of frustration that occurs because enforcement authority to resolve these issues still resided in the courts.

The CICC being proposed is based in good part on input gathered from extensive workshops that occurred during the 2001 Legislative session. Participants in the workshops included the Ombudsman, representatives from the Real Estate Division, Association boards of directors and members, property managers, attorneys, and developers of Associations.

The Common Interest Community Commission is possibly the most well received piece of proposed legislation having to do with Homeowners Associations that has ever been introduced, since Nevada enacted laws governing Homeowners Associations in 1991.

Here's but one example of how the CICC could benefit those living in Associations: NRS 116 imposes numerous obligations on the developers of common interest communities. For instance, the developer must pay assessments on the annexed lots he owns, and when he turns over control of the Association Board to the homeowners, he must provide a Reserve Study and see to it that the Reserve is properly funded, as well as turnover certain documents and Association records. At present, if a developer fails to meet any of those obligations, the Association's recourse is through the courts. Typically, when an Association weighs the costs associated with that method of enforcement against the funds or actual damages that could be recovered, they discover that when all is said and done, pursuing the matter through civil action is a losing proposition. However, if we have a CICC, Associations would at long last have an efficient, effective and affordable method to enforce developers comply with and fulfill their obligations under NRS 116.

Thank you

Shari O'Donnell

ASSEMBLY JUDICIARY
DATE: 5/14/02 ROOM: 3138 EXHIBIT K
SUBMITTED BY: Shari O'Donnell

KENNY C. GUINN
Governor

SYDNEY H. WICKLIFFE, C.P.A.
Director

STATE OF NEVADA

GAIL J. ANDERSON
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
2501 E. Sahara Avenue, Suite 102
Las Vegas, Nevada 89104
(702) 486-4033 • Fax (702) 486-4067
www.red.state.nv.us

MEMORANDUM

TO: **Assemblyman Bernie Anderson, Chairman**

Assembly Judiciary Committee

DATE: **May 13, 2003**

RE: **Testimony Regarding Senate Bill 100**

FROM: **Gail J. Anderson, Administrator, Real Estate Division**

In 1997, the Office of the Ombudsman for Owners in Common-Interest Communities was created to:

- Assist owners in common-interest communities to understand their rights and responsibilities as set for in Chapter 116 AND the governing documents of their associations;
- Assist persons appointed or elected to serve on executive boards of associations to carry out their duties;
- Assist in processing claims submitted to mediation arbitration; and
- Compile and maintain a registration of each association organized within the state.

The mere existence of the law itself and the existence of governing documents for individual communities has not sufficed to ensure that every self-governing association works well - and that everyone DOES what they're supposed to do - and responds in the way they should respond.

The Office of the Ombudsman is charged in NRS 116 with providing education and information to owners and board members. The Office has made progress by providing classes and training sessions toward fulfilling the purpose of assisting owners and board members in understanding and fulfilling their responsibilities. However, more assistance is needed than the Office of the Ombudsman is authorized by law to provide.

1 of 4

ASSEMBLY JUDICIARY
DATE: 5/14/03 ROOM: 3138 EXHIBIT L
SUBMITTED BY: Gail Anderson

The Real Estate Division specifically supports SB 100 because it adds a very important component to the authority of the office: (Section 52, page 19) **"When appropriate, investigate disputes involving the provisions of this chapter or the governing documents of an association and assist in resolving such disputes."**

The public is frustrated by our inability and limitations in what we can do to help in a problem situation. They are turning to us for assistance in getting conflicts and problems resolved. The Real Estate Division supports the creation of a Commission for Common-Interest Communities to hear complaints involving violations of NRS 116 and to render decisions to resolve disputes.

The Real Estate Division has been actively involved and working on this legislation throughout the process that brings us this far. We have especially had input as to how this legislation would be implemented, including the staffing and the processes of working with an administrative hearing commission (for Common Interest Communities).

The Real Estate Division supports Senate Bill 100.

KENNY C. GUINN
Governor

SYDNEY H. WICKLIFFE, C.P.A.
Director

STATE OF NEVADA

GAIL J. ANDERSON
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
www.red.state.nv.us

PROCESS OF RESOVLING COMPLAINTS IN COMMON-INTEREST COMMUNITIES AFTER SB100 IMPLEMENTATION

Step No. 1

Contact the Ombudsman's office for assistance in understanding rights, responsibilities and roles units owners and board members have when living in common-interest communities.

Step No. 2

Apply the knowledge gained from the assistance in step no. 1 to **attempt to resolve the matter on your own.**

Step No. 3

If you are unable to resolve the matter on your own, you may **file a complaint** with the Ombudsman's office requesting that they assist you in resolving the complaint.

Step No. 4

The Ombudsman's office will:

- **facilitate communication** between opposing parties ;
- seek information about the problems and **review the facts**;
- **mediate discussions** aimed at resolving conflicts;
- **negotiate solutions** to problems; and
- **make a recommendation** on how to solve the complaint.

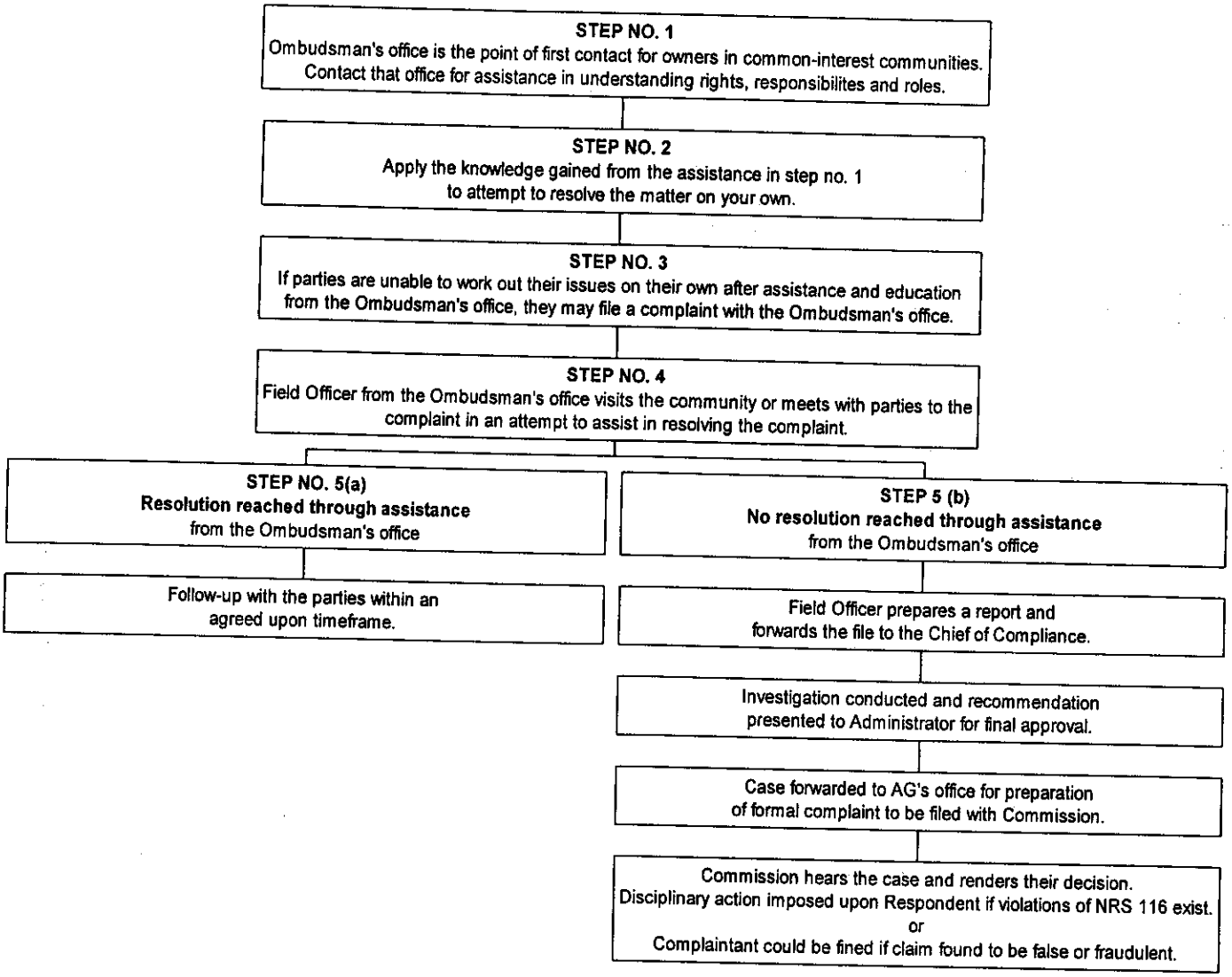
Step No. 5

The opposing parties may:

- **Accept the recommendation made by the Ombudsman's office** and resolve the complaint; **or**
- **If the complaint involves violations of NRS 116**, may ask that the Ombudsman's office refer their file to the Compliance Section to have an **investigation conducted** and if the investigation results in a conclusion that violations exist have a formal **Complaint for Disciplinary Action filed with the Commission for Common-Interest Communities; or**
- **If the complaint involves violations of the governing documents** of an association, but not violations of NRS 116, **file an ADR claim** pursuant to NRS 38.300-360.

* Often times matters may have overlapping issues and you may have to file the complaint with the commission concurrently with the ADR claim (not possible in current version of SB100, Sec. 11).

L 3a 4


STEP NO. 1
Ombudsman's office is the point of first contact for owners in common-interest communities. Contact that office for assistance in understanding rights, responsibilites and roles.
STEP NO. 2
Apply the knowledge gained from the assistance in step no. 1 to attempt to resolve the matter on your own.
STEP NO. 3
If parties are unable to work out their issues on their own after assistance and education from the Ombudsman's office, they may file a complaint with the Ombudsman's office.
STEP NO. 4
Field Officer from the Ombudsman's office visits the community or meets with parties to the complaint in an attempt to assist in resolving the complaint.
STEP NO. 5(a)
Resolution reached through assistance
from the Ombudsman's office
Follow-up with the parties within an agreed upon timeframe.
STEP 5 (b)
No resolution reached through assistance
from the Ombudsman's office
Field Officer prepares a report and forwards the file to the Chief of Compliance.
Investigation conducted and recommendation presented to Administrator for final approval.
Case forwarded to AG's office for preparation of formal complaint to be filed with Commission.
Commission hears the case and renders their decision.
Disciplinary action imposed upon Respondent if violations of NRS 116 exist.
or
Complaintant could be fined if claim found to be false or fraudulent.

L 484

Date: May 12, 2003

To: Assembly Committee on Judiciary
Honorable Bernie Anderson, Chairman
Honorable John Ocequera, Vice Chairman
Committee Members: Barbara Buckley, Jerry Claborn, Marcus Conklin, William Horne, Harry Mortenson, Genie Ohrenschall, Sharron Angle, David Brown, John Carpenter, Jason Geddes, Don Gustavson, Garn Mabey, Rod Sherer

From: Committee Association Institute- Legislative Action Committee
Michael Schulman and John Leach

Re: SB 100 - Proposed Amendments

Section 61, Subsection 4, page 38, lines 38-45 and page 39, lines 1-10:

4. Any past due fine:

(a) Bears interest at the rate established by the association, not to exceed 18 percent per year.

(b) May include any charges for late payment of the past due fine at a rate established by the association, not to exceed 5 fine at a rate established by the association, not to exceed 5 percent of the outstanding balance.

(c) May include any cost of collecting the past due fine at a rate established by the association. Notwithstanding the foregoing, if the fine is for a violation of the declaration, bylaws, rules or regulations of the association that does not threaten the health, safety or welfare of the residents of the common-interest community:

(1) Not to exceed $20, if the outstanding balance is less than $200.
(2) Not to exceed $50, if the outstanding balance die $200 or more, but is less than $500.
(3) Not to exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.
(4) Not to exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.
(5) Not to exceed $500, if the outstanding balance is $5,000 or more.

The intent of this amendment is to treat liens and the costs associated with the collection process consistently. NRS 116.31162(4) makes a distinction between fines imposed for violations that threaten the health, safety and welfare of the residents of the association and violations that do not threaten the health, safety and welfare of the residents. Section 61(4) should be revised to be consistent with NRS 16.31162.

ASSEMBLY JUDICIARY
DATE: 5/14/03 ROOM: 3138 EXHIBIT M
SUBMITTED BY: Michael Schulman

Section 61, Subsection 5, page 28, lines 13-21:

5. As used in this section:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and other fee or cost that an association~~, a collection agency, a community manager and other person or entity engaged to collect a past due fine~~ may reasonably ~~incur~~charge to the units owners for the collection of a past due fine. The term does not include any costs incurred by an association during civil action to enforce the payment of a past due fine.

The intent of this amendment is to clarify the dollar amounts outside the outlined caps cannot be charged to the units owner in the associations attempt to collect fines. Associations, collection agencies, managers, etc. have no control over the costs to record documents, postage for certified mail, charges for documents from title companies, etc. They can only control which of those costs they will pass through to the homeowner who has been fined for the violations.

Section 62, Subsection 8, page 30, lines 6-15:

8. The election of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representative as set forth in section 46 of this act. If the election is conducted by secret written ballot, the secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner. Any ballot sent pursuant to NRS 116.31034 shall provide each unit's owner with at least 15 days from the date of the mailing of such ballot to return it to the association.

The intent of this amendment is to make sure that the homeowner has adequate time to return the written ballot by mail.

Section 67, Subsection 2, page 37, lines 12-17, which is a new provision, should be deleted.

~~The intent of this amendment is to place this proposed amendment in the proper section of the Code (NRS 116.31175) and to protect attorney-client privilege materials. This proposed amendment is related to the following amendments and is discussed in more detail below:~~

Section 67, Subsection 3, page 37, lines 18-38, which amends 116.31085(2) should likewise be deleted.

~~The intent of this amendment is to place this proposed amendment in the proper section of the Code (NRS 116.31175) and to protect attorney-client privilege materials. This proposed amendment is related to the following amendments and is discussed in more detail below.~~

Section 79, Subsection 1, page 49, lines 40-45 and page 50, lines 1-9:

1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association, including, without limitation, all contracts of which the association is a party, except for any contract protected by the attorney-client privilege, and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the salaries and benefits of those employees; and

(b) The records of the association relating to another unit's owner, except for those records described in subsection 2.

As drafted, the current amendment provides that all association contracts must be available for review, inspection and copying. The intent of this series of proposed amendments is to assure that the homeowner has the right to review, inspect and copy any contract entered by the association, unless the contract is protected by the attorney-client privilege. These amendments will also place the amendment in the proper section of the Code, namely NRS 116.31175 which governs the availability of books, records and papers of the association.

Senate Bill 100
Proposed Amendment

Assemblyman John Carpenter

Add in the following new provision:

In conducting any meetings, a rural agricultural residential common-interest community must comply with the provisions set forth in chapter 241 of NRS concerning open meetings which are generally applicable to public bodies.

ASSEMBLY JUDICIARY
DATE: 5/14/03 ROOM: 3138 EXHIBIT N
SUBMITTED BY: John Carpenter



tion
ces, Inc

1412 South Decatur Blvd.
Las Vegas, Nevada 89102
Tel: 702.804.8885
Fax: 702.804.8887
Toll Free: 888.NAS.5544

May 9, 2003

Judy Farrah
2397 Grassy Spring Place
Las Vegas NV 89135

via fax (562-9863) and U.S. Mail

Dear Judy:

I have spent some time reviewing SB100 and its amendment. There are two items or concern. Those items have to do with the Commission and Section 61.

I think the proposed Commission will serve as a useful and effective oversight tool. Section 35 provides for very specific remedies to violations under this section. However, I am concerned about a very creative homeowner, or attorney, construing this entire section as an opportunity to cease paying association assessments while a dispute makes its way through the complaint process. In other words, a homeowner files an Affidavit with the Division claiming a breach of duty by a sitting Board member. In the meantime, the owner stops making assessment payments figuring an offset of payments may be equitable if it turns out that the owner's complaint is proper and substantiated and action is taken by the Ombudsman, Commission or hearing panel. My suggestion is that somewhere in the Commission language, it should be made clear that notwithstanding an provisions of the Commission sections, an owner shall not cease payment of assessment payments while a complaint makes its way through the "hearing" process.

My second concern under the Commission sections is Section 28(1)(a) and 2. Liberally applied, these sections apply to landscapers, roofers, handymen, etc. I am not sure if it was the intent of the legislature to make these sections so wide reaching.

Finally, my concern is with Sections 61(4) and (5). NRS 116.31162 provides for foreclosure by an association for fines, if the fines are for threats to health, safety and welfare. As an aside, I am not familiar with a single situation in which an association foreclosed on an owner for fines based on threats to health, safety and welfare. In any case, NRS 116.31162 gives the association "teeth" to enforce significant health, safety and welfare violations. However, the proposal under Sections 61(4) and (5) remove the ability from an association to take such action by limiting the cost of collection to an unreasonably low amount. The most an association can charge for collection costs for a $5,000 fine is $500.00. With lesser fines, the cost of collecting is less. The cost, however, to conduct a foreclosure sale is in excess of $500.00. The cost to comply with NRS 107 (foreclosure statutes) is in excess of $500.00. The cost of collection is the same if the fine for threats to health, safety and welfare is $100 or $5,000.00. The natural result of this section would be associations unable to cost effectively force compliance by homeowners who are threatening the health safety and welfare of the other residents in the community.

1352

ASSEMBLY JUDICIARY
DATE: 5/14/03 ROOM: 3138 EXHIBIT O
SUBMITTED BY: David Stone

Please do not hesitate to call should you have any questions or would like to further discuss an aspects of SB 100.

Sincerely,

David Stone

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Second Session
May 15, 2003

The Committee on Judiciary was called to order at 7:47 a.m., on Thursday, May 15, 2003. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

Note: *These minutes are compiled in the modified verbatim style. Bracketed material indicates language used to clarify and further describes testimony. Actions of the Committee are presented in the traditional legislative style.*

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. John Oceguera, Vice Chairman
Mrs. Sharron Angle
Mr. David Brown
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Jerry D. Claborn
Mr. Marcus Conklin
Mr. Jason Geddes
Mr. Don Gustavson
Mr. William Horne
Mr. Garn Mabey
Mr. Harry Mortenson
Ms. Genie Ohrenschall
Mr. Rod Sherer

GUEST LEGISLATORS PRESENT:

Senator Michael A. Schneider, District No. 11, Clark County

don't think the Legislative Counsel Bureau [LCB] would draft a bill that would be blatantly unconstitutional.

Things were mentioned about pay. You want to pay the Commission, that's fine with me; let's pay them. Contractors' licensing fees will pay the bill, if that's a problem. For any little objection that was brought up here, I think we could work that out as a subcommittee.

I appreciate Mr. Claborn's comment about "a breath of fresh air." What I'm trying to bring here is something totally out of the box that will move us down the road. Let me offer this, if you go to the Commission and you feel that your home didn't get repaired, and then you could go on to court or appeal it to a judge, I guess that would be OK, wouldn't it? But I would think that if the Commission is doing its job, all the repairs are going to be done, and a judge would reject it if all the repairs were done.

Thank you, Mr. Chairman. I look forward to working with you and I appreciate the respect and time you've given everyone. I watched most of the hearing yesterday from my office, and you ran an extremely good hearing, one of the best I've seen for the entire session. Thank you for allowing the people to have as much time as they did yesterday.

Chairman Anderson:
Is there anybody else on S.B. 371 who feels that the issue has not been fully heard or has a piece of information that's absolutely essential for the Committee to have? [There were none.] Let me close the hearing on S.B. 371.

[Chairman Anderson called for a recess at 9:20 a.m. and reconvened the meeting at 9:44 a.m.]

We've got a good news/bad news scenario. The major piece of legislation dealing with construction defect is still hanging fire. I'm still hopeful that we're going to come up with a solution, but it's not looking promising right this second. I have an idea of what we should do. If I can get your acquiescence to it, I think we'll be OK, but I'm still hopeful that they're going to work out some of their differences.

Our Work Session Document (Exhibit F) includes Senate Bill 100. If we can take care of S.B. 100, I think we might be in pretty good shape. So, let us take up S.B. 100 in the Work Session Document.

Let me indicate first of all that there is a quorum present, 13 members being present.

Senate Bill 100 (1st Reprint): Makes various changes to provisions governing common-interest communities. (BDR 10-29)

Allison Combs, Committee Policy Analyst:
Senate Bill 100 is the measure heard yesterday. There were a number of amendments that were proposed and I've summarized them through the Work Session Document (Exhibit F) as numbers 1 through 11, but I have also attached for the Committee's reference each of the exhibits that were submitted yesterday.

The first amendment, listed as number 1, would require rural agricultural residential common-interest communities to comply with the Open Meeting Law. That was proposed by Assemblyman Carpenter.

The second amendment, and these are presented in the order in which they appear in the bill as far as the section numbers to be affected, is in Section 36, with regard to protecting an association from having to indemnify board members or officers who knowingly or willfully violate the law, was proposed by Mr. Michael Buckley. The amendment language suggested is set forth in the Work Session Document (Exhibit F). He also referenced Section 63 of existing law requiring an association to indemnify board members when they're sued for actions taken in their role as a member, unless it's proved that they acted with willful or wanton misfeasance or with gross negligence.

