

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session
April 3, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 7:43 a.m., on Tuesday, April 3, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman John Ocegura
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman John C. Carpenter (Excused)
Assemblyman Harry Mortenson (Excused)



STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Kaci Kerfeld, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Donna Toussaint, Private Citizen, West Sahara Community, Las Vegas, Nevada
Dan Newburn, Private Citizen, Las Vegas, Nevada
Kevin Janison, Private Citizen, Las Vegas, Nevada
Wallace Riddle, Private Citizen, Las Vegas, Nevada
Sandy Ambrose, Private Citizen, Las Vegas, Nevada
Gary Randall, Private Citizen, Las Vegas, Nevada
Bob Sidell, Representing Value Alliance, Las Vegas, Nevada
Karen Dennison, Representing the American Resort Development Association and Lake at Las Vegas Joint Venture Community, Nevada
Michael Buckley, Chairman of the Nevada Commission for Common-Interest Communities
Marilyn Brainard, Commissioner, Nevada Commission for Common-Interest Communities
Gail Anderson, Administrator, Department of Business and Industry, Real Estate Division, Nevada
Shari O'Donnell, Vice President of Government Affairs and Community Relations, Signature Homes, Nevada, Representing Nevada Commission for Common-Interest Communities
Kevin Ruth, Representing Community Association Management Companies through Executive Officers, Nevada
Randy Eckland, Representing the Howard Hughes Corporation and the Summerlin Community Association Management Team, Nevada
David Stone, Owner, Nevada Association Service
David Thomas, Resident, Summerlin Community, Nevada
Judy Farrah, Chairman of the Community Associations Institute of Nevada, and Representing Legislative Action Committee
Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Nevada
Sam McMullen, Snell and Wilmer, Limited Liability Partnership, Representing the Association of Condominium Hotel Unit Owners, Nevada

Mandy Shavinsky, Snell and Wilmer, Limited Liability Partnership,
Representing the Association of Condominium Hotel Unit Owners,
Nevada

Bruce Arkell, Representing the Nevada Association of Land Surveyors

Chairman Anderson:

[Meeting called to order and roll called.]

I have an email addressed to Assemblyman Goedhart regarding Assembly Bill 371 which needs to be entered into the record ([Exhibit C](#)).

Let us open the hearing on Assembly Bill 396.

Assembly Bill 396: Makes various changes to the provisions governing common-interest communities. (BDR 10-1284)

Assemblywoman Francis O. Allen, Assembly District No. 4:

[Read from prepared testimony ([Exhibit D](#)). Also submitted proposed amendments ([Exhibit E](#)).]

Chairman Anderson:

If a homeowner in a common-interest community wishes to give away their voting rights to a certain person, may they do so?

Assemblywoman Allen:

Yes. This does not prevent proxy voting. They can fill out a form in which a person is named to vote on their behalf. This only prevents the systematic process of delegate voting, where one person represents an entire neighborhood.

Chairman Anderson:

If everyone on the block wants the same person to be their representative, would that be allowed?

Assemblywoman Allen:

The neighbors are allowed to cast ballots. They can acquire a proxy and give it to the person they choose to vote for them. The only thing that this does not allow is the systematic casting of votes, which many people do not even know takes place. For example, in our own races, only 40 or 50 percent of the electorate comes out to vote. What if the incumbent could cast the rest of the balance in their own favor?

Assemblyman Horne:

Is there anything to prevent an association from obtaining proxies that say "you agree that I will be able to cast your vote if at any time should you choose not to cast a ballot?"

Assemblywoman Allen:

No, it would not prohibit that. If a homeowners association (HOA) is determined, they could manipulate their rules to get the incumbents reelected. We can only do a finite amount of things. This would be a strong message from the legislature saying that we believe one man equals one vote.

Assemblyman Horne:

Could there be a provision that uses conspicuous language that states failure to vote in any particular election will allow your vote to be exercised by your delegate and may be cast for themselves? That would give the homeowners a fair warning that should they not vote, their delegate would get it.

Assemblywoman Allen:

That is not afforded to people right now. I am open to any suggestions from the Committee as to how to clarify this portion.

Donna Toussaint, Private Citizen, West Sahara Community, Las Vegas, Nevada:

I believe in the democratic process. Delegate voting disenfranchises everybody in the community. It costs thousands of dollars to hold a delegate election and we have to elect delegates every year. In my community, the homeowners pay \$20 per month for assessments. We have seven sub associations, six of whom do not care what the master does. We have 2,208 single units, 60 businesses, and 1,800 apartments. The West Sahara Community Association sends a letter to every unit owner, including businesses, requesting that they submit their name to be a delegate. For each mailing, we have to pay for postage, copies, envelopes, and staff, which is around \$800. We need 84 delegates; last year we received twelve, and this year we received eight. We compile the responses we receive with their resumes and send everything back out to the unit owners; another \$800. We get the third mailing back and call a special meeting at which we open the ballots in public. After that is done, we have to send all of the information back out to the unit owners; another \$800. In our community, for every 50 homes there is one delegate. If everyone in area number one votes in favor of one person, but that area did not have a delegate, those votes cannot be counted. In area number two, if we have one person say they will be a delegate and one person who actually votes, that delegate can cast all 50 votes for all of the homeowners in favor of whoever that delegate wants. I do not know where the equity is in this. It is very expensive for our HOA and the system does not work. Delegates may work when the developer is still

involved, but my community is 22 years old. With seven sub associations, the delegate system has created more apathy than you can imagine. Why would anybody vote for a board of directors when they do not know whether or not their vote will count? The homeowners get very confused as to why there is or is not a delegate. It creates the problem where the homeowners get angry and they feel like they do not have a voice. They do not want someone telling them what they have to say. We do not use proxies in our community because the proxy process was abused so much in the late 80's and early 90's. We need 84 delegates in order to have a complete election. Since 1985, the West Sahara Community Association has not had a legal election because we cannot get 84 delegates. We cannot change our documents because we cannot get enough delegates. We need help from the legislature. Our documents are 22 years old and they are written very poorly. This system is broken, costly, and expensive.

