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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*

F1 of 21

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, Caughlin 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 Section 79 (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

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.

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.

Proposed Amendment to SB 100
Section 46

Add new subsections (4) and (5) to Section 46 as follows:

4. Notwithstanding 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 is 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.

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 percent 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 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.

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 116.31054 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.



4435 S. EASTERN AVENUE
LAS VEGAS, NEVADA 89119-7826

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 your 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.

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:cm

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 . . .*