The third amendment is with regard to voting procedures, and it would be an amendment to Section 46. There was some concern raised by individuals, including Terri Janison, with regard to voting through delegates. The amendment was proposed by Senator Schneider to require the election of delegates or representatives by secret ballot. He submitted language, on page 3 of the blue pages (Exhibit F), for the Committee to consider that specifies:

- The election of any delegates or representatives must be conducted by secret or written ballot.
- Mailing procedures.
- Only written ballots returned to the association in the manner prescribed on the ballot could be counted to determine the outcome of the election.
- The ballots must be opened and counted at a meeting called for that purpose of electing the delegates or representatives.
- A quorum is not required to be present when the ballots are opened and counted.

- The candidate for delegate or representative may not possess or participate in the opening or counting of the ballots that are returned to the association.

The fourth amendment would clarify which chapter or provisions of *Nevada Revised Statutes* would govern where there is a conflict. It would be an amendment to Section 48 of the bill and would clarify that NRS Chapter 116 also governs when there are conflicts between that chapter, NRS Chapter 78, which pertains to private corporations, and NRS 81.010 to NRS 81.060, which pertains to nonprofit cooperative corporations. That was proposed by former California Senator Briggs.

The fifth amendment was discussed in concept by Assemblywoman Buckley to clarify that an association could not act in violation of federal or state laws such as the Americans with Disabilities Act (ADA) with regard to restricting access or withholding approval for improvements to a unit.

Amendment number 6, to clarify the definition of the cost of collecting, is from Pamela Scott, Michael Schulman, and John Leach, who submitted their proposals in writing but weren't available yesterday to testify. Ms. Scott noted that the intent was to clarify that dollar amounts outside the outlined caps cannot be charged to the unit's owner in the association's attempt to collect fines. The proposed change to that definition is also set forth at the bottom of page 2 of the Work Session Document (Exhibit F).

Amendment 7 is an issue raised in writing. There was no formal testimony on this by Mr. Schulman and Mr. Leach regarding ensuring consistency between the provisions concerning fines and the inclusion of costs for collecting past due fines. This amendment would be to Section 61 of the bill. The intent set forth in their written document was to treat liens and the costs associated with the collection process consistently. *Nevada Revised Statutes* 116.31162(4) makes a distinction between fines imposed for violations that threaten the health, safety, and welfare of the residents of the association and violations that do not threaten the health, safety and welfare. The proposal is that this new language should be consistent with what is in existing law, so the proposal set forth would be that any past due fine would exclude the fine for a violation of the declaration of bylaws, rules, or regulations that would threaten the health, safety, or welfare of the residents.

Amendment 8 is proposed by Michael Buckley, Mr. Schulman, and Mr. Leach to ensure that the homeowner has adequate time to return a written ballot by mail. The language suggested by Mr. Buckley is at the bottom of page 3 (Exhibit F), which specifies permitting the ballot to be returned within no less than 15 days.

Amendment 9 is proposed by Betty Ravendo. Her proposal, regarding the minutes from the meetings of the unit owners, would amend Section 65 of S.B. 100. She proposed to delete the word "substance" and insert "summary" of the remarks made by unit owners as far as what must go into the minutes, and also to delete the requirement that prepared remarks be attached to those minutes. She's proposing a similar change to Section 66 to delete that requirement entirely. She provided her intent on the amendment in writing (Exhibit F). For example, in Section 66 she noted that meetings of boards of directors shall not be required to include comments or narratives of the owners because it is a meeting of the board of directors and should reflect their actions and the votes they take. She also suggested that it was not appropriate to attach to the minutes copies of remarks submitted by owners because the remarks could be incorrect or irrelevant or defamatory. For those reasons, she is suggesting that these changes be made.

The tenth suggested change pertains to attorney-client privilege. Mr. Maddox testified yesterday that the bill as written causes some concerns with regard to attorney-client privilege. He submitted language to try to correct that and protect contracts between the association and attorney.

The final amendment was submitted by Mr. William Magrath to ensure the ability of a unit owner to review the association's books, records, and other papers and ensure that this ability is not frustrated. He noted that some executive boards refuse to disclose the number of hours worked by personnel employed by the association, and that unit owners should also be able to know how many hours people are working in exchange for the salaries they are paid. The language suggested is on page 6 of the Work Session Document (Exhibit F) and would specify that the executive board must not require a unit owner to pay in excess of $10 an hour to review documents, books, records, or other papers of the association, and also included that personnel records of the employees, except for those records relating to hours worked, salaries, and benefits of the employees, would be accessible by the unit owners.

Chairman Anderson:
Ms. Lang, do we need to clarify the questions in number 10, the attorney-client privilege language of Mr. Maddox?

Risa B. Lang, Committee Counsel:
I think it's OK the way it is. The concern was if this was open and anybody could come, and the homeowners themselves may not have a contract individually with the attorney, and that what would otherwise be confidential could become open by waiving the privilege in that manner.

Assemblyman Geddes:
On number 7 on page 3 (Exhibit F), when we get into the language and it's a question that if we set the cap at 18 percent, wouldn't all the associations just put the interest rate at 18 percent? Is that high for this sort of thing? I'm not sure. It just seems high to me. I don't know how others feel. On page 4, amendment 9 (Exhibit F), I don't like that proposed amendment. Some of these homeowners associations are quite contentious and there is a lot of fighting going on. I think it is somewhat disingenuous to allow somebody to cover up the fighting that's going on in an association, and to let somebody move in and then find out what's going on once they're in there. If there are a lot of these issues out there, and there is a lot of fighting going on, I don't think we should allow them to cover that up, and I would not support that.

Chairman Anderson:
Let me come back to your point in number 7. By no means do I want to put myself out as an expert on money, but isn't it "not to exceed 18 percent"? It's the top end cap, so it could be considerably less. I know that we didn't hear any discussion on that.

Assemblyman Geddes:
I would agree. I'm just not sure anybody would set it any less if they could charge 18 percent. I don't think anybody would come in with prime, or prime plus two, or 5 percent, if they could charge 18 percent in this punitive action. Just an opinion, of course.

Chairman Anderson:
So you would prefer that it be prime. Is that what you're pushing?

Assemblyman Geddes:
Something—or a lower rate.

Assemblyman Brown:
I'm just wondering about the legal interest rate; I think it's in NRS Chapter 99 point something or other, which is generally prime plus two. If the Committee has the same concern that Assemblyman Geddes has, that number might be pushed towards the 18 percent since it's set at a cap.

Chairman Anderson:
You're suggesting that it would be "not to exceed prime plus 2 percent"?

Assemblyman Brown:
Or any enacted fine bears "interest at the legal rate." A lot of contracts state the lesser of the legal rate or 10 percent or something like that. I do agree that 18 percent is pretty hefty, but the Chairman is correct, it doesn't mandate 18 percent, it's just not to exceed. But if the Committee is concerned, I don't want to say it's quite standard, but in many instances the rates are set at the legal rate.

Chairman Anderson:
What you're suggesting is that what we should put in there, if we were to move it in 7, any past due fines bear "interest at the rate established by the association not to exceed the legal rate"?

Assemblyman Brown:
That's one way of saying it, or just stating "it shall accrue at the legal rate of interest." We could certainly give them the ability to set, but it wouldn't exceed the legal rate, which at this point is quite low. Some people may think it's too low.

Chairman Anderson:
Let's go back to the front. Number 1, seems to me, is acceptable.

Number 2 looks to me OK.

I have no problems with numbers 3, 4, or 5.

There's something about number 6 that causes me concern—"Costs of collecting includes, without limitation."

If we're going to move with number 7, it seems to me we should use "not to exceed the legal rate" at line (a).

Number 8 looks OK.

Number 9 does not look OK. I like the existing language. I understand Ms. Ravendo's concerns, but it seems to me that if somebody provides their written statement and wants it included, it should be included even if they are foolish enough to make inflammatory remarks. To quote Mr. Goldwater, "You can't stop people from doing dumb things."

Number 10 would be OK, and number 11 looked to be OK. Other than that, does anybody else have any concerns?

Assemblyman Carpenter:
Going back to page 4 of the Work Session Document (Exhibit F) where it talks about the minutes, it says under subsection 8(c), "the substance of all matters proposed, discussed, or decided at the meeting and, at the request of any member of the executive board, a record of each member's vote on any matter decided by vote at the meeting." I always thought that how members voted were part of the record, but it appears it's not recorded unless somebody on the board asks for it. It should be automatic that the voting of each member should be recorded. I may be reading it wrong.

Chairman Anderson:
You've got us reaching for the book. We'll have to go back and reread the bill here.

Assemblyman Carpenter:
It's on page 36, lines 21 and 22, and it says "and at the request of any member of the executive board, a record of each member's vote on any matter." I thought it was a matter that how the members voted was always recorded, whether it was unanimous or somebody voted against it, because if that wasn't recorded and anybody went back to find out how members voted, they wouldn't have any idea.

Chairman Anderson:
Mr. Carpenter, it would appear that, at least in my reading, they would have to keep date, time, place, those members of the executive board who were present, and the substance of what was proposed including the record and substantive remarks. In subsection 9, however, they can limit other materials, remarks, or other information to be included in the minutes. In other words, on materials and remarks, but I don't think that they can limit the vote.

Assemblyman Carpenter:
I guess I'm not expressing it. The only time they would record how the members voted is if somebody requested that the vote be part of the minutes. It seems to me that for any board like this, it should be part of the minutes whether it was unanimous, whoever voted against it, or whatever.

Chairman Anderson:
"Except as otherwise provided in subsection 9, the minutes of each meeting of the executive board must include . . . ." So you're suggesting that we remove the material of line 22 of Section 66, page 36 of S.B. 100?

Assemblyman Carpenter:
I think what you would do is where it says "discussed or decided at the meeting and," take out "at the request of any member of the executive board" and then it would read "and a record of each member's vote on any matter decided," and not at the request of any member of the executive board.

Chairman Anderson:
I think this is a drafter kind of question, but Ms. Lang, if our intention is that we want to make sure that's included in the recorded minutes, would we not put it into a category by itself along with the date, time, place of meeting, the members of the executive board who are present, those members who are absent, and the requested vote, and then renumber the other materials so that the board could request the substance of all materials proposed for discussion?

Risa Lang:
I think we could do it either way and we can work that out in drafting. I think it would mean the same thing either way. We take out the clause that Assemblyman Carpenter is referring to, so that it's always included instead of just being included at the request of a member of the board, and if it makes it more clear, we can certainly put that as a separate paragraph.

Chairman Anderson:
We definitely want to make sure that a recorded part of any minutes kept would include the way people voted and that it wouldn't be an option for them not to have that part. Ms. Dennison and Ms. Scott, do you find any problems with that? [Both indicated they did not.] Are you OK, Assemblyman Carpenter?

Assemblyman Carpenter:
Yes, sir.

Assemblywoman Buckley:
The only thing I was concerned about was the fines. It was explained to me why the health and safety was being adjusted, and I understand that now, but I still have some concerns about having an open cost of collecting. I like the idea of capping that because, otherwise, it's the $20 fine, then it's the cost of collecting the $20, and before you know it, it's this ridiculous amount. I hope we have a cap in this and that this cost of collecting isn't so broad that it allows them to charge any collection fee they want.

Chairman Anderson:
That would be [amendment] 6?

Assemblywoman Buckley:
Exactly.

Chairman Anderson:
Ms. Lang, can we clarify that a little bit better?

Risa Lang:
I think you're looking at Section 61, considering the manner in which you're going to charge these costs, and what you're going to charge. The current language of the section excludes health and welfare violations from the caps that are in this section currently, and which says that the fine can't exceed $100 for each violation or a total of $500. Currently that wouldn't apply if the violation was one that threatened health or welfare, so by changing it to just a violation it would apply to any. However, you'll note in the suggestion on number 7 of the Work Session Document (Exhibit F), it seems to be placing those back in.

I'm not sure what Assemblywoman Buckley is asking. I think she is addressing the language in lines 24 through 26 on page 27 of the bill. [Assemblywoman Buckley answered in the affirmative.] This says that the limitations on the amount of the fine don't apply to these additional charges for collections including interest, charges, or costs if the fine becomes past due. Basically, the limitations that are in Section 61, subsection 4, on the amount that can be charged for the fine don't apply to any kind of charges that are incurred for a late payment of the fine.

Assemblywoman Buckley:
I'm very confused by all this language, and I apologize. What would make me feel better is if all of these collection charges were also under this. What I think page 27, line 41 attempts to do, it says that these charges can't exceed 5 percent of the outstanding balance. What if there was some overall cap so you can't make up a $50 collection fee to just keep adding on? That would make me feel better about all these language amendments. If we had that language in somewhere, that would make me feel better.

Assemblyman Brown:
I know we spoke yesterday about health, safety, and welfare. Is there someplace in the statute that defines those types of violations? I'm wondering if your garbage can that has residual refuse in the bottom of it is deemed a health violation and what that would do? I know we're outside of our hearing, and perhaps that's not affected by this particular provision. Does anybody have information on that?

Chairman Anderson:
Well, I'm at a loss.

Assemblyman Brown:
I'm probably not going to get an answer to that one.

Risa Lang:
I'm actually not aware of anywhere in this chapter that would define that. I would guess it would just be a factual thing. I would also mention in Section 61, subsection 4, it does appear to place a limitation on the amount. I think that's what that subsection is for, for the amount that can be imposed for the past-due fines.

Assemblywoman Buckley:
But what confused me was on page 27, line 24, "the limitations on the amount of the fine do not apply to the interest, charges, or costs that may be collected."

Risa Lang:
I think that's referring back to the $100 per violation or $500 total. Then Section 61, subsection 4, is limiting how much that can be.

Assemblywoman Buckley:
Yes. In addition, Section 61, subsection 4(c), is pretty broad: "may include any costs of collecting the past due fine at a rate established by the association." That could be a pretty high rate.

Risa Lang:
If you go to the next page, it has some caps on that as well.

Chairman Anderson:
We were suggesting that it would bear interest at the rate established by the association not to exceed legal rate. Then we see the not to exceed $20, not withstanding the foregoing fine, and 5 percent on outstanding balance.

Assemblywoman Buckley:
So you get 18 percent interest, a late charge not to exceed 5 percent, and then a collection fee in accordance with that schedule. Why do you get interest and a late payment? Don't they represent the same thing? I'll defer to Mr. Brown.

Assemblyman Brown:
This is a statute and usually it is one or the other. I don't have heartburn over limiting it to one or the other. I would say that costs of collections are defined

in Section 61, subsection 5. At first I had some problems with this provision, but as I read it again, I feel like the caps that are imposed by Section 61, subsection 4(c) are pretty substantial. Looking at the costs of collection, they may add up rather quickly. So, if your typical fine is a $50 fine, that's going to fall within the $20 cap. They're probably going to incur the costs far in excess of that rather rapidly. I do think the cap is significant. I think the only thing I would do on this is perhaps limit it to one or the other, the interest or the late charge.

Assemblyman Conklin:
I would support it if it were capped at the legal rate with no additional penalties. If there's a cost to collecting, that should go in the evaluation of the original fine in the first place as far as I'm concerned. I think we should take collection charges out. There's a fine, there's a percentage, and that's it. That would be my suggestion for late fees. I don't think it costs the community if you leave your trash can out overnight.

Chairman Anderson:
Let's find a solution so we can move the bill. What are we going to do here?

Assemblyman Brown:
Delete Section 61, subsection 4(b).

Chairman Anderson:
In number 7 (Exhibit F)?

Assemblyman Brown:
That's correct. Either (a) or (b), but if you're looking for one, we can do (b).

Chairman Anderson:
So, it would then read that it "Bears interest at the rate established by the association not to exceed the legal rate." Then we would have (b): "May include any costs of collecting the past due fine at a rate established by the association." That would take care of Assemblywoman Buckley's concerns?

Assemblyman Brown:
Assemblywoman Buckley had heartburn over having both a legal rate and a late fee under the assumption that isn't the interest rate . . .

Chairman Anderson:
I understand. I misstated. So we can either do (a) or (b), but you can't do (a) and (b). You get your choice between either (a) or (b), so the bill drafter is going to have a pleasant time trying to sort this out for us.

Assemblywoman Buckley:
At the risk of moving us along, how about we pick (a) at prime plus 2 [percent]?

Assemblyman Brown:
Which is the legal rate.

Assemblywoman Buckley:
Legal rate. Right.

Chairman Anderson:
We already did that.

Assemblywoman Buckley:
So forget (b).

Chairman Anderson:
That's what I suggested just a second ago. So we don't have to worry about number 6. Are we accepting the changes in proposal 6 in the Work Session Document (Exhibit F), "costs of collecting"? That's where your original problem came from? That's now OK? So, we're going with proposed amendments 1, 2, 3, 4, 5, 6, and 7 with the elimination of subsection 4(b).

Risa Lang:
Are we going to add the language on number 7, subsection 4(c), that would make the distinction for health and safety violations just for the purpose of collecting past due fines?

Chairman Anderson:
Absolutely. Yes. We're accepting number 8. In number 9 we're doing Assemblyman Carpenter's change to reorganize that to ensure that they will record the vote. We are doing suggestion numbers 10 and 11. So we're doing 1 through 11, and in 9 what we're doing is clarifying that the change is not as in the Work Session Document (Exhibit F), but rather the suggestion being made by Assemblyman Carpenter. In 7, we're eliminating subsection 4(b).

Assemblyman Brown:
The only thing I don't think I heard was amending it to the legal rate. We stated delete subsection 4(b).

Chairman Anderson:
Absolutely. You're correct, Assemblyman Brown. I didn't say that and I should have. In proposed amendment number 7 (Exhibit F), 4(a) will read: "Bears

interest at the rate established by the association, not to exceed the legal rate"; subsection 4(b) will be eliminated; and in 4(c) we will accept the "notwithstanding the foregoing, if the fine is for a violation of the declaration, bylaws. . ." and we're going to clarify further "for health and safety."

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS S.B. 100 WITH THE AMENDMENTS AS DISCUSSED.
>
> ASSEMBLYMAN GUSTAVSON SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Assemblyman Horne was not present for the vote.)

Chairman Anderson:
I'll assign the bill to Assemblyman Brown. Assemblyman Brown is doing such a good job on these things.

That takes care of our Work Session Document (Exhibit F). We may meet this evening. I'm still hopeful that we're going to come up with the construction defect piece yet. I'm going to ask our policy analyst to take a look at A.B. 133 in its second reprint with a couple of little changes in it relative to some discussion on legal. Since we've not been able to reach consensus from the construction folks, we'll meet after the Assembly Committee on Elections, Procedures, and Ethics. The Assembly Committee on Elections, Procedures, and Ethics is meeting at 3:15 p.m., so as soon as they're out of here, we will be in here and I would anticipate they'll be out of here by six, but it's probably going to be a little later. We are in recess [at 10:30 a.m.].

[Chairman Anderson reconvened the meeting at 7:15 p.m.] I see trial lawyers here but no home builders and that distresses me. Let's hope that they're coming directly.

We can take care of a few issues while we're waiting. There were 66 bills referred to our Committee from the Senate, of which we have processed all but 4. [The Chair gave the status of both Senate and Assembly bills.]

Let's look at Senator Hardy's S.B. 136 in the Work Session Document (Exhibit G).

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ASSEMBLY COMMITTEE ON JUDICIARY



WORK SESSION DOCUMENT

MAY 15, 2003 ~ A.M.

ASSEMBLY JUDICIARY F1-21
DATE: 5/15/03 ROOM: 3138 EXHIBIT F
SUBMITTED BY: Allison Combs

WORK SESSION

ASSEMBLY COMMITTEE ON JUDICIARY

May 15, 2003 ~ A.M.

(Please note the list of speakers and summary of the discussion on each measure contained within this document do not represent an official record of the referenced meetings. For an official record, please see the minutes from the meetings of the Assembly Committee on Judiciary, which are available through the Legislative Counsel Bureau.)

The following measure may be considered during the Committee's work session:

☐ SENATE BILL 100, FIRST REPRINT (BDR 10-29 was introduced by the Senate Committee on Commerce and Labor). The bill was heard in Committee on May 14, 2003, and no action was taken.

Senate Bill 100 makes various changes to provisions governing common-interest communities.

Proponents/those testifying in support of the bill: Multiple individuals signed in and testified in support of the measure including the following: Senator Michael Schneider; Karen D. Dennison, Lake at Las Vegas Joint Venture; Michael E. Buckley, Community Associations Institute; Gail J. Anderson and Tami DeVries, Real Estate Division, Department of Business and Industry; William A.S. Magrath II, Laughlin Ranch Homeowners Association; former California Senator John V. Briggs; Melody L. Luetkehans, Nevada Association of Realtors; Shari O'Donnell, Signature Homes; Betty Ravendo, Cameo; Mark Kaplinsky; Terri Janison; Amber Williams; Eldon Hardy, Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry.