Chairman Anderson:

As I understand it, your community has been divided into districts and the election within each district is determined by the number of people who show up to vote. If you have one person who is nominated in that district and that person is the only one that votes, then they get the seat. Is that correct?

Donna Toussaint:

As far as delegates, that is correct. When you are electing the board of directors, you cannot count someone's vote unless they have a delegate. Once a delegate is elected, they can vote any way they want.

Chairman Anderson:

So a representative is elected because he received the only vote from the district and was the only person willing to take on the responsibility. He then has the responsibility of electing a board of directors, but he is not obligated to vote a particular way.

Donna Toussaint:

We would hope that the delegates would cast the votes the way the members would like them to be cast, but that is not always the situation. We have people who want to vote but we cannot count their votes if they do not have a delegate.

Chairman Anderson:

It is not any different than the election that brought in the 42 of us. We all represent the same number of people, but that does not mean that they are all registered voters. The numbers of registered voters in our districts are

dramatically different. If a representative is elected to make decisions, are they entitled to make decisions whether everybody in the district likes it or not?

Donna Toussaint:

Suppose you were running for election and the state law said that in order for you to be elected, there would have to be a delegate in place to cast the votes. If you received 98 percent of the votes but the delegate just did not like you, he could vote for someone else. If a homeowner decides to cast his vote, the vote should count for the person they want. People do not vote because they know that their vote does not count.

Chairman Anderson:

Representative democracies are difficult to understand because they do not have a direct election.

Donna Toussaint:

I would like the way the state government works to funnel down to HOA and not have a system like the electoral college. I think it would be beneficial to the community and to the homeowners.

Dan Newburn, Private Citizen, Las Vegas, Nevada:

In 1994, the Summerlin Community Baptist Church started with seven people. A few years later, we purchased property in the Summerlin North Association. Shortly after we moved into the building, we were notified that we would need to begin paying a monthly assessment which would be based on the number of houses that could have been built on the four acres we owned. When I purchased my private home in Summerlin, it was made absolutely clear that we were moving into a HOA and there would be a monthly fee. That subject was never brought up when purchasing the church. During the years we owned the property and did not have a building on it, we did not pay any assessments. I inquired among the other churches in the area and found that five of the churches as well as the Hebrew Academy and other nonprofits did not pay a fee, and that only the new churches being built were being assessed. We met with the Board of Directors and felt that they too thought one house of worship should not be treated differently than another house of worship. I felt we were on our way to equality when I discovered that one of the larger churches that had been recently built had approached the association and asked if they could pay \$100,000 up front so they would not have to make a monthly payment. The Board of Directors agreed to that, and it was suggested to us that if they exempted the other churches in the community from paying assessments, they would have to rebate that money. It is unfair, and the Board, at different times, also thought it was unfair. If we wanted to minister there, we would have to pay the fee. The only way this could be changed is if the Legislature would

make the change. It would benefit all of the churches. The \$6,000 per year that the Summerlin Community Baptist Church pays to the association could be used to do other things to serve the community.

Chairman Anderson:

When purchasing the property, did you tell the HOA of the intended usage?

Dan Newburn:

Yes, they actively solicited that we build a Baptist Church in the Association.

Chairman Anderson:

Did they sell the property to you at a reduced rate as compared to other property in the area?

Dan Newburn:

I suspect they did, but we did not ask them to do that. We paid the price they gave us.

Chairman Anderson:

Discussing this issue on another piece of legislation, the general indication is that the HOA's often want to bring churches in to provide the feeling of community which is not offered in dollars and cents. To attract the churches, they often give an upfront deal on the property as compared to other types of usages.

Dan Newburn:

I know they did that with some of the other places of worship early on because they were very desirous. I do not know what they did with other churches but they gave us a price and we paid that price.

Assemblywoman Allen:

Assemblywoman Marilyn Kirkpatrick and Assemblywoman Sheila Leslie have asked to amend this bill with regard to HOA mailings. I consider it a friendly amendment and agree with what they have to say.

Kevin Janison, Private Citizen, Las Vegas, Nevada:

When you are elected, you represent all of the people in your district, whether they voted for you or not. Representing a constituent on issues is much different then representing a district based upon people who chose not to vote. The Electoral College is determined by the number of votes cast, not the number of votes not cast. If you have a dispute with your HOA, they give you a couple of options. They say that you can move out of your home or you can choose to run for the board. In my HOA where there are 16,000 homes, I can

knock on 7,000 doors and completely convince those people that I am the right man for the job. Even if all of them vote, someone else can be sitting in his living room watching Monday night football and be able to cast 9,000 votes because the turnout is less than 10 percent. It gives the delegates over 90 percent of the votes cast. I do not know of any other place where people get to vote for individual candidates by casting ballots for other people. These people are rewarded if the turnout is low so that they do not have to knock on doors. They can sit back and maintain their seat year after year. It is impossible to get new people that might have a different viewpoint.