Opponents/those testifying in opposition of the bill: None

Discussion: Proponents reviewed the bill section-by-section and proposed amendments to the omnibus measure. Individuals testifying expressed strong overall support. Some concerns were raised regarding issues such as voting requirements, exemptions from Chapter 116 of NRS, ensuring the requirements of the Americans with Disabilities Act were not impeded, imposition of fines, and payment for copies of minutes.

Proposed Amendments: Following are the proposed amendments presented generally in the order in which the sections appear in the bill.

1. **Require rural agricultural residential common-interest communities to comply with the open meeting law**, proposed by Assemblyman John Carpenter.

2. **Protect an association from having to indemnify board members or officers who knowingly and willfully violate the law,** proposed by Mr. Buckley. The following amendment to **Section 36, subsection 5** (page 13 of the bill) is proposed:

5. Notwithstanding any other provision of this section, unless the respondent has knowingly and willfully committed a violation, if the respondent is a member of an executive board or an officer of an association:

(a) The association is liable for all fines and costs imposed against the respondent pursuant to this section; and

(b) The respondent may not be held personally liable for those fines and costs.

(Mr. Buckley also notes **Section 63, subsection 4,** which is existing law requiring an association to indemnify a board member who is sued for actions taken in his role as a member, unless it is proven that he "acted with willful or wanton misfeasance or with gross negligence.")

3. **Voting procedures—Amend Section 46 to require election of delegates or representatives by secret written ballot,** proposed by Senator Schneider. (See page 17 of the bill.) A copy of the language submitted by Senator Schneider is provided with the work session document on page 3 of the blue attachments.

Note: Concerns with regard to Section 46 with regard to voting through delegates were also noted in testimony by Terri Janison.

4. **Clarify that Chapter 116 of NRS (Common-Interest Ownership) governs when there are conflicts between that chapter and Chapter 78 of NRS (Private Corporations) and NRS 81.010 to 81.160 (Nonprofit Cooperative Corporations),** proposed by former California Senator Briggs as an amendment to **Section 48** (page 18 of the bill).

5. **Clarify that an association may not act in violation of federal or state laws, such as the Americans with Disabilities Act, in restricting access or withholding approval for improvements to a unit,** proposed by Assemblywoman Barbara Buckley as a possible change to **Section 58, subsection 2** (page 24 of the bill).

6. **Clarify the definition of "Costs of collecting" under Section 61, subsection 5,** proposed by Pamela Scott, Michael Schulman, and John Leach. As noted by Ms. Scott, "The intent is to clarify that dollar amounts outside the outlined caps cannot be charged to the unit's owner in the associations attempts to collect fines." The following change is proposed on page 28 of the bill:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association, ~~a collection agency, a community manager and any other person or entity engaged to collect a past due fine~~ may reasonably ~~incur~~ charge to the units owner for the collection of a past due fine. The term does

not include any costs incurred by an association during a civil action to enforce the payment of a past due fine.

7. **Ensure consistency with regard to provisions concerning fines and the inclusion of costs for collecting past due fines**, proposed by Mr. Schulman and Mr. Leach. As noted by Mr. Schulman and Mr. Leach, "The intent of this amendment is to treat liens and costs associated with the collection process consistently. NRS 116.31162(4) makes a distinction between fines imposed for violations that threaten the health, safety and welfare of the residents of the association and violations that do **not** threaten the health, safety and welfare of the residents. Section 61(4) should be revised to be consistent with NRS 16.31162." **(Staff Note:** NRS 116.31162, referenced above, may be reviewed under **Section 77**, pages 48 and 49, of the bill.)

The following amendment to **Section 61, subsection 4**, is proposed (pages 27 and 28 of the bill):

4. Any past due fine:

(a) Bears interest at the rate established by the association, not to exceed 18 percent per year.

(b) May include any charges for late payment of the past due fine at a rate established by the association, not to exceed 5 percent of the outstanding balance.

(c) May include any costs of collecting the past due fine at a rate established by the association. *Notwithstanding the foregoing, if the fine is for a violation of the declaration, bylaws, rules or regulations of the association that does not threaten the health, safety or welfare of the residents of the common-interest community:*

(1) Not to exceed $20, if the outstanding balance is less than $200.

(2) Not to exceed $50, if the outstanding balance is $200 or more, but is less than $500.

(3) Not to exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.

(4) Not to exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.

(5) Not to exceed $500, if the outstanding balance is $5,000 or more.

8. **Ensure homeowner has adequate time (at least 15 days) to return a written ballot by mail**, proposed by Mr. Buckley, Mr. Schulman, and Mr. Leach. The following change is proposed to the last line of **Section 62, subsection 8** (page 30 of the bill):

~~[5.]~~ *8.* The election of any member of the executive board must be conducted by secret written ballot ~~[. The]~~ ***unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in Section 46 of this act. If the election is conducted by secret written ballot, the*** secretary or other officer specified in the bylaws of the association shall cause ***a secret ballot and a return envelope*** to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner *and permit the ballot to be returned within no less than 15 days*. ~~[, a secret ballot and a return envelope.~~

9. **Require "summary" instead of "substance" of minutes from meetings of units' owners and delete requirement to attach written remarks,** proposed by Ms. Ravendo who noted the "purpose of the amendment is to change the word 'substance' to 'summary' in subsection (c) and to delete a requirement that prepared written remarks need to be attached to the minutes if required by the owner. The purpose is to protect the association from having to attach statements by owners which are irrelevant or, even worse, defamatory or libelous.

Following is the proposed change to **Section 65, subsection 6** (page 34 of the bill):

> 6. ***Except as otherwise provided in subsection 7, the minutes of each meeting of the units' owners must include:***
>
> ***(a) The date, time and place of the meeting;***
>
> ***(b) The substance of all matters proposed, discussed or decided at the meeting; and***
>
> ***(c) The ~~substance~~ summary of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks ~~or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.~~***

In addition, the following change is proposed by **Section 66, subsection 8** (page 36 of the bill):

> 8. ***Except as otherwise provided in subsection 9 and NRS 116.31085, the minutes of each meeting of the executive board must include:***
>
> ***(a) The date, time and place of the meeting;***
>
> ***(b) Those members of the executive board who were present and those members who were absent at the meeting;***
>
> ***(c) The substance of all matters proposed, discussed or decided at the meeting and, at the request of any member of the executive board, a record of each member's vote on any matter decided by vote at the meeting; ~~and~~***
>
> ***~~(d) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.~~***

Ms. Ravendo notes the following as the rationale for the proposed change to **Section 66**: "A meeting of the Board of Directors should not be required to include any "comments" or "narratives" of the owners because it is a meeting of the Board of Directors and should reflect the actions of the Board of Directors and any votes which the Board takes. For the reasons set forth above, under no circumstances should the Board have to attach to its minutes copies of remarks submitted by owners because such remarks could be incorrect, irrelevant, or worse, defamatory or libelous. Additionally, the current law requires the Association to provide copies of the most current minutes with the resale package which is given to prospective buyers prior to the close of escrow. The type of attachments mentioned above could discourage a prospective buyer from buying into an Association which may give the "appearance" of disharmony or controversy when such controversy

may involve only a few homeowners. There appears to be no constructive reason for this provision."

10. **Preservation of the attorney-client privilege**, proposed by Bob Maddox, Nevada Trial Lawyer Association. (Similar changes are proposed by Mr. Schulman and Mr. Leach to address this issue.) Mr. Maddox notes that the bill currently provides that "all association contracts must be available for review, inspection, and copying. The intent of this series of proposed amendments is to assure that the homeowner has the right to review, inspect and copy any contract entered into by the association, unless the contract is protected by the attorney-client privilege. These amendments will also place the amendment in the proper section of the Code, namely NRS 116.31175 which governs the availability of books, records and papers of the association.

The following changes are proposed to **Sections 67** (page 37 of the bill) and **Section79** (pages 49 and 50 of the bill):

Sec. 67. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners of the association or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. ***An executive board may not meet in executive session to enter into, renew, modify, terminate or take any other action regarding a contract, ~~including, without limitation~~, excluding a contract with ~~the~~ an attorney ~~for the association~~. If the executive board takes any action regarding a contract, except a contract between the association and an attorney, the contract must be made reasonably available for review by the units' owners of the association.***

In addition: Delete the changes on page 37 of the bill to the new subsection 3 (subsection 2 of existing law under NRS 116.31085).

Sec. 79. NRS 116.31175 is hereby amended to read as follows:

116.31175 1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association ~~[.]~~, ***including, without limitation, all contracts of which the association is a party, except for any contract between the association and an attorney, and all records filed with a court relating to a civil or criminal action to which the association is a party.*** The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association ~~[,]~~, ***except for those records relating to the salaries and benefits of those employees;*** and

(b) The records of the association relating to another unit's owner ~~[.]~~, ***except for those records described in subsection 2.***

11. **Ensure ability of unit owner to review the association's books, records, and other papers is not frustrating**, proposed by Mr. Magrath who recommends adding a limit to the hourly rate an association or executive board may charge the unit's owner for review of the documents. In addition, Mr. Mcgrath notes,

"Some executive boards refuse to disclose the number of hours worked by personnel employed by the association. Unit owners should be able to learn how many hours are being worked in exchange for the salaries paid by the association."

The following amendment is proposed to **Section 79, subsection 1** (pages 49 and 50 of the bill):

Sec. 79. NRS 116.31175 is hereby amended to read as follows:

116.31175 1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association ~~[.]~~, ***including, without limitation, all records filed with a court relating to a civil or criminal action to which the association is a party.*** *The executive board must not require a unit owner to pay in excess of $10.00 per hour to review any books, records, and other papers of the association.* The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association ~~[,]~~, ***except for those records relating to the*** *hours worked,* ***salaries and benefits of those employees;*** and

(b) The records of the association relating to another unit's owner ~~[.]~~, ***except for those records described in subsection 2.***

AJWS-05-15-03

BLUE

Senate Bill 100
Proposed Amendment

Assemblyman John Carpenter

Add in the following new provision:

In conducting any meetings, a rural agricultural residential common-interest community must comply with the provisions set forth in chapter 241 of NRS concerning open meetings which are generally applicable to public bodies.

1

May 13, 2003

To: Assembly Committee on Judiciary

From: Michael Buckley, Jones Vargas

Re: SB 100- Proposed Amendment
Section ~~36~~ 35, Subsection 5, page 13, lines 1 – 14

5. Notwithstanding any other provision of this section, unless the respondent has knowingly and willfully committed a violation, if the respondent is a member of an executive board or an officer of an association:

(a) The association is liable for all fines and costs imposed against the respondent pursuant to this section; and

(b) The respondent may not be held personally liable for those fines and costs.

The intent of this amendment is to protect the association in the same manner as is typical in corporate indemnifications, i.e., the officer or director who knowingly violates the law should not be indemnified by the association.

See also Sec 63(4) – p. 31, line 34.

2

Proposed Amendment to SB 100
Section 46

Add new subsections (4) and (5) to Section 46 as follows:

4. Not withstanding any provisions in the declaration, the election of any delegates or representatives must be conducted by secret written ballot. The secretary or other officer of the association specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the units owner.

(a) Only the secret written ballots that are returned to the association in the manner prescribed on the ballot may be counted to determine the outcome of the election.

(b) The secret written ballots must be opened and counted at a meeting called for the purpose of electing delegates or representatives. A quorum in not required to be present when the secret written ballots are opened and counted at the meeting.

(c) A candidate for delegate or representative may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association in the manner prescribed on the ballot before those secret written ballots have been opened and counted at a meeting called for that purpose.

PROPOSED BY: Mike Schneider

Senator John V. Briggs, Ret.

May 14, 2003

SENATE BILL 100 (1ST REPRINT

Amendment proposed by John V. Briggs
Elk Point Country Club, Inc. Zephyr Cove, Nevada

Section 48

Problem: Page 18, lines 14-17 cites NRS116 as the prevailing governing chapter where there is a conflict with NRS82. NRS81.010-160 and NRS78 have been left out and need to be put in..

Elk Point Country Club, Inc., formed in 1925, is governed under NRS81.010-160 and remained there when NRS.82 was enacted in 1991, so that NRS116 is the prevailing chapter common-interest associations organized under NRS81.010-160.

(Elk Point never elected to be governed by the provisions of NRS82 (see NRS82.056). Thus, Elk Point is governed only by NRS116, NRS81.010-160 and NRS78).

Solution: On Page 18, Line 15 add 78, 81.010-160 so it will read:
by chapters 78, 81.010-160, and 82

Line 16, add 78, 81.010-160 so it will read:
provisions of this chapter and the provisions of chapters 78, 81.010-160, and 82

The inclusion of NRS81.010-160 makes it clear that NRS116 prevails, not NRS82.

The addition of NRS78 makes it clear that NRS116 also prevails over general incorporation law NRS78.

No other changes are proposed.

4

F 11 of 21

P.O. Box 12578 Zephyr Cove, Nevada 89448 (775) 588 1526 Fax (775) 588 2906

Date: May 12, 2003

To: Assembly Committee on Judiciary
Honorable Bernie Anderson, Chairman
Honorable John Ocequera, Vice Chairman
Committee Members: Barbara Buckley, Jerry Claborn, Marcus Conklin, William Horne, Harry Mortenson, Genie Ohrenschall, Sharron Angle, David Brown, John Carpenter, Jason Geddes, Don Gustavson, Garn Mabey, Rod Sherer

From: Committee Association Institute- Legislative Action Committee
Michael Schulman and John Leach

Re: SB 100 - Proposed Amendments

Section 61, Subsection 4, page 38, lines 38-45 and page 39, lines 1-10:

4. Any past due fine:

(a) Bears interest at the rate established by the association, not to exceed 18 percent per year.

(b) May include any charges for late payment of the past due fine at a rate established by the association, not to exceed 5 fine at a rate established by the association, not to exceed 5 percent of the outstanding balance.

(c) May include any cost of collecting the past due fine at a rate established by the association. Notwithstanding the foregoing, if the fine is for a violation of the declaration, bylaws, rules or regulations of the association that does not threaten the health, safety or welfare of the residents of the common-interest community:

(1) Not to exceed $20, if the outstanding balance is less than $200.

(2) Not to exceed $50, if the outstanding balance die $200 or more, but is less than $500.

(3) Not to exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.

(4) Not to exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.

(5) Not to exceed $500, if the outstanding balance is $5,000 or more.

The intent of this amendment is to treat liens and the costs associated with the collection process consistently. NRS 116.31162(4) makes a distinction between fines imposed for violations that threaten the health, safety and welfare of the residents of the association and violations that do not threaten the health, safety and welfare of the residents. Section 61(4) should be revised to be consistent with NRS 16.31162.

Section 61, Subsection 5, page 28, lines 13-21:

5. As used in this section:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and other fee or cost that an association~~, a collection agency, a community manager and other person or entity engaged to collect a past due fine~~ may reasonably ~~incur~~charge to the units owners for the collection of a past due fine. The term does not include any costs incurred by an association during civil action to enforce the payment of a past due fine.

The intent of this amendment is to clarify the dollar amounts outside the outlined caps cannot be charged to the units owner in the associations attempt to collect fines. Associations, collection agencies, managers, etc. have no control over the costs to record documents, postage for certified mail, charges for documents from title companies, etc. They can only control which of those costs they will pass through to the homeowner who has been fined for the violations.

Section 62, Subsection 8, page 30, lines 6-15:

8. The election of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representative as set forth in section 46 of this act. If the election is conducted by secret written ballot, the secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner. Any ballot sent pursuant to NRS 116.31034 shall provide each unit's owner with at least 15 days from the date of the mailing of such ballot to return it to the association.

The intent of this amendment is to make sure that the homeowner has adequate time to return the written ballot by mail.

Section 67, Subsection 2, page 37, lines 12-17, which is a new provision, should be deleted.

~~The intent of this amendment is to place this proposed amendment in the proper section of the Code (NRS 116.31175) and to protect attorney-client privilege materials. This proposed amendment is related to the following amendments and is discussed in more detail below:~~

Section 67, Subsection 3, page 37, lines 18-38, which amends 116.31085(2) should likewise be deleted.

~~The intent of this amendment is to place this proposed amendment in the proper section of the Code (NRS 116.31175) and to protect attorney-client privilege materials. This proposed amendment is related to the following amendments and is discussed in more detail below.~~

Section 79, Subsection 1, page 49, lines 40-45 and page 50, lines 1-9:

1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association, including, without limitation, all contracts of which the association is a party, except for any contract protected by the attorney-client privilege, and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the salaries and benefits of those employees; and

(b) The records of the association relating to another unit's owner, except for those records described in subsection 2.

As drafted, the current amendment provides that all association contracts must be available for review, inspection and copying. The intent of this series of proposed amendments is to assure that the homeowner has the right to review, inspect and copy any contract entered by the association, unless the contract is protected by the attorney-client privilege. These amendments will also place the amendment in the proper section of the Code, namely NRS 116.31175 which governs the availability of books, records and papers of the association.

LAW OFFICES OF
WOLF, RIFKIN, SHAPIRO & SCHULMAN, LLP

MICHAEL T. SCHULMAN
ATTORNEY AT LAW

TEL: 702.341.5200
FAX: 702.341.5300
mschulman@nevadahoa.com

4435 S. EASTERN AVENUE
LAS VEGAS, NEVADA 89119-7826

PAGE 4/7 ID:7024868281O

The Howard Hughes Corporation℠

An Affiliate of THE ROUSE COMPANY

May 13, 2003

To: To: Assembly Committee on Judiciary
Honorable Bernie Anderson, Chairman
Honorable John Ocequera, Vice Chairman
Committee Members: Barbara Buckley, Jerry Claborn, Marcus Conklin, William Horne, Harry Mortenson, Genie Ohrenschall, Sharron Angle, David Brown, John Carpetner, Jason Geddes, Don Gustavson, Garn Mabey, Rod Sherer

From: Pamela Scott
Summerlin

Re: SB 100 – Proposed Amendment
Section 62, Subsection 5, page 28, lines 13 – 21

5. As used in this section:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association~~, a collection agency, a community manager and any other person or entity engaged to collect a past due fine~~ may reasonably ~~incur~~ **charge to the units owner** for the collection of a past due fine. The term does not include any costs incurred by an association during civil action to enforce the payment of a past due fine.

The intent of this amendment is to clarify that dollar amounts outside the outlined caps cannot be charged to the units owner in the associations attempts to collect fines. Associations, collection agencies, managers, etc. have no control over the costs to record documents, postage for certified mail, charges for documents from title companies, etc. They can only control which of those costs they will pass through to the homeowner who has been fined for violations.

SB 100 AMENDMENT

Submitted by: Michael Buckley
May 13, 2003

Amend Section 62, page 30

Add to line 15, after "unit's owner" and before period:

"and permit the ballot to be returned within no less than 15 days"

MEMORANDUM

To: Allison Combs

From: Betty Ravendo (Treasurer of Cameo, Inc.)

Re: Proposed Amendments to SB 100

Date: May 15, 2003

Proposed Amendments to Section 65.6 and Section 66.8 of SB 100.

Amendment No. 1.

Section 65.6, Subsection 6 should be deleted in its entirety and replaced with the following:

> "Except as otherwise provided in subsection 7, the minutes of each meeting of the units' owners must include:
>
> (a) the date, time and place of the meeting;
>
> (b) a substance of all matters proposed, discussed or decided at the meeting; and
>
> (c) a ***summary*** of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks."

The purpose of the amendment is to change the word "substance" to "summary" in subsection (c) and to delete a requirement that prepared written remarks need to be attached to the minutes if requested by the owner. The purpose is to protect the association from having to attach statements by owners which are irrelevant or, even worse, defamatory or libelous.

Amendment No. 2.

Section 66.8(d) of Senate Bill 100 should be deleted in its entirety. Such section presently provides that the minutes of each meeting of the executive board must include:

> " ... (d) the substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks, or if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion."

Rationale.

A meeting of the Board of Directors should not be required to include any "comments" or "narratives" of the owners because it is a meeting of the Board of Directors and should reflect the actions of the Board of Directors and any votes which the Board takes. For the reasons set forth above, under no circumstances should the Board have to attach to its minutes copies of remarks submitted by owners because such remarks could be incorrect, irrelevant, or worse, defamatory or libelous. Additionally, the current law requires the Association to provide copies of the most current minutes with the resale package which is given to prospective buyers prior to the close of escrow. The type of attachments mentioned above could discourage a prospective buyer from buying into an Association which may give the "appearance" of disharmony or controversy when such controversy may involve only a few homeowners. There appears to be no constructive reason for this provision.

****

Thank you for you time and consideration in reviewing our proposed amendment. If you have any questions or need further clarification, please contact me at 702-792-0885 or my cell 702-595-8445

May 13, 2003

Honorable Bernie Anderson
Chairman, Assembly Committee on Judiciary
re: SB100 Proposed Amendments

Dear Chairman Anderson and Members of the Committee:

On behalf of the Nevada Trial Lawyers Association, we have discussed with the proponents of SB100 amendments to Sec. 67 and 79 of SB100. The amendments are necessary so as to preserve the attorney-client privilege on behalf of homeowners associations needing legal advice. The proposed amendments to Sec. 67, paragraphs 2 and 3 (amending NRS 116.31085) are as follows:

Sec. 67. NRS 116.31085 is hereby amended to read as follows: . . . .

2. An executive board may not meet in executive session to enter into, renew, modify, terminate or take any other action regarding a contract, ~~including~~ excluding ~~without limitation~~ a contract with ~~the~~ an attorney ~~for the association~~. If the executive board takes any action regarding a contract, except a contract between the association and an attorney, the contract must be made reasonably available for review by the units' owners of the association.

3. An executive board may meet in executive session **only** to: (a) Consult with ~~the~~ an attorney ~~for the association~~ on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive. ~~The provisions of this paragraph do not permit the executive board to meet in executive session to take any action regarding a contract with the attorney for the association.~~

. . . .

Sec. 67, Subsection 3, page 37, lines 18-38, which amends 116.31085(2) should likewise be deleted.

The intent of this amendment is to place this proposed amendment in the proper section of the Code (NRS 116.31175) and to protect attorney-client privilege materials. This proposed amendment is related to the following amendments and is discussed in more detail below.

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Section 79, Subsection 1, page 49, lines 40-45 and page 50, lines 1-9:

1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association, including, without limitation, all contracts of which the association is a party, except for any contract between the association and an attorney, and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the salaries and benefits of those employees; and

(b) The records of the association relating to another unit's owner, except for those records described in subsection 2.

As drafted, the current amendment provides that all association contracts must be available for review, inspection and copying. The intent of this series of proposed amendments is to assure that the homeowner has the right to review, inspect and copy any contract entered by the association, unless the contract is protected by the attorney-client privilege. These amendments will also place the amendment in the proper section of the Code, namely NRS 116.31175 which governs the availability of books, records and papers of the association.

Thank you for your kind consideration.

Sincerely,

ROBERT C. MADDOX & ASSOCIATES

ROBERT C. MADDOX

RCM:crn

NTLA\NTLA\Bernie Anderson ltr51303

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5-14-03

Senate Bill 100 (1st Reprint)

Amendment proposed by William Magrath, Caughlin Ranch Homeowners Association (Reno, NV) 775-788-2000

Problem #1: **Executive Boards can frustrate the ability of a unit owner to review the association's books, records, and other papers, by "maintaining" these records at the office of the Association's attorney or accountant. Then the Executive Board conditions review of the records upon the payment by the unit owner of the attorney or accountant's "hourly rate." This frustrates access to the records since these "hourly rates" can range from $150.00 to $300.00 per hour. While it is reasonable to require a person to be present during the review of the records, the member should only have to pay a reasonable rate of $10.00 per hour (i.e. a part-time or clerical worker's wage rate) to review or inspect the records.**

Solution & Proposed Amendment For Problem #1. **Shown below in *red italics and underlined*, an additional sentence has been added to limit the hourly rate which an association or executive board can charge a unit's owner for the review of association books, records, and other papers.**

Problem #2. **Some Executive Boards refuse to disclose the number of hours worked by personnel employed by the association. Unit owners should be able to learn how many hours are being worked in exchange for the salaries paid by the association.**

Solution & Proposed Amendment for Problem #2. **Shown below in *red italics and underlined*, NRS 116.31175(1)(a) is amended to require disclosure of hours worked by personnel of the association.**

48-40 Sec. 79. NRS 116.31175 is hereby amended to read as
48-41 follows:
48-42 116.31175 1. Except as otherwise provided in this
48-43 subsection, the executive board of an association shall, upon the
48-44 written request of a unit's owner, make available the books, records
48-45 and other papers of the association for review during the regular

---

49-1 working hours of the association[.] , *including, without limitation,*
49-2 *all records filed with a court relating to a civil or criminal action*
49-3 *to which the association is a party. The executive board must not require a unit owner to pay in excess of $10.00 per hour to review any books, records, and other papers of the association.* The provisions of this
49-4 subsection do not apply to:
49-5 (a) The personnel records of the employees of the association[;]
49-6 , *except for those records relating to the hours worked, salaries and benefits of*
49-7 *those employees;* and
49-8 (b) The records of the association relating to another unit's
49-9 owner [.] , *except for those records described in subsection 2.*
49-10 2. *The executive board of an association shall maintain a . . .*

NO OTHER CHANGES ARE PROPOSED TO SECTION 79.

14

MINUTES OF THE
SENATE COMMITTEE ON FINANCE

Seventy-second Session
May 27, 2003

The Senate Committee on Finance was called to order by Chairman William J. Raggio, at 9:25 a.m., on Tuesday, May 27, 2003, in Room 2134 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator William J. Raggio, Chairman
Senator Raymond D. Rawson, Vice Chairman
Senator Dean A. Rhoads
Senator Barbara K. Cegavske
Senator Sandra J. Tiffany
Senator Bob Coffin
Senator Bernice Mathews

GUEST LEGISLATORS PRESENT:

Assemblywoman Christina R. Giunchigliani, Assembly District No. 9
Assemblyman Richard D. Perkins, Assembly District No. 23

STAFF MEMBERS PRESENT:

Gary Ghiggeri, Fiscal Analyst
Pamela Carter, Committee Secretary

OTHERS PRESENT:

John P. Comeaux, Director, Department of Administration
Michael Hillerby, Deputy Chief of Staff, Office of the Governor
Michael R. Alastuey, Lobbyist, University Medical Center
Charles Duarte, Administrator, Division of Health Care Financing and Policy, Department of Human Resources
Danny Thompson, Advisory Council to the Division of Industrial Relations, Department of Business and Industry, and Lobbyist, American Federation of Labor Congress of Industrial Organizations
Lynn Fulstone, Lobbyist, Sunrise Hospital and Medical Center
Lucille Lusk, Lobbyist, Nevada Concerned Citizens
Brian Krolicki, State Treasurer
Terry L. Hickman, Lobbyist, Nevada State Education Association
James J. Jackson, Lobbyist, Nevada State Education Association
Stan Olsen, Lobbyist, Lieutenant, Las Vegas Metropolitan Police Department, and Nevada Sheriff's & Chief's Association/South
Janine Hansen, Lobbyist, Nevada Eagle Forum
Laura M. Mijanovich, Lobbyist, American Civil Liberties Union of Nevada
Richard L. Siegel, Lobbyist, American Civil Liberties Union of Nevada
Craig Kadlub, Lobbyist, Clark County School District
Jeannie Simons
Juanita Y. Jeanney, Washoe County School District

SENATOR CEGAVSKE:
I yield to your expertise in the law.

SENATOR RAGGIO:
I have no expertise on this issue.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

SENATOR RAGGIO:
The hearing is closed on S.B. 345 and opened on S.B. 100.

SENATE BILL 100 (2nd Reprint): Makes various changes to provisions governing common-interest communities. (BDR 10-29)

SENATOR RAGGIO:
Senate Bill 100 came to this committee after being processed by the Senate Committee on Commerce and Labor, and then was sent to the Assembly. The Senate Committee on Finance received back an extensive amendment, which I showed to the chairman of the Senate Committee on Commerce and Labor (Commerce and Labor), who indicated it was appropriate. Other than that, I have no information. I will distribute Amendment No. 744 to S.B 100 to the committee (Exhibit E).

SENATOR TIFFANY:
Was anything changed that would change the fiscal note?

SENATOR RAGGIO:
Senate Bill 100 deals with common-interest communities. The Senate Committee on Finance sent the bill to the Assembly with a fiscal note. The Assembly amended the bill, but I do not know whether it changed the fiscal note in any way. The chairman of Commerce and Labor reviewed the amendment, felt it was appropriate, and would concur with it. Unfortunately, it returned to this committee for concurrence because this was the last committee to process the bill. Therefore, we can either concur or send it to Commerce and Labor for concurrence. Do we need to obtain some information on the fiscal note? There are fiscal notes from the Real Estate Division and the Office of the Attorney General.

MR. GHIGGERI:
When you heard S.B. 100 in the Senate Committee on Finance, it was noted the funding was coming out of the common-interest communities funding and there was no General Fund impact.

SENATOR RAWSON:
At this point in the session, rather than re-referring it, since there was assurance from the chairman of Commerce and Labor that it was an appropriate amendment, I suggest this committee concur.

SENATOR RAGGIO:
What is the pleasure of the committee?

SENATOR COFFIN MOVED TO CONCUR WITH AMENDMENT NO. 744 TO S.B. 100.

SENATOR RAWSON SECONDED THE MOTION.

SENATOR RAGGIO:
Based upon the assurance of the chairman of Commerce and Labor, the motion is to concur with Amendment No. 744 to S.B. 100. Are there any objections to the motion?

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

SENATOR RAGGIO:
The hearing is closed on S.B. 100 and opened on S.B. 46.

SENATE BILL 46 (1st Reprint): Authorizes issuance of general obligation bonds to carry out Environmental Improvement Program in Lake Tahoe Basin. (BDR S-174)

SENATOR RAGGIO:
I will distribute Amendment No. 851 to S.B. 46 (Exhibit F). Senate Bill 46 was amended by renumbering section 4 as section 6, adding new sections designated as sections 4 and 5, following section 3, to read as follows: "To carry out projects for control of erosion and the restoration of natural water courses and other projects." It is carried out through section 5 where issuance of the bonds and use of the proceeds is limited to awarding grants specifically for control of erosion and restoration of natural watercourses. The language, "and other projects," was added; therefore, we need a knowledgeable person to explain the reason that language was added.

MR. GHIGGERI:
The amendment amends prior bond issuance language consistent with the closing of certain budgets in the State Department of Conservation and Natural Resources. In the closing of those budgets, the committees agreed to fund certain positions in the Division of State Lands and the Division of State Parks using the interest from the bonds issued.

SENATOR RAGGIO:
Was there any objection to it?

MR. GHIGGERI:
Not in the closing.

SENATOR COFFIN:
The original bill spelled out projects the organization felt necessary and they were clear to us. Now, however, I do not know. The language "and other programs and other projects" is vague. You could bill just about anything for anybody with that language.

SENATOR RAGGIO:
Would you like clarification?

SENATOR COFFIN:
Yes.

DISCLAIMER

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

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

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

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

Amendment No. 744

Assembly Amendment to Senate Bill No. 100 First Reprint (BDR 10-29)
Proposed by: Committee on Judiciary
Amendment Box: **Resolves Conflicts with:** N/A
Amends: Summary: Title: Preamble: Joint Sponsorship:

Adoption of this amendment will MAINTAIN a 2/3s majority vote requirement for final passage of SB100 R1 (§§ 16, 24, 30, 35).

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

Amend sec. 35, page 13, line 1, after "*section,*" by inserting:

"*unless the respondent has knowingly and willfully committed a violation,*".

Amend sec. 46, page 17, between lines 31 and 32, by inserting:

"*4. Notwithstanding any provision in the declaration, the election of any delegate or representative must be conducted by secret written ballot.*

5. When an election of a delegate or representative is conducted by secret written ballot:

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

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

(c) Only the secret written ballots that are returned to the association in the manner prescribed on the ballot may be counted to determine the outcome of the election.

EXHIBIT E Senate Committee on Finance
Date: 5/27/03 Page 1 of 4

(d) The secret written ballots must be opened and counted at a meeting called for the purpose of electing delegates or representatives. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) A candidate for delegate or representative may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association in the manner prescribed on the ballot before those secret written ballots have been opened and counted at a meeting called for that purpose.".

Amend the bill as whole by adding a new section designated sec. 47.5, following sec. 47, to read as follows:

"Sec. 47.5. ***In conducting any meetings, a rural agricultural residential common-interest community must comply with the provisions set forth in chapter 241 of NRS concerning open meetings which are generally applicable to public bodies.***".

Amend sec. 48, page 18, by deleting lines 15 and 16 and inserting:

"***by chapter 78 of NRS, NRS 81.010 to 81.160, inclusive, or chapter 82 of NRS and there is a conflict between the provisions of this chapter and the provisions of chapter 78 of NRS, NRS 81.010 to 81.160, inclusive, or chapter 82 of NRS,***".

Amend sec. 54, page 21, line 10, by deleting "A" and inserting:

"~~[A]~~ ***Except as otherwise provided in section 47.5 of this act, a***".

Amend sec. 58, page 24, between lines 14 and 15, by inserting:

"***(c) With regard to approving or disapproving any improvement or alteration made to a unit, act in violation of any state or federal law.***".

Amend sec. 61, pages 27 and 28, by deleting lines 40 through 45 on page 27 and lines 1 through 11 on page 28, and inserting:

"***to exceed the legal rate per annum.***

(b) May include any costs of collecting the past due fine at a rate established by the association. If the past due fine is for a violation that does not threaten the health, safety or welfare of the residents of the common-interest community, the rate established by the association for the costs of collecting the past due fine:

E-2

(1) May not exceed $20, if the outstanding balance is less than $200.

(2) May not exceed $50, if the outstanding balance is $200 or more, but is less than $500.

(3) May not exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.

(4) May not exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.

(5) May not exceed $500, if the outstanding balance is $5,000 or more.

(c) May include any costs incurred by the association during a".

Amend sec. 61, page 28, by deleting lines 16 through 18 and inserting:

"*or delivery, and any other fee or cost that an association may reasonably charge to the unit's owner for*".

Amend sec. 62, page 30, by deleting line 10 and inserting:

"*the election of any member of the executive board is conducted by secret written ballot:*

(a) The secretary or".

Amend sec. 62, page 30, by deleting lines 16 through 19 and inserting:

"~~6.~~ *(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.*

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

(d) Only the secret written ballots that are returned to the".

Amend sec. 62, page 30, line 22, by deleting "*(b)*" and inserting "*(e)*".

Amend sec. 62, page 30, line 26, by deleting "*(c)*" and inserting "*(f)*".

Amend sec. 63, page 31, by deleting line 10 and inserting:

"*secret written ballot:*

(a) The secretary or other officer specified in the".

Amend sec. 63, page 31, by deleting lines 16 through 18 and inserting:

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

(c) Only the secret written ballots that are returned to the".

Amend sec. 63, page 31, line 20, by deleting "*(b)*" and inserting "*(d)*".

Amend sec. 63, page 31, line 24, by deleting "*(c)*" and inserting "*(e)*".

E-3

Amend sec. 66, page 36, by deleting lines 21 and 22 and inserting:

"***at the meeting;***

(d) A record of each member's vote on any matter decided by".

Amend sec. 66, page 36, line 24, by deleting "***(d)***" and inserting "***(e)***".

Amend sec. 67, page 37, by deleting lines 12 through 17 and inserting:

"2. ***An executive board may not meet in executive session to enter into, renew, modify, terminate or take any other action regarding a contract, unless it is a contract between the association and an attorney.***".

Amend sec. 67, page 37, by deleting lines 22 through 25 and inserting:

"NRS 49.035 to 49.115, inclusive ~~[;]~~ ***, or to enter into, renew, modify, terminate or take any other action regarding a contract between the association and the attorney.***".

Amend sec. 79, page 50, line 2, after "***all***" by inserting:

"***contracts to which the association is a party and all***".

Amend sec. 79, page 50, by deleting lines 5 through 7 and inserting:

"(a) The personnel records of the employees of the association ~~[; and]~~ ***, except for those records relating to the number of hours worked and the salaries and benefits of those employees;***".

Amend sec. 79, page 50, line 9, by deleting "***2.***" and inserting:

"***2; and***

(c) A contract between the association and an attorney.".

Amend sec. 79, page 50, after line 42, by inserting:

"***5. The executive board shall not require a unit's owner to pay an amount in excess of $10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section.***".

E-4

FLOOR ACTIONS

AMENDMENTS ON SECOND READING
FLOOR VOTES AND STATEMENTS
OTHER ACTIONS

NOTE: THESE FLOOR ACTIONS ARE TAKEN FROM THE *DAILY JOURNALS* (HTTP://WWW.LEG.STATE.NV.US/SESSION/72ND2003/JOURNAL/INDEX.CFM), WHICH ARE NOT THE OFFICIAL FINALIZED VERSIONS OF THE *JOURNALS*. CONSULT THE PRINT VERSION FOR THE OFFICIAL RECORD.

Floor Actions

March 10, 2003 *Senate Daily Journal*

Excerpt:

NOTICE OF EXEMPTION

March 10, 2003

The Fiscal Analysis Division, pursuant to Joint Standing Rule 14.6, has determined the exemption of: Senate Bills Nos. 3, 33, 34, 41, 49, 58, 62, 64, 66, 100, 102, 117, 119, 126, 127, 132, 137, 138, 184, 189, 200, 215, 216, 238.

GARY GHIGGERI
Fiscal Analysis Division

April 18, 2003 *Senate Daily Journal*

Excerpt:

Senate Bill No. 100.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor.

Amendment No. 286

Amend the bill as a whole by deleting sections 1 through 66 and adding new sections designated sections 1 through 93, following the enacting clause, to read as follows:

"Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 48, inclusive, of this act.

Sec. 2. *"Certificate" means a certificate for the management of a common-interest community issued by the Division.*

Sec. 3. *"Commission" means the Commission for Common-Interest Communities created by section 13 of this act.*

Sec. 4. *"Community manager" means a person who provides for or otherwise engages in the management of a common-interest community.*

Sec. 5. *"Complaint" means a complaint filed by the Administrator pursuant to section 31 of this act.*

Sec. 6. *"Division" means the Real Estate Division of the Department of Business and Industry.*

Sec. 7. *"Hearing panel" means a hearing panel appointed by the Commission pursuant to section 19 of this act.*

Sec. 8. *"Management of a common-interest community" means the physical, administrative or financial maintenance and management of a common-interest community, or the supervision of those activities, for a fee, commission or other valuable consideration.*

Sec. 9. *"Ombudsman" means the Ombudsman for Owners in Common-Interest Communities.*

Sec. 10. *"Party to the complaint" means the Division and the respondent.*

Sec. 11. *"Permit" means a permit to engage in property management issued pursuant to the provisions of chapter 645 of NRS.*

Sec. 12. *"Respondent" means a person against whom:*

1. An affidavit has been filed pursuant to section 30 of this act.

2. A complaint has been filed pursuant to section 31 of this act.

Sec. 13. *1. The Commission for Common-Interest Communities is hereby created.*

2. The Commission consists of five members appointed by the Governor. The Governor shall appoint to the Commission:

(a) One member who is a unit's owner residing in this state and who has served as a member of an executive board in this state;

(b) One member who is in the business of developing common-interest communities in this state;

(c) One member who holds a permit or certificate;

(d) One member who is a certified public accountant licensed to practice in this state pursuant to the provisions of chapter 628 of NRS; and

(e) One member who is an attorney licensed to practice in this state.

3. Each member of the Commission must be a resident of this state. At least three members of the Commission must be residents of a county whose population is 400,000 or more.

4. Each member of the Commission must have resided in a common-interest community or have been actively engaged in a business or profession related to common-interest communities for not less than 3 years immediately preceding the date of his appointment.

5. After the initial terms, each member of the Commission serves a term of 3 years. Each member may serve not more than two consecutive full terms. If a vacancy occurs during a member's term, the Governor shall appoint a person qualified under this section to replace the member for the remainder of the unexpired term.

6. While engaged in the business of the Commission, each member is entitled to receive:

(a) A salary of not more than $80 per day, as established by the Commission; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 14. *1. The Division shall provide or arrange to have provided to each member of the Commission courses of instruction concerning rules of procedure and substantive law appropriate for members of the Commission.*

2. Each member of the Commission must attend the courses of instruction not later than 6 months after the date that the member is first appointed to the Commission.

Sec. 15. *1. At the first meeting of each fiscal year, the Commission shall elect from its members a Chairman, a Vice Chairman and a Secretary.*

2. The Commission shall meet at least once each calendar quarter and at other times on the call of the Chairman or a majority of its members.

3. A majority of the members of the Commission constitutes a quorum for the transaction of all business.

Sec. 16. *1. The provisions of this chapter shall be administered by the Division, subject to the administrative supervision of the Commission.*

2. The Commission and the Division may do all things necessary and convenient to carry out the provisions of this chapter, including, without limitation, prescribing such forms and adopting such procedures as are necessary to carry out the provisions of this chapter.

3. The Commission or the Administrator, with the approval of the Commission, may adopt such regulations as are necessary to carry out the provisions of this chapter.

4. The Commission may by regulation delegate any authority conferred upon it by the provisions of this chapter to the Administrator to be exercised pursuant to the regulations adopted by the Commission.

5. When regulations are proposed by the Administrator, in addition to other notices required by law, the Administrator shall provide copies of the proposed regulations to the Commission not later than 30 days before the next meeting of the Commission. The Commission shall approve, amend or disapprove any proposed regulations at that meeting.

6. All regulations adopted by the Commission, or adopted by the Administrator with the approval of the Commission, must be published by the Division and offered for sale at a reasonable fee.

7. The Division may publish or supply a reference manual or study guide for community managers and may offer it for sale at a reasonable fee.