There is one other issue that is not part of this bill that my HOA engages in and that is a nominating committee. You cannot decide that you want to run for the board and put your name in; you have to go through a nominating committee. Unfortunately, the members of the nominating committee are already board members, delegates, members of the compliance committee, or members of the design review committee. Every step of the way, the appeal process is the same group of faces. If you are a member of a community, you should have the same rights as everyone else to get your name on the ballot and run for the board without having to pursue acceptance by a nominating committee.

Wallace Riddle, Private Citizen, Las Vegas, Nevada:

I strongly support this bill as submitted by Assemblywoman Allen. There are a few changes I would like to recommend. I would like to use *Nevada Revised Statute* (NRS) 116.31034 as an example for the mailing and return of ballots to the Board. I would also like to see a definition of the mailing of ballots plainly set forth in Section 8(a). I would like there to be a Section 8(d) that states only votes that are returned may be counted. NRS 116.3106 refers to the recall of a board member. I would recommend the usage of the policies stated there. If ballots are counted to elect an individual, the same procedure should be used for recall. Thirty-five percent of the people in my HOA cast a ballot and the majority will either recall or not recall an individual. That does not seem fair to the individual homeowners. If you vote to elect an individual, you should vote to remove them on the same procedures.

Sandy Ambrose, Private Citizen, Las Vegas, Nevada:

I am sure there is concern about the wording "without prior consent." There may need to be language put into the bill that would define what is proper and what is not proper. The *Twin Rivers* appellate decision [*Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association*, 383 N.J. Super. 22 (App. Div. 2006)] is a very important document with regard to freedom of speech. In that decision, they have mandated that while freedom of speech is an amendment right, it is not absolute. There are limitations that the Board may have of time, place, and manner in which freedom of speech can be provided.

In Section 9 subsection 6, defines "an official publication," but the Board members also provide information on an intermittent basis. If the bill does not expound on the definition of an official publication, it gives the implication that it is a regularly circulated newsletter or publication. When they send out ballots, which are "an official publication", they can send flyers that provide information. These flyers are not "an official publication."

Board members often give oral presentations to explain their position, and their presentation may not be in a written publication or official newsletter. If you do not provide some way of allowing members of an association to give an opposing view, then you are only getting one side of the story. An example can be an executive board meeting. A board member can stand up and provide graphs and documents and provide experts to show their position on it. There is no remedy if you do not provide language in the bill for oral presentation by the opposing side. Inherent with this are problems that come up when you have one Board presenting its opinion when there may be 20 members of an association who have opposing views. How do you relegate whose opposing view gets to be presented? Publication can get rather large if you have to have everybody's position posted. In an oral presentation, whose opinion should be presented? I am happy with the bill, but as I have stated, there are some inherent problems that may come along with it. There needs to be something done with the censorship because you need to limit the language someone can use so that it is not slanderous.

Gary Randall, Private Citizen, Las Vegas, Nevada:

I am very much in favor of this bill. We had a situation in my HOA where the homeowners were required to vote for one issue against another rather than a yes or no vote on each issue. The Board was allowed to set forth their position with that ballot, which resulted in people voting for the position they wanted. There was no opportunity at that time for opposition to be voiced. We feel this should not be limited to an official publication such as a newsletter or website.

Chairman Anderson:

I will now move to those in opposition.

Bob Sidell, Representing Value Alliance, Las Vegas, Nevada:

We have a concern with the portion of the bill that relates to the delegate system. The reality is that the system is not working the way it is supposed to, however going from one extreme to another may not be the best solution. To go from a delegate system to a one person one vote rule may cause more difficulty than we already have. We believe there is a midpoint that will satisfy all HOAs. The idea of a cookie cutter solution does not exist in relation to HOAs; there are some as small as 20 homes and some as large as

20,000 homes. The implementation of their Covenants, Conditions, and Restrictions (CC&Rs) differ because they have different problems. The more complacent a community gets and the better it is being managed, the happier everybody is. Complacency is infectious, and that infection happens at different rates with a small community as opposed to a large one. The idea of going from black to white may not solve the problem, but there are infinite shades of grey. Our suggestion is to have the portion of the bill referring to the elimination of the delegate system be addressed again with the idea in mind of not simply eliminating the system, but fixing it. If there is a delegate, the delegate votes, but if there is no delegate, the individual homeowner's votes would count. That is the direction we believe it should take.

Assemblyman Mabey:

What problem would you foresee if each person had a vote and we did away with the delegate system?

Bob Sidell:

An example would be in a very large association with a very small minority who are always vocal. Because of the complacency of one-on-one voting, a contentious issue does not even bring the voters out. The vocal minority could exercise a lot of effort to push a particular issue. True to form, a 5,000 member association may end up with 300 or 400 total votes. The vote will probably be represented by a majority of the dissidents. Unfortunately, the majority of homeowners are silent, especially when things are good. Presently votes may count in favor toward an issue that only affects a very small percentage of the association and is detrimental to most of it. Unfortunately, that is the reality of what exists. Sociologists have been fighting it for years, and I do not know how we will ever get around it. The major concern is that with one-on-one voting, a very small minority can create problems that are detrimental to the majority of homeowners in that association.

Assemblyman Mabey:

It seems like it could be just the opposite.

Bob Sidell:

It very easily could be. It would be great if a contentious issue would bring out the vast majority. The problem is that HOAs are divided between the homeowners and the Board. People seem to forget that the Board is made up of volunteers that are actually giving their time to guarantee that the CC&Rs are going to be protected. When things are going well, nobody cares. The only people who care are the ones who have an axe to grind and they do not necessarily represent the majority.