Sec. 17. *Any notice or other information that is required to be served upon the Commission pursuant to the provisions of this chapter may be delivered to the principal office of the Division.*

Sec. 18. *1. Except as otherwise provided in this section and within the limits of legislative appropriations, the Division may employ experts, attorneys, investigators, consultants and other personnel as are necessary to carry out the provisions of this chapter.*

2. The Attorney General shall act as the attorney for the Division in all actions and proceedings brought against or by the Division pursuant to the provisions of this chapter.

3. The Attorney General shall render to the Commission and the Division opinions upon all questions of law relating to the construction or interpretation of this chapter, or arising in the administration thereof, that may be submitted to him by the Commission or the Division.

Sec. 19. *1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers.*

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division, upon the direction of the Chairman of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

Sec. 20. *The Commission or a hearing panel may conduct a hearing by means of an audio or video teleconference to one or more locations if the audio or video technology used at the hearing provides the persons present at each location with the ability to hear and communicate with the persons present at each other location.*

Sec. 21. *The Commission and its members, each hearing panel and its members, the Administrator, the Ombudsman, the Division, and the experts, attorneys, investigators, consultants and other personnel of the Commission and the Division are immune from any civil liability for any decision or action taken in good faith and without malicious intent in carrying out the provisions of this chapter.*

Sec. 22. *1. The Commission shall conduct such hearings and other proceedings as are required by the provisions of this chapter.*

2. The Commission shall collect and maintain or cause to be collected and maintained accurate information relating to:

(a) The number and kind of common-interest communities in this state;

(b) The effect of the provisions of this chapter and any regulations adopted pursuant thereto on the development and construction of common-interest communities, the residential lending market for units within common-interest communities and the operation and management of common-interest communities;

(c) Violations of the provisions of this chapter and any regulations adopted pursuant thereto;

(d) The accessibility and use of, and the costs related to, the arbitration and mediation procedures set forth in NRS 38.300 to 38.360, inclusive, and the decisions rendered and awards made pursuant to those arbitration and mediation procedures;

(e) The number of foreclosures which were completed on units within common-interest communities and which were based on liens for the failure of the unit's owner to pay any assessments levied against the unit or any fines imposed against the unit's owner;

(f) The study of the reserves required by NRS 116.31152; and

(g) Other issues that the Commission determines are of concern to units' owners, associations, community managers, developers and other persons affected by common-interest communities.

3. The Commission shall develop and promote:

(a) Educational guidelines for conducting the elections of the members of an executive board, the meetings of an executive board and the meetings of the units' owners of an association; and

(b) Educational guidelines for the enforcement of the governing documents of an association through liens, penalties and fines.

4. The Commission shall recommend and approve for accreditation programs of education and research relating to common-interest communities, including, without limitation:

(a) The management of common-interest communities;

(b) The sale and resale of units within common-interest communities;

(c) Alternative methods that may be used to resolve disputes relating to common-interest communities; and

(d) The enforcement, including by foreclosure, of liens on units within common-interest communities for the failure of the unit's owner to pay any assessments levied against the unit or any fines imposed against the unit's owner.

Sec. 23. *The Commission may:*

1. By regulation, establish standards for subsidizing proceedings for mediation and arbitration conducted pursuant to NRS 38.300 to 38.360, inclusive, to ensure that such proceedings are not lengthy and are affordable and readily accessible to all parties;

2. By regulation, establish standards for subsidizing educational programs for the benefit of units' owners, members of executive boards and officers of associations;

3. Accept any gifts, grants or donations; and

4. Enter into agreements with other entities that are required or authorized to carry out similar duties in this state or in other jurisdictions and cooperate with such entities to develop uniform procedures for carrying out the provisions of this chapter and for accumulating information needed to carry out those provisions.

Sec. 24. *1. The Commission shall by regulation provide for the issuance by the Division of certificates to community managers. The regulations:*

(a) Must establish the qualifications for the issuance of such a certificate, including, without limitation, the education and experience required to obtain such a certificate.

(b) May require applicants to pass an examination in order to obtain a certificate. If the regulations require such an examination, the Commission shall by regulation establish fees to pay the costs of the examination, including any costs which are necessary for the administration of the examination.

(c) May require an investigation of an applicant's background. If the regulations require such an investigation, the Commission shall by regulation establish fees to pay the costs of the investigation.

(d) Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate.

(e) Must establish rules of practice and procedure for conducting disciplinary hearings.

2. The Division may collect a fee for the issuance of a certificate in an amount not to exceed the administrative costs of issuing the certificate.

Sec. 25. *1. An applicant for a certificate shall submit to the Division:*

(a) The social security number of the applicant; and

(b) The statement prescribed by the Welfare Division of the Department of Human Resources pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Division shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance of the certificate; or

(b) A separate form prescribed by the Division.

3. A certificate may not be issued if the applicant:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Division shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 26. *1. If the Division receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to the holder of a certificate, the Division shall deem the certificate to be suspended at the end of the 30th day after the date the court order was issued unless the Division receives a letter issued to the holder of the certificate by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the certificate has complied with a subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

2. The Division shall reinstate a certificate that has been suspended by a district court pursuant to NRS 425.540 if the Division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the holder of the certificate that he has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 27. *As used in sections 27 to 37, inclusive, of this act, unless the context otherwise requires, "violation" means a violation of any provision of this chapter, any regulation adopted pursuant thereto or any order of the Commission or a hearing panel.*

Sec. 28. *1. In carrying out the provisions of sections 27 to 37, inclusive, of this act, the Division and the Ombudsman have jurisdiction to investigate and the Commission and each hearing panel has jurisdiction to take appropriate action against any person who commits a violation, including, without limitation:*

(a) Any association and any officer, employee or agent of an association.

(b) Any member of an executive board.

(c) Any community manager who holds a permit or certificate and any other community manager.

(d) Any declarant or affiliate of a declarant.

(e) Any unit's owner.

(f) Any tenant of a unit's owner if the tenant has entered into an agreement with the unit's owner to abide by the governing documents of the association and the provisions of this chapter and any regulations adopted pursuant thereto.

2. The jurisdiction set forth in subsection 1 applies to any officer, employee or agent of an association or any member of an executive board who commits a violation and who:

(a) Currently holds his office, employment, agency or position or who held his office, employment, agency or position at the commencement of proceedings against him.

(b) Resigns his office, employment, agency or position:

(1) After the commencement of proceedings against him; or

(2) Within 1 year after the violation is discovered or reasonably should have been discovered.

Sec. 29. *1. The rights, remedies and penalties provided by sections 27 to 37, inclusive, of this act are cumulative and do not abrogate and are in addition to any other rights, remedies and penalties that may exist at law or in equity.*

2. If the Commission, a hearing panel or another agency or officer elects to take a particular action or pursue a particular remedy or penalty authorized by sections 27 to 37, inclusive, of this act or another specific statute, that election is not exclusive and does not preclude the Commission, the hearing panel or another agency or officer from taking any other actions or pursuing any other remedies or penalties authorized by sections 27 to 37, inclusive, of this act or another specific statute.

3. In carrying out the provisions of sections 27 to 37, inclusive, of this act, the Commission or a hearing panel shall not intervene in any internal activities of an association except to the extent necessary to prevent or remedy a violation.

Sec. 30. *1. Except as otherwise provided in this section, a person who is aggrieved by an alleged violation may, not later than 1 year after the person discovers or reasonably should have discovered the alleged violation, file with the Division a written affidavit that sets forth the facts constituting the alleged violation. The affidavit may allege any actual damages suffered by the aggrieved person as a result of the alleged violation.*

2. An aggrieved person may not file such an affidavit unless the aggrieved person has, on at least two separate occasions, provided the respondent by certified mail, return receipt requested, with written notices of the alleged violation set forth in the affidavit. The notices must:

(a) Be mailed to the respondent's last known address.

(b) Be mailed at least 15 days apart.

(c) Specify, in reasonable detail, the alleged violation, any actual damages suffered by the aggrieved person as a result of the alleged violation, and any corrective action proposed by the aggrieved person.

3. A written affidavit filed with the Division pursuant to this section must be:

(a) On a form prescribed by the Division.

(b) Be accompanied by evidence that:

(1) The respondent has been given a reasonable opportunity after receiving the written notices to correct the alleged violation; and

(2) Reasonable efforts to resolve the alleged violation have failed.

4. The Commission or a hearing panel may impose an administrative fine of not more than $1,000 against any person who knowingly files a false or fraudulent affidavit with the Division.

Sec. 31. *1. Upon receipt of an affidavit that complies with the provisions of section 30 of this act, the Division shall refer the affidavit to the Ombudsman.*

2. The Ombudsman shall give such guidance to the parties as the Ombudsman deems necessary to assist the parties to resolve the alleged violation.

3. If the parties are unable to resolve the alleged violation with the assistance of the Ombudsman, the Ombudsman shall provide to the Division a report concerning the alleged violation and any information collected by the Ombudsman during his efforts to assist the parties to resolve the alleged violation.

4. Upon receipt of the report from the Ombudsman, the Division shall conduct an investigation to determine whether good cause exists to proceed with a hearing on the alleged violation.

5. If, after investigating the alleged violation, the Division determines that the allegations in the affidavit are not frivolous, false or fraudulent and that good cause exists to proceed with a hearing on the alleged violation, the Administrator shall file a formal complaint with the Commission and schedule a hearing on the complaint before the Commission or a hearing panel.

Sec. 32. *1. Except as otherwise provided in subsection 2, if the Administrator files a formal complaint with the Commission, the Commission or a hearing panel shall hold a hearing on the complaint not later than 90 days after the date that the complaint is filed.*

2. The Commission or the hearing panel may continue the hearing upon its own motion or upon the written request of a party to the complaint, for good cause shown, including, without limitation, the existence of proceedings for mediation or arbitration or a civil action involving the facts that constitute the basis of the complaint.

3. The Division shall give the respondent written notice of the date, time and place of the hearing on the complaint at least 30 days before the date of the hearing. The notice must be:

(a) Delivered personally to the respondent or mailed to the respondent by certified mail, return receipt requested, to his last known address.

(b) Accompanied by:

(1) A copy of the complaint; and

(2) Copies of all communications, reports, affidavits and depositions in the possession of the Division that are relevant to the complaint.

4. At any hearing on the complaint, the Division may not present evidence that was obtained after the notice was given to the respondent pursuant to this section, unless the Division proves to the satisfaction of the Commission or the hearing panel that:

(a) The evidence was not available, after diligent investigation by the Division, before such notice was given to the respondent; and

(b) The evidence was given or communicated to the respondent immediately after it was obtained by the Division.

5. The respondent must file an answer not later than 30 days after the date that notice of the complaint is delivered or mailed by the Division. The answer must:

(a) Contain an admission or a denial of the allegations contained in the complaint and any defenses upon which the respondent will rely; and

(b) Be delivered personally to the Division or mailed to the Division by certified mail, return receipt requested.

6. If the respondent does not file an answer within the time required by subsection 5, the Division may, after giving the respondent written notice of the default, request the Commission or the hearing panel to enter a finding of default against the respondent. The notice of the default must be delivered personally to the respondent or mailed to the respondent by certified mail, return receipt requested, to his last known address.

Sec. 33. *Any party to the complaint may be represented by an attorney at any hearing on the complaint.*

Sec. 34. *1. After conducting its hearings on the complaint, the Commission or the hearing panel shall render a final decision on the merits of the complaint not later than 20 days after the date of the final hearing.*

2. The Commission or the hearing panel shall notify all parties to the complaint of its decision in writing by certified mail, return receipt requested, not later than 60 days after the date of the final hearing. The written decision must include findings of fact and conclusions of law.

Sec. 35. *1. If the Commission or the hearing panel, after notice and hearing, finds that the respondent has committed a violation, the Commission or the hearing panel may take any or all of the following actions:*

(a) Issue an order directing the respondent to cease and desist from continuing to engage in the unlawful conduct that resulted in the violation.

(b) Issue an order directing the respondent to take affirmative action to correct any conditions resulting from the violation.

(c) Impose an administrative fine of not more than $1,000 for each violation.

2. If the respondent is a member of an executive board or an officer of an association, the Commission or the hearing panel may order the respondent removed from his office or position if the Commission or the hearing panel, after notice and hearing, finds that:

(a) The respondent has knowingly and willfully committed a violation; and

(b) The removal is in the best interest of the association.

3. If the respondent violates any order issued by the Commission or the hearing panel pursuant to this section, the Commission or the hearing panel, after notice and hearing, may impose an administrative fine of not more than $1,000 for each violation.

4. If the Commission or the hearing panel takes any disciplinary action pursuant to this section, the Commission or the hearing panel may order the respondent to pay the

costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation and reasonable attorney's fees.

5. Notwithstanding any other provision of this section, if the respondent is a member of an executive board or an officer of an association:

(a) The association is liable for all fines and costs imposed against the respondent pursuant to this section; and

(b) The respondent may not be held personally liable for those fines and costs.

Sec. 36. *If the Commission or a hearing panel, after notice and hearing, finds that the executive board of an association or any person acting on behalf of the association has committed a violation, the Commission or the hearing panel may take any or all of the following actions:*

1. Order an audit of the association.

2. Require the executive board to hire a community manager who holds a permit or certificate.

Sec. 37. *1. If the Commission or the Division has reasonable cause to believe, based on evidence satisfactory to it, that any person has committed a violation or will continue to commit violations, the Commission or the Division may bring an action in the district court for the county in which the person resides or, if the person does not reside in this state, in any court of competent jurisdiction in this state, to enjoin that person from continuing to commit the violations or from doing any act in furtherance of the violations.*

2. The action must be brought in the name of the State of Nevada.

3. The court may issue the injunction without:

(a) Proof of actual damages sustained by any person.

(b) The filing of any bond.

Sec. 38. *1. Notwithstanding any provision of the governing documents to the contrary, and except as otherwise provided in this section, a unit's owner is entitled to display the flag of the United States, in a manner that is consistent with the Federal Flag Code, from or on:*

(a) A flagpole or staff which is located on exterior property within the boundaries of his unit or which is attached to an exterior limited common element that forms a part of the boundaries of his unit.

(b) A window, ledge, sill, railing, patio, terrace or balcony of his unit or an exterior limited common element that forms a part of the boundaries of his unit, whether or not the flag is displayed from a flagpole or staff.

2. An association may adopt rules that:

(a) Prohibit the display of the flag of the United States in a manner that is inconsistent with the Federal Flag Code.

(b) Prohibit the display of the flag of the United States if the flag exceeds 4 feet in its vertical dimension or 6 feet in its horizontal dimension. For the purposes of this paragraph, the horizontal dimension of the flag is the dimension that is parallel with the horizontal stripes of the flag, regardless of the position in which the flay is displayed.

(c) Establish a maximum number of flags of the United States that may be displayed from, on or around the exterior of a unit. The maximum number may be one.

(d) Prohibit the display of the flag of the United States from a flagpole or staff that exceeds 25 feet in height.

(e) Prohibit the display of the flag of the United States in a manner that poses a real and substantial danger to health or safety.

3. As used in this section:

(a) "Federal Flag Code" means the rules and customs pertaining to the display and use of the flag of the United States which are codified in 4 U.S.C. §§ 5 to 10, inclusive, as altered, modified or repealed by the President of the United States pursuant to 4 U.S.C. § 10, and any additional rules pertaining to the display and use of the flag of the United States which are prescribed by the President pursuant to 4 U.S.C. § 10.

(b) "Flag of the United States" does not include a depiction or emblem of the flag of the United States that is made of balloons, flora, lights, paint, paving materials, roofing, siding or any other similar building, decorative or landscaping component or material.

Sec. 39. *1. If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association, the executive board shall, if action is required by the executive board, place the subject of the complaint on the agenda of the next regularly scheduled meeting of the executive board.*

2. Not later than 10 business days after the date that the association receives such a complaint, the executive board or an authorized representative of the association shall acknowledge the receipt of the complaint and notify the unit's owner that, if action is required by the executive board, the subject of the complaint will be placed on the agenda of the next regularly scheduled meeting of the executive board.

Sec. 40. *A member of an executive board, an officer of an association or a community manager shall not solicit or accept any form of compensation, gratuity or other remuneration that:*

1. Would improperly influence or would appear to a reasonable person to improperly influence the decisions made by those persons; or

2. Would result or would appear to a reasonable person to result in a conflict of interest for those persons.

Sec. 41. *An executive board, a member of an executive board or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:*

1. Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association; or

2. Requested in good faith to review the books, records or other papers of the association.

Sec. 42. *1. Except as otherwise provided in this section, a member of an executive board or an officer of an association shall not:*

(a) On or after October 1, 2003, enter into a contract or renew a contract with the association to provide goods or services to the association; or

(b) Otherwise accept any commission, personal profit or compensation of any kind from the association for providing goods or services to the association.

2. The provisions of this section do not prohibit a declarant, an affiliate of a declarant or an officer, employee or agent of a declarant or an affiliate of a declarant from:

(a) Receiving any commission, personal profit or compensation from the association, the declarant or an affiliate of the declarant for any goods or services furnished to the association;

(b) Entering into contracts with the association, the declarant or affiliate of the declarant; or

(c) Serving as a member of the executive board or as an officer of the association.

Sec. 43. *1. If a common-interest community is developed in separate phases and any declarant or successor declarant is constructing any common elements that will be added to the association's common elements after the date on which the units' owners other than the declarant may elect a majority of the members of the executive board, the declarant or successor declarant who is constructing such additional common elements is responsible for:*

(a) Paying all expenses related to the additional common elements which are incurred before the conveyance of the additional common elements to the association; and

(b) Except as otherwise provided in NRS 116.31038, delivering to the association that declarant's share of the amount specified in the study of the reserves completed pursuant to subsection 2.

2. Before conveying the additional common elements to the association, the declarant or successor declarant who constructed the additional common elements shall deliver to the association a study of the reserves for the additional common elements which satisfies the requirements of NRS 116.31152.

3. As used in this section, "successor declarant" includes, without limitation, any successor declarant who does not control the association established by the initial declarant.

Sec. 44. *1. Except as otherwise provided in subsection 2, in a county whose population is 400,000 or more, a person who owns, or directly or indirectly has an interest in, one or more units within a planned community that are restricted to residential use by the declaration, may use that unit or one of those units for a transient commercial use only if:*

(a) The governing documents of the association and any master association do not prohibit such use;

(b) The executive board of the association and any master association approve the transient commercial use of the unit, except that such approval is not required if the planned community and one or more hotels are subject to the governing documents of a master association and those governing documents do not prohibit such use; and

(c) The unit is properly zoned for the transient commercial use and any license required by the local government for the transient commercial use is obtained.

2. In a county whose population is 400,000 or more, a declarant who owns, or directly or indirectly has an interest in, one or more units within a planned community under the governing documents of the association that are restricted to residential use by the declaration, may use that unit or those units for a transient commercial use

during the period that the declarant is offering units for sale within the planned community if such use complies with the requirements set forth in paragraphs (a) and (c) of subsection 1.

3. The association and any master association may establish requirements for the transient commercial use of a unit pursuant to the provisions of this section, including, without limitation, the payment of additional fees that are related to any increase in services or other costs associated with the transient commercial use of the unit.

4. As used in this section:

(a) "Remuneration" means any compensation, money, rent or other valuable consideration given in return for the occupancy, possession or use of a unit.

(b) "Transient commercial use" means the use of a unit, for remuneration, as a hostel, hotel, inn, motel, resort, vacation rental or other form of transient lodging if the term of the occupancy, possession or use of the unit is for less than 30 consecutive calendar days.

Sec. 45. *The executive board of a master association of any common-interest community that was created before January 1, 1975, and is located in a county whose population is 400,000 or more may record an amendment to the declaration pursuant to which the master association reallocates the costs of administering the common elements of the master association among the units of the common-interest community uniformly and based upon the actual costs associated with each unit.*

Sec. 46. *1. If the declaration so provides, in a common-interest community that consists of at least 1,000 units, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives.*

2. In addition to a common-interest community identified in subsection 1, if the declaration so provides, in a common-interest community created before October 1, 1999, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives.

3. For the purposes of subsection 1, each unit that a declarant has reserved the right to create pursuant to NRS 116.2105 and for which developmental rights exist must be counted in determining the number of units in a common-interest community.

Sec. 47. *1. A unit's owner shall adhere to a schedule required by the association for:*

(a) The completion of the design of a unit or the design of an improvement to a unit;

(b) The commencement of the construction of a unit or the construction of an improvement to a unit;

(c) The completion of the construction of a unit or the construction of an improvement to the unit; or

(d) The issuance of a permit which is necessary for the occupancy of a unit or for the use of an improvement to a unit.

2. The association may impose and enforce a construction penalty against a unit's owner who fails to adhere to a schedule as required pursuant to subsection 1 if:

(a) The maximum amount of the construction penalty and the schedule are set forth in:

(1) The declaration;

(2) Another document related to the common-interest community that is recorded before the date on which the unit's owner acquired title to the unit; or

(3) A contract between the unit's owner and the association; and

(b) The unit's owner receives notice of the alleged violation which informs him that he has a right to a hearing on the alleged violation.

3. For the purposes of this chapter, a construction penalty is not a fine.

Sec. 48. *If a matter governed by this chapter is also governed by chapter 82 of NRS and there is a conflict between the provisions of this chapter and the provisions of chapter 82 of NRS, the provisions of this chapter prevail.*

Sec. 49. NRS 116.1103 is hereby amended to read as follows:

116.1103 ~~[In]~~ *As used in this chapter and in* the declaration and bylaws ~~[(NRS 116.3106), unless specifically provided otherwise or]~~ *of an association, unless* the context otherwise requires, ~~[and in this chapter,]~~ the words and terms defined in NRS 116.110305 to 116.110393, inclusive, *and sections 2 to 12, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 50. NRS 116.110305 is hereby amended to read as follows:

116.110305 "Administrator" means the *Real Estate* Administrator . ~~[of the Real Estate Division of the Department of Business and Industry.]~~

Sec. 51. NRS 116.11145 is hereby amended to read as follows:

116.11145 1. To carry out the purposes of this chapter, the ~~[Real Estate Commission,]~~ *Commission,* or any member thereof ~~[,]~~ *acting on behalf of the Commission or acting on behalf of a hearing panel,* may issue subpoenas to compel the attendance of witnesses and the production of books, records and other papers.

2. If any person fails to comply with a subpoena issued by the Commission *or any member thereof* pursuant to this section within ~~[10]~~ *20* days after ~~[its issuance,]~~ *the date of service of the subpoena,* the Commission may petition the district court for an order of the court compelling compliance with the subpoena.

3. Upon such a petition, the court shall enter an order directing the person subpoenaed to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than ~~[10]~~ *20* days after the date of *service of* the order, and show cause why he has not complied with the subpoena. A certified copy must be served upon the person subpoenaed.

4. If it appears to the court that the subpoena was regularly issued by the Commission ~~[,]~~ *or any member thereof pursuant to this section,* the court shall enter an order compelling compliance with the subpoena, and upon failure to obey the order the person shall be dealt with as for contempt of court.

Sec. 52. NRS 116.1116 is hereby amended to read as follows:

116.1116 1. The Office of the Ombudsman for Owners in Common-Interest Communities is hereby created within the ~~[Real Estate Division of the Department of Business and Industry.]~~ *Division.*

2. The Administrator shall appoint the Ombudsman . ~~[for Owners in Common-Interest Communities.]~~ The Ombudsman ~~[for Owners in Common-Interest Communities]~~ is in the unclassified service of the State.

3. The Ombudsman ~~[for Owners in Common-Interest Communities]~~ must be qualified by training and experience to perform the duties and functions of his office.

4. ~~[The Ombudsman for Owners in Common-Interest Communities]~~ *In addition to any other duties set forth in this chapter, the Ombudsman* shall:

(a) Assist in processing claims submitted to mediation or arbitration pursuant to NRS 38.300 to 38.360, inclusive;

(b) Assist owners in common-interest communities to understand their rights and responsibilities as set forth in this chapter and the governing documents of their associations, including, without limitation, publishing materials related to those rights and responsibilities;

(c) Assist ~~[persons appointed or elected to serve on]~~ *members of* executive boards *and officers* of associations to carry out their duties; ~~[and]~~

(d) *When appropriate, investigate disputes involving the provisions of this chapter or the governing documents of an association and assist in resolving such disputes; and*

(e) Compile and maintain a registration of each association organized within the State which includes, without limitation ~~[:]~~ *, the following information:*

(1) The name, address and telephone number of the association;

(2) The name of ~~[the person engaged in property management]~~ *each community manager* for the common-interest community ~~[or]~~ *and* the name of ~~[the]~~ *any other* person who ~~[manages]~~ *is authorized to manage* the property at the site of the common-interest community;

(3) The names, mailing addresses and telephone numbers of the members of the executive board of the association;

(4) The name of the declarant;

(5) The number of units in the common-interest community; ~~[and]~~

(6) The total annual assessment made by the association ~~[.]~~ *;*

(7) The number of foreclosures which were completed on units within the common-interest community and which were based on liens for the failure of the unit's owner to pay any assessments levied against the unit or any fines imposed against the unit's owner; and

(8) Whether the study of the reserves of the association has been conducted pursuant to NRS 116.31152 and, if so, the date on which it was completed.

Sec. 53. NRS 116.1117 is hereby amended to read as follows:

116.1117 1. There is hereby created the Account for ~~[the Ombudsman for Owners in]~~ Common-Interest Communities in the State General Fund. The Account must be administered by the Administrator.

2. ~~[The]~~ *Except as otherwise provided in subsection 3, all money received by the Commission, a hearing panel or the Division pursuant to this chapter, including, without limitation, the* fees collected pursuant to NRS 116.31155 , must be ~~[credited to]~~ *deposited into* the Account.

3. *If the Commission imposes a fine or penalty, the Commission shall deposit the money collected from the imposition of the fine or penalty with the State Treasurer for credit to the State General Fund. If the money is so deposited, the Commission may present a claim to the State Board of Examiners for recommendation to the Interim*

Finance Committee if money is required to pay attorney's fees or the costs of an investigation, or both.

4. The interest and income earned on the money in the Account, after deducting any applicable charges, must be credited to the Account.

~~[4.]~~ *5.* The money in the Account must be used solely to defray ~~[the]~~ *:*

(a) The costs and expenses of ~~[administering]~~ *the Commission and* the Office of the Ombudsman ~~[for Owners in Common-Interest Communities and for the payment of fees for a mediator or an arbitrator]~~ *; and*

(b) If authorized by the Commission or any regulations adopted by the Commission, the costs and expenses of subsidizing proceedings for mediation and arbitration conducted pursuant to NRS ~~[38.330.]~~ *38.300 to 38.360, inclusive.*

Sec. 54. NRS 116.1201 is hereby amended to read as follows:

116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this state.

2. This chapter does not apply to:

(a) Associations created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) A rural agricultural residential common-interest community.

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that ~~[the]~~ *this* chapter does apply to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted ~~[,]~~ only if the declaration so provides or *if* the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this state, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this state by any party unless exempt under subsection 2 of NRS 116.4101.

(d) *A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 50,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.*

(e) Except as otherwise provided in this chapter, time shares governed by the provisions of chapter 119A of NRS.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units' owners of the association;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;

(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992; or

(d) Prohibit a common-interest community created before January 1, 1992, *or a common-interest community described in section 46 of this act* from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. ~~[For the purposes of this section, the Administrator]~~ *The Commission* shall establish, by regulation, the criteria for determining whether an association ~~[is created for the limited purpose of maintaining the landscape of the common elements of a common-interest community, maintaining facilities for flood control or maintaining a rural agricultural residential]~~ *or a* common-interest community ~~[.]~~ *satisfies the requirements for an exemption from any provision of this chapter.*

Sec. 55. NRS 116.1203 is hereby amended to read as follows:

116.1203 1. Except as otherwise provided in subsection 2, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1105, 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.

2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, *the provisions of* NRS 116.3101 to 116.3119, inclusive, *and section 47 of this act* and *the definitions set forth in NRS* 116.110305 to 116.110393, inclusive, *and sections 2 to 12, inclusive, of this act,* to the extent *that such definitions are* necessary in construing any of those ~~[sections,]~~ *provisions,* apply to a residential planned community containing more than six units.

Sec. 56. NRS 116.1206 is hereby amended to read as follows:

116.1206 1. Any *provision contained in a* declaration, bylaw or other governing document of a common-interest community ~~[created before January 1, 1992, that does not conform to]~~ *that violates* the provisions of this chapter shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

2. In the case of amendments to the declaration, bylaws or plats and plans of any common-interest community created before January 1, 1992:

(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.

3. An amendment to the declaration, bylaws or plats and plans authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of chapter 117 or 278A of NRS and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

Sec. 57. NRS 116.2103 is hereby amended to read as follows:

116.2103 1. ~~[All provisions of the declaration and bylaws are severable.]~~ *The inclusion in a governing document of an association of a provision that violates any provision of this chapter does not render any other provisions of the governing document invalid or otherwise unenforceable if the other provisions can be given effect in accordance with their original intent and the provisions of this chapter.*

2. The rule against perpetuities and NRS 111.103 to 111.1039, inclusive, do not apply to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to NRS 116.3102.

3. In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

4. Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

Sec. 58. NRS 116.2111 is hereby amended to read as follows:

116.2111 ~~[Subject]~~

1. Except as otherwise provided in this section and subject to the provisions of the declaration and other provisions of law, a unit's owner:

~~[1.]~~ *(a)* May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community;

~~[2.]~~ *(b)* May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common-interest community, without permission of the association; and

~~[3.]~~ *(c)* After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community. Removal of partitions or creation of apertures under this ~~[subsection]~~ *paragraph* is not an alteration of boundaries.

2. An association may not:

(a) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a unit's owner to have reasonable access to his unit.

(b) Unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit:

(1) Improvements such as ramps, railings or elevators that are necessary to improve access to the unit for any occupant of the unit who has a disability;

(2) Additional locks to improve the security of the unit; or

(3) Shutters to improve the security of the unit or to aid in reducing the costs of energy for the unit.

3. Any improvement or alteration made pursuant to subsection 2 that is visible from any other portion of the common-interest community must be installed, constructed or added in accordance with the procedures set forth in the governing documents of the

association and must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

Sec. 59. NRS 116.212 is hereby amended to read as follows:

116.212 1. If the declaration provides that any of the powers described in NRS 116.3102 are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of one or more common-interest communities or for the benefit of the units' owners of one or more common-interest communities, or on behalf of a common-interest community and a time-share plan created pursuant to chapter 119A of NRS, all provisions of this chapter applicable to unit-owners' associations apply to any such corporation, except as modified by this section.

2. Unless it is acting in the capacity of an association described in NRS 116.3101, a master association may exercise the powers set forth in paragraph (b) of subsection 1 of NRS 116.3102 only to the extent expressly permitted in:

(a) The declarations of common-interest communities which are part of the master association or expressly described in the delegations of power from those common-interest communities to the master association; or

(b) The declaration of the common-interest community which is a part of the master association and the time-share instrument creating the time-share plan governed by the master association.

3. If the declaration of any common-interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

4. The rights and responsibilities of units' owners with respect to the unit-owners' association set forth in NRS 116.3103 ~~[to 116.31038, inclusive,]~~ *, 116.31032, 116.31034, 116.31036,* 116.3108, *116.31085,* 116.3109, 116.311 and 116.3112 *and section 46 of this act* apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise units' owners within the meaning of this chapter.

5. Even if a master association is also an association described in NRS 116.3101, the certificate of incorporation or other instrument creating the master association and the declaration of each common-interest community, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of the declarant's control in any of the following ways:

(a) All units' owners of all common-interest communities subject to the master association may elect all members of the master association's executive board.

(b) All members of the executive boards of all common-interest communities subject to the master association may elect all members of the master association's executive board.

(c) All units' owners of each common-interest community subject to the master association may elect specified members of the master association's executive board.

(d) All members of the executive board of each common-interest community subject to the master association may elect specified members of the master association's executive board.

Sec. 60. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in subsection 2, and subject to the provisions of the declaration, the association may:

(a) Adopt and amend bylaws, rules and regulations;

(b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from units' owners;

(c) Hire and discharge managing agents and other employees, agents and independent contractors;

(d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community;

(e) Make contracts and incur liabilities;

(f) Regulate the use, maintenance, repair, replacement and modification of common elements;

(g) Cause additional improvements to be made as a part of the common elements;

(h) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112;

(i) Grant easements, leases, licenses and concessions through or over the common elements;

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to units' owners;

(k) Impose charges for late payment of assessments *, impose construction penalties when authorized pursuant to section 47 of this act* and, except as otherwise provided in NRS 116.31031, after notice and an opportunity to be heard, levy reasonable fines for violations of the ~~[declaration, bylaws, rules and regulations]~~ *governing documents* of the association;

(l) Impose reasonable charges for the preparation and recordation of amendments to the declaration, the information required by NRS 116.4109 or statements of unpaid assessments;

(m) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides;

(o) Exercise any other powers conferred by the declaration or bylaws;

(p) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association;

(q) Direct the removal of vehicles improperly parked on property owned or leased by the association, pursuant to NRS 487.038; and

(r) Exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Sec. 61. NRS 116.31031 is hereby amended to read as follows:

116.31031 1. If a unit's owner ~~[,]~~ or a tenant or guest of a unit's owner ~~[, does not comply with a]~~ *violates any* provision of the governing documents of an association, the executive board of the association may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner ~~[,]~~ or the tenant or guest of the unit's owner ~~[,]~~ from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner ~~[,]~~ or the tenant or guest of the unit's owner ~~[,]~~ from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) ~~[Require]~~ *Impose a fine against* the unit's owner ~~[,]~~ or the tenant or guest of the unit's owner ~~[, to pay a fine]~~ for each ~~[failure to comply that does not threaten the health and welfare of the common-interest community.]~~ *violation, except that a fine may not be imposed for a violation that is the subject of a construction penalty pursuant to section 47 of this act*. The fine must be commensurate with the severity of the violation, but must not exceed $100 for each violation or a total amount of $500, whichever is less. *The limitations on the amount of the fine do not apply to any interest, charges or costs that may be collected by the association pursuant to this section if the fine becomes past due*.

2. If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days *,* or ~~[a]~~ *within any* longer period ~~[as]~~ *that* may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

3. Except as otherwise provided in subsection 2, the imposition of a fine pursuant to this section must comply with the requirements of subsection 6 of NRS 116.31065.

4. Any past due fine:

(a) Bears interest at the rate established by the association, not to exceed 18 percent per year.

(b) May include any charges for late payment of the past due fine at a rate established by the association, not to exceed 5 percent of the outstanding balance.

(c) May include any costs of collecting the past due fine at a rate established by the association:

(1) Not to exceed $20, if the outstanding balance is less than $200.

(2) Not to exceed $50, if the outstanding balance is $200 or more, but is less than $500.

(3) Not to exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.

(4) Not to exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.

(5) Not to exceed $500, if the outstanding balance is $5,000 or more.

(d) May include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

5. As used in this section:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association, a collection agency, a community manager and any other person or entity engaged to collect a past due fine may reasonably incur for the collection of a past due fine. The term does not include any costs incurred by an association during a civil action to enforce the payment of a past due fine.

(b) "Outstanding balance" means the amount of a past due fine that remains unpaid before any interest, charges for late payment or costs of collecting the past due fine are added.

Sec. 62. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, at least a majority of whom must be units' owners. The executive board shall elect the officers ~~[.]~~ *of the association.* The members ~~[and officers]~~ of the executive board *and the officers of the association* shall take office upon election.

2. The term of office of a member of the executive board may not exceed 2 years ~~[. A]~~ *, except for members who are appointed by the declarant. Unless the governing documents provide otherwise, there is no limitation on the number of terms that a person may serve as a* member of the executive board . ~~[may be elected to succeed himself.]~~

3. The governing documents of the association must ~~[set forth the month during which elections for the members of the executive board must be held after the termination of any period of the declarant's control.~~

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

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

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

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

the names of the nominees selected by the members of the executive board or a nominating committee established by the association.

~~[4.]~~ *5. Each person whose name is placed on the ballot as a candidate for a member of the executive board must make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board. The candidate must make the disclosure, in writing, to each member of the association in the manner established in the bylaws of the association.*

6. Unless a person is appointed by the declarant:

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

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

(1) That master association; or

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

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

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

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

~~[5.]~~ *8.* The election of any member of the executive board must be conducted by secret written ballot ~~[. The]~~ *unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in section 46 of this act. If the election is conducted by secret written ballot, the* secretary or other officer specified in the bylaws of the association shall cause *a secret ballot and a return envelope* to be sent *,* prepaid by United States mail *,* to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner *.* ~~[, a secret ballot and a return envelope.~~

~~6.]~~ *9. A quorum is not required for the election of any member of the executive board. If the election is conducted by secret written ballot:*

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

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

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

10. Each member of the executive board shall, within ~~[30]~~ *90* days after his appointment or election, certify in writing *to the association, on a form prescribed by the Administrator,* that he has read and understands the governing documents of the association and the provisions of this chapter to the best of his ability. *The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158.*

Sec. 63. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, the units' owners, by a two-thirds vote of all persons ~~[present and]~~ entitled to vote at any meeting of the units' owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

2. *The removal of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in section 46 of this act. If the removal of a member of the executive board is conducted by secret written ballot, the secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.*

3. If the removal of a member of the executive board is conducted by secret written ballot:

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

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

(c) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

4. If a member of an executive board is *named as a respondent or* sued for liability for actions undertaken in his role as a member of the board, the association shall indemnify him for his losses or claims, and undertake all costs of defense, unless it is

proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof , the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against the association, but may be recovered from persons whose activity gave rise to the damages.

5. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to sections 27 to 37, inclusive, of this act.

Sec. 64. NRS 116.3106 is hereby amended to read as follows:

116.3106 1. The bylaws of the association must provide:

(a) The number of members of the executive board and the titles of the officers of the association;

(b) For election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify;

(c) The qualifications, powers and duties, terms of office and manner of electing and removing officers of the association and members of the executive board and filling vacancies;

(d) Which ~~[,]~~ *powers,* if any, ~~[of its powers]~~ *that* the executive board or *the* officers *of the association* may delegate to other persons or to a ~~[managing agent;]~~ *community manager;*

(e) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association;

(f) Procedural rules for conducting meetings of the association; ~~[and]~~

(g) A method for amending the bylaws ~~[.]~~ *; and*

(h) Procedural rules for conducting elections.

2. Except as otherwise provided in the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

3. The bylaws must be written in plain English.

Sec. 65. NRS 116.3108 is hereby amended to read as follows:

116.3108 1. A meeting of the units' owners of an association must be held at least once each year. If the governing documents of a common-interest community do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1. Special meetings of the units' owners of an association may be called by the president, a majority of the executive board or by units' owners having 10 percent, or any lower percentage specified in the bylaws, of the votes in the association.

2. Not less than 10 nor more than 60 days in advance of any meeting of the units' owners of an association, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be hand-delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing

by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting ~~[distributed to him]~~ *provided to the unit's owner* upon request and, if required by the executive board, upon payment to the association of the cost of ~~[making the distribution.]~~ *providing the copy to the unit's owner*.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

3. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer *of the association* or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

4. If the association adopts a policy imposing ~~[a fine on a unit's owner for the violation of the declaration, bylaws or other rules established by]~~ *fines for any violations of the governing documents of* the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

5. *The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners.* Not more than 30 days after ~~[any meeting of the units' owners,]~~ *each such meeting,* the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner ~~[who pays]~~ *upon request and, if required by the executive board, upon payment to* the association *of* the cost of providing the copy to ~~[him.]~~ *the unit's owner*.

6. *Except as otherwise provided in subsection 7, the minutes of each meeting of the units' owners must include:*

(a) The date, time and place of the meeting;

(b) The substance of all matters proposed, discussed or decided at the meeting; and

(c) The substance of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

7. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

8. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

9. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the other units' owners who are in attendance at the meeting.

10. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners of the association;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 3.

Sec. 66. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board of an association must be held at least once every 90 days.

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

(a) Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;

(b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or

(c) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

4. The notice of a meeting of the executive board of an association must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners of the association. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting ~~[distributed to him]~~ *provided to the unit's owner* upon request and, if required by the executive board, upon payment to the association of the cost of ~~[making the distribution.]~~ *providing the copy to the unit's owner*.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

5. The agenda of the meeting of the executive board of an association must comply with the provisions of subsection 3 of NRS 116.3108. The period required to be devoted to comments by units' owners and discussion of those comments must be scheduled for the beginning of each meeting. In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

6. At least once every 90 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review at one of its meetings:

(a) A current reconciliation of the operating account of the association;

(b) A current reconciliation of the reserve account of the association;

(c) The actual revenues and expenses for the reserve account, compared to the budget for that account for the current year;

(d) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained;

(e) An income and expense statement, prepared on at least a quarterly basis, for the operating and reserve accounts of the association; and

(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

7. The *secretary or other officer specified in the bylaws shall cause* minutes ~~[of a]~~ *to be recorded or otherwise taken at each* meeting of the executive board . ~~[of an association must be]~~ *Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be* made available to the units' owners . ~~[in accordance with the provisions of subsection 5 of NRS 116.3108.]~~ *A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.*

8. *Except as otherwise provided in subsection 9 and NRS 116.31085, the minutes of each meeting of the executive board must include:*

(a) The date, time and place of the meeting;

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting and, at the request of any member of the executive board, a record of each member's vote on any matter decided by vote at the meeting; and

(d) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has

prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

10. The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

11. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners of the association;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 67. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners of the association or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. *An executive board may not meet in executive session to enter into, renew, modify, terminate or take any other action regarding a contract, including, without limitation, a contract with the attorney for the association. If the executive board takes any action regarding a contract, the contract must be made reasonably available for review by the units' owners of the association.*

3. An executive board may meet in executive session *only* to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive . ~~[;]~~ *The provisions of this paragraph do not permit the executive board to meet in executive session to take any action regarding a contract with the attorney for the association.*

(b) Discuss ~~[matters relating to personnel; or~~

~~(c) Discuss]~~ *the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.*

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents *,* ~~[alleged to have been committed by a unit's owner,]~~ including, without limitation, the failure to pay an assessment . ~~[, except as otherwise provided in subsection 3.~~

~~3.]~~ *(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to section 47 of this act if the alleged failure may subject the unit's owner to a construction penalty.*

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the ~~[unit's owner who allegedly committed]~~ *person who may be sanctioned for* the *alleged* violation requests in writing that the hearing be conducted by the executive board at an open meeting. The ~~[unit's owner who is alleged to have committed]~~ *person who may be sanctioned for* the *alleged* violation ~~[may]~~ *is entitled to* attend the hearing and testify concerning the alleged violation, but *the person* may be excluded by the executive board from any other portion of the hearing, including, without limitation, the deliberations of the executive board.