Assemblyman Horne:

I have seen where people are quiet and unhappy, so we should not be adopting the position that we should keep things the same because there are just a few malcontents that are making the noise because the others would be making the same noise if they were unhappy. When you said that there should be a middle ground found instead of going from one extreme to the other, you admitted there were some problems with this. Did you contact the sponsor of the bill and propose a middle ground?

Bob Sidell:

Unfortunately, Value Alliance is relatively new. There are so many bills we are involved in that we did not have the chance. We would be delighted to sit down with Assemblywoman Allen and try to work out a compromise. Going from one extreme to another, regardless of what the issue is, there is always the problem of creating a monster worse than what you are getting rid of. There are some alternatives by restricting the use of delegate voting, like only allowing certain things, not being able to abuse the process, and satisfying the end result without creating any upset. It is a lot easier for an association that has 100 people in it to deal with something, where an association with 5,000 or 6,000 has difficulty. The concept of a delegate system is correct. Unfortunately, over the years it has evolved into a system that does not work. It does not work primarily because there are no built-in restrictions for how it should operate. If we could correct that, there would not be a need to do anything else.

Assemblyman Horne:

Many of the emails I received were from board members who do not believe the system is broken at all, which is also why Assemblywoman Allen brought the bill. It was expressed that proxy voting is not going away. Many of the concerns that the board has can still be addressed in that manner. It is not appropriate that if a vote is not cast, a vote is cast by someone else. If you want to give away your vote, you have to get a proxy, which as I suggested, could be conspicuous language saying you have my vote.

Assemblywoman Allen:

With regard to the specific instance where a neighborhood does not have a delegate, you said that their votes are not cast. I believe that in Summerlin North, the board president gets to cast those votes when there is no delegate.

Bob Sidell:

The original CC&R documents say that any district which does not elect a delegate will have the current president represent them. It does not say that he

will cast the vote. The people in the districts without a delegate are not represented by someone on the Board of Directors. There are no restrictions, and it would be simple for this bill to say that where there is no delegate elected, the individual votes of homeowners in that district will be counted. It would only need a one-line sentence stating that they may be represented, which is necessary for being able to disseminate information to the homeowners. If they are not represented by a member on the Board, they can keep their voting rights. Those are simple compromises that will allow the system to continue to work.

Assemblywoman Allen:

The concept of delegate voting for people, whether there is a delegate or not, is an affront to democracy. You said yourself that the CC&Rs in Summerlin allow for the Board President to cast those ballots.

Bob Sidell:

I did not say he could cast their vote for them, I said that he is allowed to represent them.

Karen Dennison, Representing the American Resort Development Association and Lake at Las Vegas Joint Venture Community, Nevada:

I am concerned with the issue of a time-share project in a master association voting through delegates. For example, Lake Las Vegas has a time-share project but does not generally have delegate voting. It has a one-unit, one-vote system for the commercial and residential owners except for time-share projects. With 13,000 time-share owners who own undivided interest in the time-share project, it is unmanageable for that to be a system of a one time-share interval. You would have to have 52 intervals to make one unit vote. We are asking for a narrow exception to say that if a time-share project is part of a master association, it should be allowed to vote through delegates. Proxies do not work for time-share projects because in past sessions, our legislature has narrowly defined who can receive a proxy. *Nevada Revised Statutes* 116.311 states that if you cannot vote through delegates, you are limited as to who can have your proxy. It limits your options to an immediate family member, another unit owner who resides in the community, or your tenant who resides in the common-interest community. The time-share owner would then have to go outside his time-share project and find someone who resides in the community to give a proxy to. This disenfranchises the project itself. There is more to proxies than voting; there is the idea that the delegate would attend a meeting on behalf of the time-share project itself. The delegate would have an opportunity to speak and be heard on issues relative to the time-share project. For this reason, we are hoping that you could make an exception for time-share projects in the delegate voting process. The other

issues that will be brought up are approval of the commission to foreclose, as well as the right of redemption after foreclosure sale and the community manager bond. I would like to say that Lake Las Vegas is in agreement with the common-interest communities' position on those issues.

Michael Buckley, Chairman of the Nevada Commission for Common-Interest Communities, Nevada:

Our commission has considered a number of bills, including this one, and has had a number of legislative commission meetings in open hearing. I would like to preface all of our remarks to echo what Mr. Sidell said. The commission is very aware that there are all different kinds of associations throughout the state. For this reason, the commission believes as a general proposition that the changes in NRS 116 need to be very carefully thought out. There are different types of delegate voting systems. The commission opposes the elimination of delegate voting. We do not propose or support any particular type of delegate voting, but we did ask the ombudsman and the Compliance Division of the Real Estate Division whether they have received complaints regarding delegate voting and they did not. There have not been hearings before the commission dealing with problems about delegate voting. The commission is concerned that the prohibition of delegate voting in all cases may have an adverse affect on different types of associations, particularly mixed use projects. *Nevada Revised Statute* 116.311 states that proxies are limited to one specific meeting and they terminate after that meeting. They cannot substitute for delegate voting. There were abuses in proxy voting, so the solution was to limit proxies to only one particular meeting. Subsection four of NRS 116.31034 allows members of the association to get their name on the ballot and has been in effect since the 1990's.

The commission opposes the idea of approving foreclosures. It is not clear if the commission would approve the amount or just the process and if they would be required to review the declaration or the budget in which the assessment is based, and at what point in the foreclosure process would the commission intervene. The commission is also concerned that they would be required to meet much more frequently at greater cost to the state, or that the enforcement of assessment liens would become seriously delayed. Most importantly, the commission does not believe that, since they are a formal body of the State of Nevada, they should be in the business of approving foreclosures as if the state itself were condoning specific foreclosures. We also suggest that activities related to foreclosures or enforcement of liens that violate law be subject to recourse either through the Nevada Real Estate Division which regulates managers who investigate associations, or the Financial Institutions Division which licenses those who conduct foreclosure sales, because they must be approved through the financial institutions.

As far as the equity of redemption, the commission did not take a position for or against. We would like to note that an equity of redemption for mortgage foreclosures is described in NRS Chapter 21 very specifically with lots of rules and procedures. It concerns the commission that none of the details are here.

As far as the official publications, we agree with what Ms. Ambrose said. There are a number of problems with the present wording because there needs to be a limitation on how one's views are shared. You do not want the association to have to mail out 20 pages of what one person thought. The commission recognizes the need for this and supports the proposition of political free speech in associations.

The commission did not take a position on the manager bonding in Section 10 because it needs greater detail. Some of the master associations of high-rise condos could have several millions of dollars and we would need to know how the bonding is going to work.

Lastly, if the houses of worship are no longer paying assessments to which they agreed, that would throw the burden on the homeowners who would have to pick up any deficit. In the interest of time, my testimony has been limited to our specific concerns ([Exhibit F](#)).

Assemblyman Mabey:

Is every house of worship treated the same?

Michael Buckley:

I do not know. That was just an observation I made. The commission has voted on some of these things, but we had not really discussed that because it was just heard this morning.

Chairman Anderson:

It seems that there are as many different ways of handling these issues as there are communities in this state.

Marilyn Brainard, Commissioner, Nevada Commission for Common-Interest Communities:

Ms. Ambrose made the comment that she felt people in associations did not have the chance to speak. We have public comment periods mandated for all of our associations, no matter what the size, so that the homeowners can come and speak before the formal board meeting begins. Ms. Ambrose also talked about asking the association to insert any material that was presented by a homeowner in the official publication. Many associations would choose not to publish their newsletter or magazine because of that burden. Lastly,

Ms. Ambrose made reference to the *Twin Rivers* decision. It has been argued to the New Jersey Supreme Court and is under consideration, but the final ruling has not yet been decided.

[Chairman Anderson left room.]

Assemblywoman Gerhardt:

I had a situation where I was at odds with my HOA because I did not believe that they were applying the rules equally to all of the residents. I went to a board meeting and asked if there was any way that I could communicate with the other homeowners about this particular issue, to see if there were other people who were having the same problem that I was. I was told that the only way I could have a voice in the process was to go knock on doors. I believe that people need to have an opportunity to be heard. As a homeowner who pays dues, I think it is absolutely appropriate to have a means of communicating with the other members. I could be brief and concise and it would not be cost prohibitive.

Marilyn Brainard:

In the association I served on, our Committee Manager takes minutes. In the beginning of our minutes, there is a summation of comments that were made. We do not identify the homeowner, but significant comments are recorded. The minutes are posted within 30 days, so the other homeowners can go online and read them. It is not a verbatim transcription, but the general issues are contained in that section. If that did not solve the problem, you always have the redress, which is why we have the ombudsman's office to work with the board to be sure that is included.

[Chairman Anderson returned to room.]

Assemblywoman Gerhardt:

How long does it typically take for ombudsman to resolve an issue?

Gail Anderson, Administrator, Department of Business and Industry, Real Estate Division, Nevada:

The ombudsman started the intervention conference program on July 31, 2006. A letter goes out six weeks before the conference, inviting homeowners to come in and attempt to resolve their issues. This is a new procedure we started last summer.

Shari O'Donnell, Vice President of Government Affairs and Community Relations, Signature Homes, Nevada, Representing Nevada Commission for Common-Interest Communities:

The right to use proxies in the election or removal of board members was done away with in past Legislative sessions. Elections and removals can only be conducted through secret ballot. In response to Assemblywoman Gerhardt's comment, we did require community managers to keep a thorough log of all violations so that you could request those records and see how many notices went out on a particular violation. It takes six weeks to have a matter reviewed by the ombudsman because of the due process involved. That timeframe could be shortened if we shortened the due process.

Assemblywoman Gerhardt:

Anecdotally, I have heard that a year to a year and a half is the norm.

Kevin Ruth, Representing Community Association Management Companies through Executive Officers, Nevada:

We represent over 340,000 homes in hundreds of communities. Everything that has been put forth by the commission in opposing the bill, CAMEO supports. We have also provided the Committee proposed amendments ([Exhibit G](#)).

Chairman Anderson:

Have you shared this with Assemblywoman Allen?

Kevin Ruth:

No, sir. It was just put together this morning. Our lobbyist did approach Assemblywoman Allen yesterday to indicate that we would be testifying in opposition.

Randy Eckland, Representing the Howard Hughes Corporation and the Summerlin Community Association Management Team, Nevada:

I believe in the delegate system of the government, therefore I must respectfully oppose A.B. 396. Since arriving in Summerlin in 1992, our delegate system has served our community very well. We have completed successful day to day operations, a major amendment process, and the smooth transition of 15,000 homes to resident control. Before residents were entitled to begin serving on the board, they were naturally eager to engage in the community government system, and the neighborhood delegate system gave them the opportunity to do that. They met regularly and it was an immediate and effective resource that engaged them in government in a positive manner. I have found that neighborhood delegates typically attend more community meetings to help familiarize themselves with the many sides of an issue. They

also tend to vest themselves more in the community government processes, and as a result they demonstrate a higher level of stewardship and responsibility. The neighborhood delegate involvement also broadens their knowledge and perspective as they discuss issues with fellow delegates and residents. The delegate system has also been instrumental in the growth of an expanded and well rounded volunteer governmental base, which is vital to any community association striving for harmony and effectiveness. Many of our early delegates eventually assumed leadership roles on the respected boards of the compliance advisory, design review, and finance committees. Not all communities have had the success that our delegate system has, and I can certainly see what the benefits would be of retooling or change. I am committed to work over the next two years to develop workable solutions. If we are given an opportunity to fix what is not working in this environment, it would be a better approach than simply doing away with it to the detriment of those areas that have used it in a good manner.