~~[4.]~~ *5.* Except as otherwise provided in this subsection, any matter discussed *by the executive board when it meets* in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection ~~[3]~~ *4 concerning an alleged violation* and, upon request, provide a copy of the decision to the ~~[unit's owner who was the subject of the hearing]~~ *person who was subject to being sanctioned at the hearing* or to his designated representative.

~~[5.]~~ *6.* Except as otherwise provided in subsection ~~[3,]~~ *4,* a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 68. NRS 116.3109 is hereby amended to read as follows:

116.3109 1. Except as otherwise provided in this section and ~~[unless the bylaws]~~ *NRS 116.31034, and except when the governing documents* provide otherwise, a quorum is present throughout any meeting of the association if ~~[persons entitled to cast 20 percent of the votes that may be cast for election of the executive board]~~ *the number of members of the association who* are present in person or by proxy at the beginning of the meeting ~~[.]~~ *equals or exceeds 20 percent of the total number of voting members of the association.*

2. If the governing documents of an association contain a quorum requirement for a meeting of the association that is greater than the 20 percent required by subsection 1 and, after proper notice has been given for a meeting, the members of the association who are present in person or by proxy at the meeting are unable to hold the meeting because a quorum is not present at the beginning of the meeting, the members who are present in person at the meeting may adjourn the meeting to a time that is not less than 48 hours or more than 30 days from the date of the meeting. At the subsequent meeting:

(a) A quorum shall be deemed to be present if the number of members of the association who are present in person or by proxy at the beginning of the subsequent meeting equals or exceeds 20 percent of the total number of voting members of the association; and

(b) If such a quorum is deemed to be present but the actual number of members who are present in person or by proxy at the beginning of the subsequent meeting is less than the number of members who are required for a quorum under the governing documents, the members who are present in person or by proxy at the subsequent meeting may take action only on those matters that were included as items on the agenda of the original meeting.

The provisions of this subsection do not change the actual number of votes that are required under the governing documents for taking action on any particular matter.

3. Unless the ~~[bylaws]~~ *governing documents* specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50 percent of the votes on that board are present at the beginning of the meeting.

~~[3. For the purposes of determining whether a quorum is present for the election of any member of the executive board, only the secret written ballots that are returned to the association may be counted.]~~

Sec. 69. NRS 116.311 is hereby amended to read as follows:

116.311 1. If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners cast the votes allocated to that unit without protest made promptly to the person presiding over the meeting by any of the other owners of the unit.

2. Except as otherwise provided in this section, votes allocated to a unit may be cast pursuant to a proxy executed by a unit's owner. A unit's owner may give a proxy only to a member of his immediate family, a tenant of the unit's owner who resides in the common-interest community *,* ~~[or]~~ another unit's owner who resides in the common-interest community ~~[.]~~ *, or to a delegate or representative when authorized pursuant to section 46 of this act*. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through an executed proxy. A unit's owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association. ~~[A proxy is void if:~~

~~(a) It is not dated or purports]~~

3. Before a vote may be cast pursuant to a proxy:

(a) The proxy must be dated.

(b) The proxy must not purport to be revocable without notice . ~~[;~~

~~(b) It does not]~~

(c) The proxy must designate the meeting for which it is executed.

(d) The proxy must designate ~~[the votes that must be cast on behalf of]~~ *each specific item on the agenda of the meeting for which* the unit's owner ~~[who]~~ *has* executed the proxy ~~[; or~~

~~(c)]~~ *, except that the unit's owner may execute the proxy without designating any specific items on the agenda of the meeting if the proxy is to be used solely for determining whether a quorum is present for the meeting. If the proxy designates one or more specific items on the agenda of the meeting for which the unit's owner has executed the proxy, the proxy must indicate, for each specific item designated in the proxy, whether the holder of the proxy must cast a vote in the affirmative or the negative on behalf of the unit's owner. If the proxy does not indicate whether the holder of the proxy must cast a vote in the affirmative or the negative for a particular item on*

the agenda of the meeting, the proxy must be treated, with regard to that particular item, as if the unit's owner were present but not voting on that particular item.

(e) The holder of the proxy ~~[does not]~~ *must* disclose at the beginning of the meeting for which the proxy is executed the number of proxies pursuant to which ~~[he]~~ *the holder* will be casting votes . ~~[and the voting instructions received for each proxy.]~~

4. A proxy terminates immediately after the conclusion of the meeting for which it ~~[was]~~ *is* executed.

5. A vote may not be cast pursuant to a proxy for the election *or removal* of a member of the executive board of an association ~~[.~~

~~3. Only a vote cast in person, by secret ballot or by proxy, may be counted.~~

~~4.]~~ *unless the proxy is exercised through a delegate or representative authorized pursuant to section 46 of this act.*

6. The holder of a proxy may not cast a vote on behalf of the unit's owner who executed the proxy in a manner that is contrary to the proxy.

7. A proxy is void if the proxy or the holder of the proxy violates any provision of subsections 1 to 6, inclusive.

8. If the declaration requires that votes on specified matters affecting the common-interest community *must* be cast by *the* lessees *of leased units* rather than *the* units' owners ~~[of]~~ *who have* leased *the* units:

(a) The provisions of subsections 1 ~~[and 2]~~ *to 7, inclusive,* apply to *the* lessees as if they were *the* units' owners;

(b) ~~[Units']~~ *The units'* owners who have leased their units to ~~[other persons]~~ *the lessees* may not cast votes on those specified matters; ~~[and]~~

(c) ~~[Lessees]~~ *The lessees* are entitled to notice of meetings, access to records ~~[,]~~ and other rights respecting those matters as if they were *the* units' owners ~~[.~~

~~Units']~~ *; and*

(d) The units' owners must ~~[also]~~ be given notice, in the manner provided in NRS 116.3108, of all meetings at which *the* lessees are entitled to vote.

~~[5. No]~~

9. If any votes *are* allocated to a unit *that is* owned by the association *, those votes* may *not* be cast ~~[.~~

~~6. Votes cast for the election of a member of the executive board of an association must be counted in public.]~~ *, by proxy or otherwise, for any purpose.*

Sec. 70. NRS 116.31139 is hereby amended to read as follows:

116.31139 1. ~~[An association may employ a person engaged in property management for the common-interest community.~~

~~2.]~~ Except as otherwise provided in this section, a person ~~[engaged in property management for a common-interest community must:~~

~~(a) Hold]~~ *shall not act as a community manager unless the person holds* a permit ~~[to engage in property management that is issued pursuant to the provisions of chapter 645 of NRS; or~~

~~(b) Hold]~~ *or* a certificate . ~~[issued by the Real Estate Commission pursuant to subsection 3.~~

~~3. The Real Estate]~~

2. The Commission shall ~~[provide]~~ by regulation *provide* for the ~~[issuance of certificates for the management of common-interest communities to persons who are not otherwise authorized to engage in property management pursuant to the provisions of chapter 645 of NRS. The regulations:~~

~~(a) Must establish the qualifications for the issuance of such a certificate, including the education and experience required to obtain such a certificate;~~

~~(b) May require applicants to pass an examination in order to obtain a certificate;~~

~~(c) Must establish]~~ standards of practice for ~~[persons engaged in property management for a common-interest community;~~

~~(d) Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate; and~~

~~(e) Must establish rules of practice and procedure for conducting disciplinary hearings.~~

~~The Real Estate Division of the Department of Business and Industry]~~ *community managers who hold permits or certificates*.

3. The Division may investigate ~~[the property managers to whom certificates have been issued]~~ *any community manager who holds a permit or certificate* to ensure ~~[their compliance]~~ *that the community manager is complying* with the standards of practice adopted ~~[pursuant to this subsection and collect a fee for the issuance of a certificate]~~ by the Commission . ~~[in an amount not to exceed the administrative costs of issuing the certificate.]~~

4. *In addition to any other remedy or penalty, if the Commission or a hearing panel, after notice and hearing, finds that a community manager who holds a permit or certificate has violated any provision of this chapter or any of the standards of practice adopted by the Commission, the Commission or the hearing panel may take appropriate disciplinary action against the community manager*.

5. The provisions of ~~[subsection 2]~~ *this section* do not apply to:

(a) ~~[A person who is engaged in property management for a common-interest community on October 1, 1999, and is granted an exemption from the requirements of subsection 2 by the Administrator upon demonstration that he is qualified and competent to engage in property management for a common-interest community.~~

~~(b)]~~ A financial institution ~~[.~~

~~(c)]~~ *that is engaging in an activity permitted by law*.

(b) An attorney *who is* licensed to practice in this state ~~[.~~

~~(d)]~~ *and who is acting in that capacity*.

(c) A trustee ~~[.~~

~~(e) An employee of a corporation who manages only]~~ *with respect to* the property of the ~~[corporation.~~

~~(f)]~~ *trust*.

(d) A declarant ~~[.~~

~~(g)]~~ *, an affiliate of the declarant and any officers or employees of the declarant or an affiliate of the declarant when engaging in the management of a common-interest*

community during the period in which the declarant controls that common-interest community.

(e) A receiver ~~[.~~

~~5. As used in this section, "property management" means the physical, administrative or financial maintenance and management of real property, or the supervision of those activities for a fee, commission or other compensation or valuable consideration.]~~ *with respect to property subject to the receivership.*

(f) A member of an executive board or an officer of an association who is acting solely within the scope of his duties as a member of the executive board or an officer of the association.

Sec. 71. NRS 116.311391 is hereby amended to read as follows:

116.311391 The expiration or revocation of a *permit or* certificate ~~[for the management of a common-interest community]~~ by operation of law or by order or decision of ~~[the Real Estate Commission or a]~~ *any agency or* court of competent jurisdiction, or the voluntary surrender of such a *permit or* certificate by the holder of the *permit or* certificate does not:

1. Prohibit the ~~[Real Estate Division of the Department of Business and Industry or Real Estate]~~ Commission *or the Division* from initiating or continuing an investigation of, or action or disciplinary proceeding against, the holder of the *permit or* certificate as authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto; or

2. Prevent the imposition or collection of any fine or penalty authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto against the holder of the *permit or* certificate.

Sec. 72. NRS 116.31151 is hereby amended to read as follows:

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

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

(b) The budget to maintain the reserve required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

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

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

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

restore any major component of the common elements or to provide adequate reserves for that purpose; and

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

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

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

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

Sec. 73. NRS 116.31152 is hereby amended to read as follows:

116.31152 1. The executive board of an association shall:

(a) Cause to be conducted *,* at least once every 5 years, a study of the reserves required to repair, replace and restore the major components of the common elements;

(b) Review the results of that study at least annually to determine if those reserves are sufficient; and

(c) Make any adjustments it deems necessary to maintain the required reserves.

2. The study *of the reserves* required by subsection 1 must be conducted by a person *who is* qualified by training and experience to conduct such a study, including *, without limitation,* a member of the executive board, a unit's owner or ~~[the property manager of the association]~~ *a community manager* who is so qualified. The study *of the reserves* must include, without limitation:

(a) A summary of an inspection of the major components of the common elements *that* the association is obligated to repair, replace or restore;

(b) An identification of the major components of the common elements that the association is obligated to repair, replace or restore which have a remaining useful life of less than 30 years;

(c) An estimate of the remaining useful life of each major component identified pursuant to paragraph (b);

(d) An estimate of the cost of repair, replacement or restoration of each major component identified pursuant to paragraph (b) during and at the end of its useful life; and

(e) An estimate of the total annual assessment that may be required to cover the cost of repairing, replacement or restoration of the major components identified pursuant to paragraph (b), after subtracting the reserves of the association as of the date of the study.

3. *The results of the study of the reserves required by subsection 1 must be submitted to the Commission not later than 45 days after the date that the executive board of the association adopts the results of the study.*

4. The ~~[Administrator]~~ *Commission* shall adopt by regulation the qualifications required for conducting ~~[a]~~ *the* study *of the reserves* required by subsection 1.

5. If a common-interest community was developed as part of a planned unit development pursuant to chapter 278A of NRS and is subject to an agreement with a city or county to receive credit against the amount of the residential construction tax that is imposed pursuant to NRS 278.4983 and 278.4985, the association that is organized for the common-interest community may use the money from that credit for the repair, replacement or restoration of park facilities and related improvements if:

(a) The park facilities and related improvements are identified as major components of the common elements of the association; and

(b) The association is obligated to repair, replace or restore the park facilities and related improvements in accordance with the study of the reserves required by subsection 1.

Sec. 74. NRS 116.31155 is hereby amended to read as follows:

116.31155 1. An association shall:

(a) If the association is required to pay the fee imposed by NRS 78.150 *, 82.193* or ~~[82.193,]~~ *86.263,* pay to the Administrator a fee established by regulation of the Administrator for every unit in the association used for residential use.

(b) If the association is organized as a trust or partnership, pay to the Administrator a fee established by regulation of the Administrator for each unit in the association.

2. The fees required to be paid pursuant to this section must be:

(a) Paid at such times as are established by the ~~[Administrator.]~~ *Division.*

(b) Deposited with the State Treasurer for credit to the Account for ~~[the Ombudsman for Owners in]~~ Common-Interest Communities created ~~[pursuant to]~~ *by* NRS 116.1117.

(c) Established on the basis of the actual ~~[cost]~~ *costs* of administering the Office of the Ombudsman ~~[for Owners in Common-Interest Communities]~~ *and the Commission* and not on a basis which includes any subsidy ~~[for the Office.]~~ *beyond those actual costs*. In no event may the fees required to be paid pursuant to this section exceed $3 per unit.

3. *The Administrator may by regulation establish an administrative penalty to be imposed against an association that violates the provisions of this section by failing to pay the fees owed by the association within the times established by the Division. The administrative penalty that is imposed for each violation may not exceed 10 percent of the amount of the fees owed by the association or $500, whichever amount is less.*

4. A unit's owner may not be required to pay any portion of the fees *or any administrative penalties* required to be paid pursuant to this section to a master association and to an association organized pursuant to NRS 116.3101.

~~[4.]~~ *5.* Upon the payment of the fees *and any administrative penalties* required by this section, the Administrator shall provide to the association evidence that it paid the fees *and the administrative penalties* in compliance with this section.

Sec. 75. NRS 116.31158 is hereby amended to read as follows:

116.31158 1. Each association shall, at the time it pays the fee required by NRS 116.31155, register with the Ombudsman ~~[for Owners in Common-Interest Communities]~~ on a form prescribed by the Ombudsman.

2. The form for registration must include, without limitation, the information required to be maintained pursuant to paragraph ~~[(d)]~~ *(e)* of subsection 4 of NRS 116.1116.

Sec. 76. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any *construction penalty that is imposed against the unit's owner pursuant to section 47 of this act, any* assessment levied against that unit or *any* fines imposed against the unit's owner from the time the *construction penalty,* assessment or fine becomes due. Unless the declaration otherwise provides, *any penalties,* fees, charges, late charges, fines and interest charged pursuant to paragraphs (j), (k) and (l) of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

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

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

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

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

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

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

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

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

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

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

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

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

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

~~[10.]~~ *(b)* In a cooperative where the owner's interest in a unit is personal property ~~[(]~~ *under* NRS 116.1105 , ~~[),]~~ the association's lien ~~[may]~~ *:*

(1) May be foreclosed ~~[in like manner]~~ as a security interest under NRS 104.9101 to 104.9709, inclusive ~~[.]~~ *; or*

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

Sec. 77. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in subsection 4, in a condominium, *in a planned community, in* a cooperative where the owner's interest in a unit is real estate ~~[as determined pursuant to]~~ *under* NRS 116.1105, or ~~[a planned community,]~~ *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:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest, at his address if known ~~[,]~~ and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed ~~[,]~~ and the name of the record owner of the unit;

(b) ~~[The]~~ *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 contains the same information as the notice of delinquent assessment, but must also describe the deficiency in payment and the name and address of the person authorized by the association to enforce the lien by sale; and

(c) The unit's owner or his successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for ~~[60]~~ *90* days following the recording of the notice of default and election to sell.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose ~~[,]~~ or *,* if no one is designated, by the president of the association.

3. The period of ~~[60]~~ *90* days begins on the first day following the later of:

(a) The day on which the notice of default is recorded; or

(b) The day on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest at his address *,* if known, and at the address of the unit.

4. The association may not foreclose a lien by sale ~~[for the assessment of]~~ *based on* a fine *or penalty* for a violation of the ~~[declaration, bylaws, rules or regulations]~~ *governing documents* of the association ~~[, unless the violation is of a type that threatens]~~ *unless:*

(a) The violation threatens the health, safety or welfare of the residents of the common-interest community ~~[.]~~ *; or*

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to section 47 of this act.

Sec. 78. NRS 116.311635 is hereby amended to read as follows:

116.311635 The association or other person conducting the sale shall also, after the expiration of the ~~[60]~~ *90* days and before selling the unit:

1. Give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the unit's owner or his successor in interest at his address *,* if known, and to the address of the unit.

2. Mail, on or before the date of first publication or posting, a copy of the notice by first-class mail to:

(a) Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116.31163; ~~[and]~~

(b) The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable ~~[.]~~ *; and*

(c) The Ombudsman.

Sec. 79. NRS 116.31175 is hereby amended to read as follows:

116.31175 1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association ~~[.]~~ *, including, without limitation, all records filed with a court relating to a civil or criminal action to which the association is a party.* The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association ~~[,]~~ *, except for those records relating to the salaries and benefits of those employees;* and

(b) The records of the association relating to another unit's owner ~~[.]~~ *, except for those records described in subsection 2.*

2. *The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation involving a failure to pay an assessment, for which the executive board has imposed a fine, a construction penalty or any other sanction. The general record:*

(a) Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty.

(b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the unit, if any, that is associated with the violation.

(c) Must be maintained in an organized and convenient filing system or data system that allows a unit's owner to search and review the general records concerning violations of the governing documents.

3. If the executive board refuses to allow a unit's owner to review the books, records or other papers of the association, the Ombudsman ~~[for Owners in Common-Interest Communities]~~ may:

(a) On behalf of the unit's owner and upon written request, review the books, records or other papers of the association during the regular working hours of the association; and

(b) If he is denied access to the books, records or other papers, request the Commission *, or any member thereof acting on behalf of the Commission,* to issue a subpoena for their production.

4. The books, records and other papers of an association must be maintained for at least 10 years. The provisions of this subsection do not apply to:

(a) The minutes of a meeting of the units' owners which must be maintained in accordance with NRS 116.3108; or

(b) The minutes of a meeting of the executive board which must be maintained in accordance with NRS 116.31083.

Sec. 80. NRS 116.31177 is hereby amended to read as follows:

116.31177 1. The executive board of an association shall maintain and make available for review at the business office of the association or *some* other suitable location ~~[:]~~ *within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties:*

(a) The financial statement of the association;

(b) The budgets of the association required to be prepared pursuant to NRS 116.31151; and

(c) The study of the reserves of the association required to be conducted pursuant to NRS 116.31152.

2. The executive board shall provide a copy of any of the records required to be maintained pursuant to subsection 1 to a unit's owner or the Ombudsman ~~[for Owners in Common-Interest Communities]~~ within 14 days after receiving a written request therefor. The executive board may charge a fee to cover the actual costs of preparing a copy, but not to exceed 25 cents per page.

Sec. 81. NRS 116.3118 is hereby amended to read as follows:

116.3118 *1.* The association shall keep financial records sufficiently detailed to enable the association to comply with NRS 116.4109.

2. All financial and other records *of the association* must be *:*

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

(b) Made reasonably available for any unit's owner and his authorized agents to inspect, examine, photocopy and audit.

Sec. 82. NRS 116.4108 is hereby amended to read as follows:

116.4108 1. A person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 shall provide a purchaser with a copy of the current public offering statement not later than the date ~~[of any contract of sale.]~~ *on which an offer to purchase becomes binding on the purchaser*. Unless the purchaser has personally inspected the unit, the purchaser may cancel, by written notice, the contract of purchase until midnight of the fifth calendar day following the date of execution of the contract, and the contract for purchase must contain a provision to that effect.

2. If a purchaser elects to cancel a contract pursuant to subsection 1, he may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

3. If a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 fails to provide a purchaser to whom a unit is conveyed with a current public offering statement, the purchaser is entitled to actual damages, rescission or other relief, but if the purchaser has accepted a conveyance of the unit, he is not entitled to rescission.