There were also misperceptions as relating to the Summerlin North Community association and the proxy to the president of the board. In my experience, the neighborhoods which did not have the ability to elect their own delegate were still returning ballots whenever an issue was brought to vote. To make sure the neighborhood was heard, the president would cast ballots for anybody who took the time to return them. There was no casting of any ballots that were not returned or any votes that were unheard.

David Stone, Owner, Nevada Association Service:

I would like to briefly address Section 7 and Section 8. Section 7 deals with getting permission from the commission. The ombudsmen's office already has a process in place regarding foreclosures and I do not think an extra step to the commission will provide any additional level of assurance. Last year, my office started thousands of collection accounts and foreclosed on only two homes. One of the homes was already in foreclosure by the lender and the other home had been abandoned by the homeowner. This is not a problem that truly exists. Section 8 is vague and does not give any timeline for the right of redemption, who is responsible for paying the mortgage, property taxes, or ongoing assessments. It does not say who needs to pay money in order to redeem the property or how to address the issue if the lender is already in foreclosure. What happens if the lender forecloses during the right of redemption period? Are any of the rights lost by any of the individuals? It needs to be cleaned up and answered those questions.

Chairman Anderson:

I have a letter from Judy Farrah in opposition of Section 7 through Section 10 that needs to be inserted into the record ([Exhibit H](#)).

Let me close the hearing on A.B. 396.

Let us open the hearing on A.B. 399.

Assembly Bill 399: Revises the provisions relating to the Office of the Ombudsman for Owners in Common-Interest Communities. (BDR 10-026)

Assemblywoman Francis O. Allen, Assembly District No. 4:

[Read from prepared testimony ([Exhibit I](#)).]

Chairman Anderson:

Dispute resolution centers are something that I have supported in the past. Would this be moving it to someone who has the training? What are the qualifications established? It appears the office gets to establish what the criteria is going to be, so is this going to take the legislature out of the process of setting forth the duties and responsibilities of the ombudsman? It is not going to be an immediate solution but a rather prolonged one.

Assemblywoman Allen:

I am open to an interim study on how to best give homeowners this resolution. The Office of the Ombudsman would select at random from a list of licensed private ombudsmen. The legislature would have oversight of it, but in actuality, instead of only having one investigator in Carson City and two in Southern Nevada, this would multiply.

Assemblyman Segerblom:

In law, we use the alternative mediation processes regularly and they are fantastic. I would encourage the concept of using mediation.

David Thomas, Resident of Summerlin Community, Nevada:

I am a resident of Summerlin community and also an attorney. I have practiced for 18 years and have represented more HOAs than I have residents. About eight years ago I got involved with youth sports in Summerlin. It became remarkable to me the number of people who came up to me and had complaints. I heard testimony earlier today that it might be 1 to 2 percent of the community that had complaints about the HOA. I do not profess to be an expert because I do not go to meetings, but I know when I was at the soccer fields and baseball fields, I had complaints from about 10 percent of the kids' parents. The complaints I heard from this HOA are not the normal complaints

about reasonable restrictions. No one has ever come to me and said that the HOA will not allow them to paint their house pink or put a garbage sculpture in their front yard. It seems to be more along the lines of people planting trees without prior approval and having to tear them out. Another example is doing brickwork and yard work and having to tear it out. One person even said their HOA did not like the contractor they used. Most recently, someone put up a Greenbay Packers flag Sunday morning and took it down Sunday night and there were complaints about that. These do not seem to be reasonable complaints from the HOA. When I found out there was talk about changing a law that would give the HOA more power, I was concerned. One of my biggest concerns is that the HOA attorneys feel like they need more power. I do not feel they need more power, they just want more power. I am concerned because of the number of contacts I have made with people. HOA's are necessary, but I am concerned about giving them control and authority over everything in the streets, only because of the people I have dealt with and the stories they have. I have always been concerned that the HOA is taking dues and giving them to an attorney and making some of these people's lives miserable. My personal opinion is that the amount of authority that the HOA has to govern their residents is fine. These are things that need to be handled between neighbors. I am concerned about the number of times people say they have been threatened with an attorney or an attorney has actually been retained.

Chairman Anderson:

Do you perceive that there may be a quicker resolution to HOA's without the use of ombudsmen?

David Thomas:

I believe that is the intent, but I have been involved in two cases where the people have felt like the ombudsman was going to take too long and that it was not going to be resolved. Another common thread with the people who have come to me, is that there was no complaint from the neighbors. Some people even had written documents from neighbors saying that they had no problem with the brickwork or the trees. If the neighbors are not concerned, I do not know why the HOA is.

Chairman Anderson:

The purpose of living in a common-interest community is to make sure people maintain their homes.

David Thomas:

HOA's are absolutely necessary for that, but I have never heard from people that they do not feel like repairing their house or watering their grass.