Sec. 83. NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner shall furnish to a purchaser before ~~[execution of any contract for sale of a unit, or otherwise before conveyance:]~~ *an offer to purchase a unit becomes binding on the purchaser:*

(a) A copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095;

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

(c) The current operating budget of the association and a financial statement for the association ~~[;]~~ *, which must include a summary of the financial components of the study of the reserves of the association required by NRS 116.31152;* and

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge.

2. The association, within 10 days after a request by a unit's owner, shall furnish a certificate containing the information necessary to enable the unit's owner to comply with ~~[this section.]~~ *subsection 1*. A unit's owner providing a certificate pursuant to subsection 1 is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

3. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. If the association fails to furnish the certificate within the 10 days allowed by subsection 2, the seller is not liable for the delinquent assessment.

4. Upon the request of a unit's owner, a purchaser to whom the unit's owner has provided a certificate pursuant to subsection 1 or an authorized agent of the unit's owner or the purchaser, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

Sec. 84. NRS 116.41095 is hereby amended to read as follows:

116.41095 The information statement required by NRS 116.4103 and 116.4109 must be in substantially the following form:

BEFORE YOU PURCHASE PROPERTY IN A
COMMON-INTEREST COMMUNITY
DID YOU KNOW . . .

1. YOU ARE AGREEING TO RESTRICTIONS ON HOW YOU CAN USE YOUR PROPERTY?

These restrictions are contained in a document known as the Declaration of Covenants, Conditions and Restrictions (C, C & R's) that should be provided for your review before making your purchase. The C, C & R's become a part of the title to your property. They bind you and every future owner of the property whether or not you have read them or had them explained to you. The C, C & R's, together with other "governing documents" (such as association bylaws and rules and regulations), are intended to preserve the character and value of properties in the community, but may also restrict what you can do to improve or change your property and limit how you use and enjoy your property. By purchasing a property encumbered by C, C & R's, you are agreeing to limitations that could affect your lifestyle and freedom of choice. You should review the C, C & R's and other governing documents before purchasing to make sure that these limitations and controls are acceptable to you.

2. YOU WILL HAVE TO PAY OWNERS' ASSESSMENTS FOR AS LONG AS YOU OWN YOUR PROPERTY?

As an owner in a common-interest community, you are responsible for paying your share of expenses relating to the common elements, such as landscaping, shared amenities and the operation of any homeowner's association. The obligation to pay these assessments binds you and every future owner of the property. Owners' fees are usually assessed by the homeowner's association and due monthly. You have to pay

dues whether or not you agree with the way the association is managing the property or spending the assessments. The executive board of the association may have the power to change and increase the amount of the assessment and to levy special assessments against your property to meet extraordinary expenses. In some communities, major components of the community such as roofs and private roads must be maintained and replaced by the association. If the association is not well managed or fails to maintain adequate reserves to repair, replace and restore common elements, you may be required to pay large, special assessments to accomplish these tasks.

3. IF YOU FAIL TO PAY OWNERS' ASSESSMENTS, YOU COULD LOSE YOUR HOME?

If you do not pay these assessments when due, the association usually has the power to collect them by selling your property in a nonjudicial foreclosure sale. If fees become delinquent, you may also be required to pay penalties and the association's costs and attorney's fees to become current. If you dispute the obligation or its amount, your only remedy to avoid the loss of your home may be to file a lawsuit and ask a court to intervene in the dispute.

4. YOU MAY BECOME A MEMBER OF A HOMEOWNER'S ASSOCIATION THAT HAS THE POWER TO AFFECT HOW YOU USE AND ENJOY YOUR PROPERTY?

Many common-interest communities have a homeowner's association. In a new development, the association will usually be controlled by the developer until a certain number of units have been sold. After the period of developer control, the association may be controlled by property owners like yourself who are elected by homeowners to sit on an executive board and other boards and committees formed by the association. The association, and its executive board, are responsible for assessing homeowners for the cost of operating the association and the common or shared elements of the community and for the day to day operation and management of the community. Because homeowners sitting on the executive board and other boards and committees of the association may not have the experience or professional background required to understand and carry out the responsibilities of the association properly, the association may hire professional managers to carry out these responsibilities.

Homeowner's associations operate on democratic principles. Some decisions require all homeowners to vote, some decisions are made by the executive board or other boards or committees established by the association or governing documents. Although the actions of the association and its executive board are governed by state laws, the C, C & R's and other documents that govern the common-interest community, decisions made by these persons will affect your use and enjoyment of your property, your lifestyle and freedom of choice, and your cost of living in the community. You may not agree with decisions made by the association or its governing bodies even though the decisions are ones which the association is authorized to make. Decisions may be made by a few persons on the executive board or governing bodies that do not necessarily reflect the view of the majority of homeowners in the community. If you do not agree with decisions made by the association, its executive board or other governing bodies, your remedy is typically to attempt to use the democratic processes of the association to

seek the election of members of the executive board or other governing bodies that are more responsive to your needs. If persons controlling the association or its management are not complying with state laws or the governing documents, your remedy is typically to seek to mediate or arbitrate the dispute and, if mediation or arbitration is unsuccessful, file a lawsuit and ask a court to resolve the dispute. In addition to your personal cost in mediation or arbitration, or to prosecute a lawsuit, you may be responsible for paying your share of the association's cost in defending against your claim. There is no government agency in this state that investigates or intervenes to resolve disputes in homeowner's associations.

5. YOU ARE REQUIRED TO PROVIDE PROSPECTIVE BUYERS OF YOUR PROPERTY WITH INFORMATION ABOUT LIVING IN YOUR COMMON-INTEREST COMMUNITY?

The law requires you to provide to a prospective purchaser of your property, before you enter into a purchase agreement, a copy of the community's governing documents, including the C, C & R's, association bylaws, and rules and regulations, as well as a copy of this document. You are also required to provide a copy of the association's current financial statement, operating budget and information regarding the amount of the monthly assessment for common expenses, including the amount set aside as reserves for the repair, replacement and restoration of common elements. You are also required to inform prospective purchasers of any outstanding judgments or lawsuits pending against the association of which you are aware. You are also required to provide a copy of the minutes from the most recent meeting of the homeowner's association or its executive board. For more information regarding these requirements, see Nevada Revised Statutes 116.4103 ~~[.]~~ *and 116.4109*.

6. YOU HAVE CERTAIN RIGHTS REGARDING OWNERSHIP IN A COMMON-INTEREST COMMUNITY THAT ARE GUARANTEED YOU BY THE STATE?

Pursuant to provisions of chapter 116 of Nevada Revised Statutes, you have the right:

(a) To be notified of all meetings of the association and its executive board, except in cases of emergency.

(b) To attend and speak at all meetings of the association and its executive board, except in some cases where the executive board is authorized to meet in closed, executive session.

(c) To request a special meeting of the association upon petition of at least 10 percent of the homeowners.

(d) To inspect, examine, photocopy and audit financial and other records of the association.

(e) To be notified of all changes in the community's rules and regulations and other actions by the association or board that affect you.

7. QUESTIONS?

Although they may be voluminous, you should take the time to read and understand the documents that will control your ownership of a property in a common-interest community. You may wish to ask your real estate professional, lawyer or other person with experience to explain anything you do not understand. You may also request

assistance from the Ombudsman for Owners in Common-Interest Communities, Nevada Real Estate Division, at (telephone number).
Buyer or prospective buyer's initials:_____
Date:_____

Sec. 85. NRS 38.300 is hereby amended to read as follows:

38.300 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), (k) and (l) of subsection 1 of NRS 116.3102.

2. "Association" has the meaning ascribed to it in NRS 116.110315.

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. The term does not include commercial property if no portion thereof contains property which is used for residential purposes.

Sec. 86. NRS 38.330 is hereby amended to read as follows:

38.330 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.

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 ~~[the Ombudsman for Owners in]~~ Common-Interest Communities created ~~[pursuant to]~~ *by* NRS 116.1117, to the extent that *:*

(a) The Commission for Common-Interest Communities approves the payment; and

(b) There is money ~~[is]~~ 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 arbitration may, within 30 days after a decision and award 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 . ~~[38 of NRS.]~~ An award procured pursuant to such 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 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 he fails to obtain a more favorable award or judgment than that which was obtained in the initial 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.

Sec. 87. NRS 78.150 is hereby amended to read as follows:

78.150 1. A corporation organized pursuant to the laws of this state shall, on or before the first day of the second month after the filing of its articles of incorporation with the Secretary of State, file with the Secretary of State a list, on a form furnished by him, containing:

(a) The name of the corporation;

(b) The file number of the corporation, if known;

(c) The names and titles of the president, secretary, treasurer and of all the directors of the corporation;

(d) The mailing or street address, either residence or business, of each officer and director listed, following the name of the officer or director;

(e) The name and street address of the resident agent of the corporation; and

(f) The signature of an officer of the corporation certifying that the list is true, complete and accurate.

2. The corporation shall annually thereafter, on or before the last day of the month in which the anniversary date of incorporation occurs in each year, file with the Secretary of State, on a form furnished by him, an annual list containing all of the information required in subsection 1.

3. Each list required by subsection 1 or 2 must be accompanied by a declaration under penalty of perjury that the corporation has complied with the provisions of chapter 364A of NRS.

4. Upon filing the list required by:

(a) Subsection 1, the corporation shall pay to the Secretary of State a fee of $165.

(b) Subsection 2, the corporation shall pay to the Secretary of State a fee of $85.

5. The Secretary of State shall, 60 days before the last day for filing each annual list required by subsection 2, cause to be mailed to each corporation which is required to comply with the provisions of NRS 78.150 to 78.185, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection 4 and a reminder to file the annual list required by subsection 2. Failure of any corporation to receive a notice or form does not excuse it from the penalty imposed by law.

6. If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective in any respect or the fee required by subsection 4 or 8 is not paid, the Secretary of State may return the list for correction or payment.

7. An annual list for a corporation not in default which is received by the Secretary of State more than 60 days before its due date shall be deemed an amended list for the previous year and must be accompanied by a fee of $85 for filing. A payment submitted pursuant to this subsection does not satisfy the requirements of subsection 2 for the year to which the due date is applicable.

8. If the corporation is an association as defined in NRS 116.110315, the Secretary of State shall not accept the filing required by this section unless it is accompanied by

evidence of the payment of the fee required to be paid pursuant to NRS 116.31155 that is provided to the association pursuant to ~~[subsection 4 of]~~ that section.

Sec. 88. As soon as practicable after July 1, 200*3, the Governor shall appoint to the Commission for Common-Interest Communities:*

1. One member whose term begins on October 1, 2003, and expires on October 1, 2004.

2. Two members whose terms begin on October 1, 2003, and expire on October 1, 2005.

3. Two members whose terms begin on October 1, 2003, and expire on October 1, 2006.

Sec. 89. 1. Notwithstanding the provisions of this act and except as otherwise provided in subsection 2, during the period from October 1, 2003, until January 1, 2004, the Real Estate Commission, the Real Estate Administrator, the Ombudsman for Owners in Common-Interest Communities and the Real Estate Division of the Department of Business and Industry shall continue to exercise all the powers and perform all the duties that, before October 1, 2003, were assigned to them pursuant to the provisions of chapter 116 of NRS.

2. During the period described in subsection 1, the *Commission for Common-Interest Communities,* the Real Estate Administrator, the Ombudsman for Owners in Common-Interest Communities and the Real Estate Division of the Department of Business and Industry may exercise any power and perform any duty assigned to them pursuant to the provisions of chapter 116 of NRS, as amended by this act, if the exercise of the power or the performance of the duty is necessary as an organizational, preparatory or preliminary measure to prepare them to carry out those provisions.

Sec. 90. 1. The State Treasurer shall transfer any balance remaining unexpended on October 1, 2003, in the Account for the Ombudsman for Owners in Common-Interest Communities in the State General Fund to the Account for Common-Interest Communities which is created by NRS 116.1117, as amended by this act.

2. On and after October 1, 2003, the State Treasurer shall treat any outstanding claims against the Account for the Ombudsman for Owners in Common-Interest Communities as claims against the Account for Common-Interest Communities.

Sec. 91. 1. Any administrative regulations adopted by an officer or an agency whose name has been changed or whose responsibilities have been transferred pursuant to the provisions of this act to another officer or agency remain in force until amended by the officer or agency to which the responsibility for the adoption of the regulations has been transferred.

2. Any contracts or other agreements entered into by an officer or agency whose name has been changed or whose responsibilities have been transferred pursuant to the provisions of this act to another officer or agency are binding upon the officer or agency to which the responsibility for the administration of the provisions of the contract or other agreement has been transferred. Such contracts and other agreements may be enforced by the officer or agency to which the responsibility for the enforcement of the provisions of the contract or other agreement has been transferred.

3. Any action taken by an officer or agency whose name has been changed or whose responsibilities have been transferred pursuant to the provisions of this act to another officer or agency remains in effect as if taken by the officer or agency to which the responsibility for the enforcement of such actions has been transferred.

Sec. 92. 1. Not later than July 1, 2005, an association or master association of a common-interest community shall have conducted elections of members of the executive board so that the terms of the members of the executive board are staggered as required by the provisions of NRS 116.31034, as amended by section 62 of this act.

2. As used in this section:

(a) "Association" has the meaning ascribed to it in NRS 116.110315.

(b) "Common-interest community" has the meaning ascribed to it in NRS 116.110323.

(c) "Executive board" has the meaning ascribed to it in NRS 116.110345.

(d) "Master association" has the meaning ascribed to it in NRS 116.110358.

Sec. 93. 1. This section and section 88 of this act become effective on July 1, 2003.

2. Sections 1 to 23, inclusive, 38 to 69, inclusive, 72 to 87, inclusive, and 89 to 92, inclusive, of this act become effective on October 1, 2003.

3. Sections 24 to 37, inclusive, 70 and 71 of this act become effective on October 1, 2003, for the purpose of adopting regulations and on January 1, 2004, for all other purposes.

4. Sections 25 and 26 of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

are repealed by the Congress of the United States, whichever is earlier.".

Amend the title of the bill to read as follows:

"AN ACT relating to property; making various changes relating to common-interest communities; creating and prescribing the powers and duties of the Commission for Common-Interest Communities; revising provisions relating to the powers and duties of the Ombudsman for Owners in Common-Interest Communities and the Real Estate Division of the Department of Business and Industry; revising provisions governing the regulation of persons who manage common-interest communities; authorizing the Commission to adjudicate certain violations relating to common-interest communities and to impose fines and take other action with regard to such violations; providing that a unit's owner has the right to display the flag of the United States under certain circumstances; enacting and revising provisions governing the conduct and activities of unit-owners' associations, the members of executive boards and declarants; enacting provisions relating to the transient commercial use of a unit; authorizing the use of delegates or representatives to exercise voting rights in certain common-interest communities; authorizing an association to impose construction penalties under certain

circumstances and to place and foreclose a lien on a unit for failure to pay such penalties; revising provisions relating to the imposition of fines; making various changes relating to meetings, quorums, voting and the election and removal of members of the executive board; authorizing certain common-interest communities to expend money received as a credit against the residential construction tax for certain purposes; revising provisions relating to the foreclosure of certain liens; making various changes relating to the books, records, reports, studies and other papers of an association; and providing other matters properly relating thereto.".

Senator Townsend moved adoption of the amendment.

Remarks by Senators Townsend, Schneider, Neal, Titus.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

May 5, 2003 *Senate Daily Journal*

Excerpt:

Senate Bill No. 100.

Bill read third time.

Roll call on Senate Bill No. 100:

YEAS—21.

NAYS—None.

Senate Bill No. 100 having received a two-thirds majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

May 22, 2003 *Assembly Daily Journal*

Excerpt:

Senate Bill No. 100.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 744.

Amend sec. 35, page 13, line 1, after "*section,*" by inserting: "*unless the respondent has knowingly and willfully committed a violation,*".

Amend sec. 46, page 17, between lines 31 and 32, by inserting:

"*4. Notwithstanding any provision in the declaration, the election of any delegate or representative must be conducted by secret written ballot.*

5. When an election of a delegate or representative is conducted by secret written ballot:

(a) The secretary or other officer of the association specified in the bylaws of the association shall cause a secret written ballot and a return envelope to be sent, prepaid

by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

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

(c) Only the secret written ballots that are returned to the association in the manner prescribed on the ballot may be counted to determine the outcome of the election.

(d) The secret written ballots must be opened and counted at a meeting called for the purpose of electing delegates or representatives. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) A candidate for delegate or representative may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association in the manner prescribed on the ballot before those secret written ballots have been opened and counted at a meeting called for that purpose.".

Amend the bill as whole by adding a new section designated sec. 47.5, following sec. 47, to read as follows:

"Sec. 47.5. *In conducting any meetings, a rural agricultural residential common-interest community must comply with the provisions set forth in chapter 241 of NRS concerning open meetings which are generally applicable to public bodies.*".

Amend sec. 48, page 18, by deleting lines 15 and 16 and inserting: "*by chapter 78 of NRS, NRS 81.010 to 81.160, inclusive, or chapter 82 of NRS and there is a conflict between the provisions of this chapter and the provisions of chapter 78 of NRS, NRS 81.010 to 81.160, inclusive, or chapter 82 of NRS,*".

Amend sec. 54, page 21, line 10, by deleting "A" and inserting: "~~[~~A~~]~~ *Except as otherwise provided in section 47.5 of this act, a*".

Amend sec. 58, page 24, between lines 14 and 15, by inserting:

"*(c) With regard to approving or disapproving any improvement or alteration made to a unit, act in violation of any state or federal law.*".

Amend sec. 61, pages 27 and 28, by deleting lines 40 through 45 on page 27 and lines 1 through 11 on page 28, and inserting: "*to exceed the legal rate per annum.*

(b) May include any costs of collecting the past due fine at a rate established by the association. If the past due fine is for a violation that does not threaten the health, safety or welfare of the residents of the common-interest community, the rate established by the association for the costs of collecting the past due fine:

(1) May not exceed $20, if the outstanding balance is less than $200.

(2) May not exceed $50, if the outstanding balance is $200 or more, but is less than $500.

(3) May not exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.

(4) May not exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.

(5) May not exceed $500, if the outstanding balance is $5,000 or more.

(c) May include any costs incurred by the association during a".

Amend sec. 61, page 28, by deleting lines 16 through 18 and inserting: "*or delivery, and any other fee or cost that an association may reasonably charge to the unit's owner for*".

Amend sec. 62, page 30, by deleting line 10 and inserting: "*the election of any member of the executive board is conducted by secret written ballot:*

(a) The secretary or".

Amend sec. 62, page 30, by deleting lines 16 through 19 and inserting:

"~~6.~~ *(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.*

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

(d) Only the secret written ballots that are returned to the".

Amend sec. 62, page 30, line 22, by deleting "*(b)*" and inserting "*(e)*".

Amend sec. 62, page 30, line 26, by deleting "*(c)*" and inserting "*(f)*".

Amend sec. 63, page 31, by deleting line 10 and inserting: "*secret written ballot:*

(a) The secretary or other officer specified in the".

Amend sec. 63, page 31, by deleting lines 16 through 18 and inserting:

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

(c) Only the secret written ballots that are returned to the".

Amend sec. 63, page 31, line 20, by deleting "*(b)*" and inserting "*(d)*".

Amend sec. 63, page 31, line 24, by deleting "*(c)*" and inserting "*(e)*".

Amend sec. 66, page 36, by deleting lines 21 and 22 and inserting: "*at the meeting;*

(d) A record of each member's vote on any matter decided by".

Amend sec. 66, page 36, line 24, by deleting "*(d)*" and inserting "*(e)*".

Amend sec. 67, page 37, by deleting lines 12 through 17 and inserting:

"2. *An executive board may not meet in executive session to enter into, renew, modify, terminate or take any other action regarding a contract, unless it is a contract between the association and an attorney.*".

Amend sec. 67, page 37, by deleting lines 22 through 25 and inserting: "NRS 49.035 to 49.115, inclusive ~~[;]~~ *, or to enter into, renew, modify, terminate or take any other action regarding a contract between the association and the attorney.*".

Amend sec. 79, page 50, line 2, after "*all*" by inserting: "*contracts to which the association is a party and all*".

Amend sec. 79, page 50, by deleting lines 5 through 7 and inserting:

"(a) The personnel records of the employees of the association ~~[; and]~~ *, except for those records relating to the number of hours worked and the salaries and benefits of those employees;*".

Amend sec. 79, page 50, line 9, by deleting "*2.*" and inserting: "*2; and*

(c) A contract between the association and an attorney.".

Amend sec. 79, page 50, after line 42, by inserting:

"*5. The executive board shall not require a unit's owner to pay an amount in excess of $10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section.*".

Assemblyman Anderson moved the adoption of the amendment.

Remarks by Assemblyman Anderson.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

May 23, 2003 *Assembly Daily Journal*

Excerpt:

Senate Bill No. 100.

Bill read third time.

Remarks by Assemblyman Brown.

Roll call on Senate Bill No. 100:

YEAS—42.

NAYS—None.

Senate Bill No. 100 having received a two-thirds majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

BILLS AND AMENDMENTS

SEE LINKS ON BILL HISTORY PAGE
FOR COMPLETE TEXT