Assemblywoman Allen:

When the ombudsman's office was originally created by the legislature, it was done to prevent the homeowner from having to retain expensive attorneys and go through a lengthy court battle. We created this ombudsman office where someone can go and get dispute resolution. Now, we as a state are failing in that obligation.

Chairman Anderson:

Let me now move to those in opposition.

Kevin Ruth, Representing Community Association Management Companies through Executive Officers, Nevada:

We are in opposition to A.B. 399. The concept of privatizing what is already in existence may be a good thing down the road. However, we as an organization have seen significant improvement in the system in the past six to nine months. The new ombudsman who has been on the staff for that period of time has instituted a new conferencing concept which we support. Issues should be resolved in a more expeditious way. I am not sure if we are trying to remedy and remove the Alternative Dispute Resolution (ADR) process which is in place right now or if we are trying to deal with the intervention process which is taken care of through the real estate division and not through the ombudsman. We feel that creating a private ombudsman is not in the best interest of HOAs at this time, nor the homeowners. We also have significant issues with the funding. It does not make sense that the aggrieved party would be required to put 10 percent of the estimated fees forth, while the respondent would be required to pay the remaining 90 percent. Once the ombudsman comes up with a determination, that all could be flip-flopped based on whether or not the homeowner was found to be incorrect in their assertions. I am confident that the common-interest community commission and the real estate division have some issues with this also.

Michael Buckley, Chairman of the Nevada Commission for Common-Interest Communities, Nevada:

Read from prepared testimony ([Exhibit J](#)).

We believe that these changes need to be very carefully thought out and have input from a lot of different people. The ombudsman reports that of the people who participate in her conferences, she believes about 50 percent of them are resolved. She does not keep formal statistics on those because she wants it to be a very informal process.

Assemblywoman Gerhardt:

You said that during the public comment portion they were overwhelmingly in support of the commission's position. How many people are you talking about?

Michael Buckley:

It depends on the meeting.

Assemblywoman Gerhardt:

What is an average?

Michael Buckley:

Only one person showed up for our meeting last week.

Assemblywoman Gerhardt:

Is that an average?

Michael Buckley:

No. It depends on what we are talking about. We had a workshop dealing with reserve study preparers in Carson City last August that had about 20 people. I would say 10-20 people come to regular meetings.

Assemblywoman Gerhardt:

How many people are we talking about in Clark County that are part of common-interest communities.

Michael Buckley:

I do not have that number. I think there are 200,000 to 300,000 units in the state and 2,600 associations, most of them in the south.

Chairman Anderson:

Before adopting regulations, we require information on the number of meetings held and the number of people who attend. It is not unusual to see that there are as few as two people who show up and sometimes as many as 100. It depends on the particular topic being discussed. I was surprised to see how frequently no one shows up, although everybody maintains that it is going to change their lifestyle.

Marilyn Brainard, Commissioner, Nevada Commission for Common-Interest Communities:

Assemblywoman Allen proposes a market-based solution in privatization, which would be a tremendous idea in many aspects of government. However, in looking at the privatization for the ombudsman, I am deeply concerned. By creating multiple people, how would oversight and consistency be

accomplished? Part of the reason we have only one ombudsman is that we like to know that every case is treated equally. I cannot even imagine how creating the oversight for a private ombudsman would be accomplished. Our current ombudsman would be forced into an administrative role when so far her strength has been getting people to resolve their problems amicably. That is what we hope will continue so the private program would be a big concern. I do not know how we could continue to hold these meetings without putting a further strain on the resources of our state government. I would like to point out, in referring to the other side of our legislative process, that Senator Schneider removed the language similar to Assemblywoman Allen's Section 10, realizing that it would be grossly unfair to put the burden on an association. It would be impossible to have the supporting regulations in place by July 1, knowing that the Legislative Counsel Bureau (LCB) must approve all language. Overall, I feel that the parts of this bill that would be considered would have many egregious, unintended, and unfavorable consequences.

Judy Farrah, Chairman of the Community Associations Institute of Nevada, and Representing Legislative Action Committee:

If you brought this bill forward in 2001 or 2003, I probably would have been in support of it because the program was not working. However, we are seeing a significant change in the division and the ombudsman's program. We now have administrative law judges who have been hired by the division to handle these particular types of disputes. We need to give them a chance to do what they have finally been able to put together over the last few months, and hopefully this program will be successful. I have submitted my comments in writing as well ([Exhibit K](#)).

Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Nevada:

I am one of the people that attended the commission hearings last week, and I appreciated the opportunity to be able to speak to the commissioners about our concerns. Recently, Caughlin Ranch HOA had an incident where we really needed the ombudsman's office to help with a matter where the reform board that had been elected did not want to conform to the requirements to have a recall election after a recall petition had been submitted to the state. If it was not for the ombudsman's office staff being available and acting quickly, we would have had serious consequences in our HOA. Within two weeks after the meeting on January 10 where the board of directors refused to set a special meeting date for the recall ballot to be counted, the ombudsman's office had assisted me in preparing a removal election plan and approving that plan with other items. We were able to hold that recall election. One of the problems with the process is that there are laws in place which indicate how you are to go about any kind of a complaint. Part of that process is that you must file an intervention affidavit with the ombudsman's office. The gentleman who spoke

earlier indicated that he had spoken to people but they did not want to file with the ombudsman's office because they thought it would be ineffective. If homeowners do not file the affidavit, the ombudsman's office does not have the authority to act. If they do not follow the procedures that are currently in place, the failure of the system is blamed, but it is not because the system does not work; it is because people fail to understand how to use the system properly.

Chairman Anderson:

Oftentimes a group of homeowners is paying for an attorney, so an individual homeowner is at a dramatic disadvantage because he is going to have to engage someone on his own.

Michael Trudell:

At times, that is the issue. We have had very good success with the ombudsman's office and the State's staff.

Chairman Anderson:

Is there anyone else wishing to be on the record for A.B. 399?

Hearing closed on A.B. 399.

It is my intention to give A.B. 396 to Assemblywoman Allen. If you have any suggestions on A.B. 396, please share them with her and Ms. Chisel. Please be cognizant of the concerns that have been raised relative to foreclosures, the placing of foreclosures within the HOA for nonpayment of assessments and how those situations are handled. Also we need to try and find a compromise on the voting process that can be worked out. Assemblywoman Allen, I believe we have offers from Ms. Dennison, Mr. Buckley, Mr. Sidell, and the Hughes Corporation to help work on language.

If there is any amended language that needs to be put forward on A.B. 399, I would also suggest that be done as soon as possible.

Let me open the hearing on Assembly Bill 431.

**Assembly Bill 431: Establishes provisions governing condominium hotels.
(BDR 10-1056)**

William Horne, Assembly District No. 34, Clark County, Nevada:

The purpose of this legislation is to create a new section in statute to deal with the unique situation of common-interest communities, particularly condominium hotels. The law currently rests in NRS Chapter 116, but it does not fit cleanly. The bill you have before you without the amendments is just a skeleton. The

amendments ([Exhibit L](#)) are supposed to be part of the bill, but because of time constraints and drafting, they have put out a skeleton bill instead. The bill without the amendments does not make very much sense in what we are trying to do in making a separate Chapter 116B for hotel condominiums. Many of the provisions in Chapter 116 have been placed in Chapter 116B. There are additional provisions that deal with the unique character of hotel condominiums. There are approximately 2,200 hotel condominiums in Clark County alone, and about 6,000 currently under construction in Clark and Washoe Counties. These properties, unlike typical HOAs, are mixed use. They are not designed for single family residences and are not the typical condominiums that we have grown accustomed to. These sit on hotel properties. In a typical HOA, a large number of residents are the owners of the condos or single family dwellings. In hotel condominiums, many of the unit owners may not live there. They rent them out to visitors who come and go, but the property is managed by the hotel. The reason this legislation was brought was because many of the common elements in a typical HOA are different in a hotel condominium property. This is going to provide some flexibility and control for hotel operators while also giving the same protections for the unit owners in the property. There is also an executive summary of the amendment ([Exhibit M](#)) which should give you a brief overview of what this legislation does. No one has contacted me in opposition or with concerns on this proposal.

Sam McMullen, Snell and Wilmer, Limited Liability Partnership, Representing the Association of Condominium Hotel Unit Owners, Nevada:

As Assemblyman Horne said, this is basically a new animal in terms of common-interest communities. Common-interest communities have multiple interests in certain pieces of property within a parcel or unit. Consequently, they have to interact, which is why we have NRS Chapter 116. In the hotel condo situation, there is a difference in common elements, which are called shared components and owned by the hotel unit. Mandy Shavinsky, who is also with Snell and Wilmer, will be doing most of the speaking to give you a quick summary of the details of the bill and how it changes NRS Chapter 116. Approximately 90 percent of this amendment is exact language from NRS Chapter 116. In respect to proxies, reserves, declarations, construction defects, and the initiation of law suits, this bill reads exactly the same as Chapter 116.

Mandy Shavinsky, Snell and Wilmer, Limited Liability Partnership, Representing the Association of Condominium Hotel Unit Owners, Nevada:

As Assemblyman Horne indicated, condominium hotels are very unique and new products to Nevada. They do not fit squarely within the framework of NRS Chapter 116, which was designed to help govern master planned communities such as Summerlin North and other traditional condominiums. Our thought is

that NRS Chapter 116 does not adequately address situations where you have more than one use, specifically hotel use that is taking place in a condominium hotel. Assembly Bill 431 provides the framework for that. Transient use is permitted in these types of developments, and as result of the hotels, it is really the primary use of these projects. It is possible but extremely unlikely that there will be full-time residents living in these types of projects. Most people live in single family subdivisions, and although we enjoy having the benefits of hotel casinos in our state, we do not want to live in them full-time. As Assemblyman Horne said, we took what worked from NRS Chapter 116 and left many of the same protections in place. We have also built in the concept of a hotel unit which is owned by a hotel operator. The hotel operator manages the hotel on-site. They have to maintain certain quality levels and standards within the condominium hotel in order to make the hotel an attractive destination for the unit owners. Operating and soon to be operating condominium hotels are often associated with hotels such as Hyatt, MGM, and other well known chains. Purchasers and guests in those projects are going to expect a level of quality that may not be possible in a traditional condominium situation where the HOA governs common elements. Essentially, the hotel and residential unit owners are all stake holders, and there is a mutuality of interest that exists in promoting and making the hotel condominium successful that is not present with HOA's.

Assembly Bill 431 has many of the same safeguards as NRS Chapter 116, and the common-interest community commission would continue to have jurisdiction over these types of communities so there would be some avenue of redress for homeowners who do not feel their voice is being heard. The ombudsman would also have jurisdiction over these communities. The same types of consumer protections that are currently in NRS Chapter 116 will also be available here, such as the provision of a public offering statement, which is a statement of statutorily mandated disclosures that homeowners must be provided with. The same five-day rescission right will exist, which is the right of someone who has contracted to purchase one of these units to rescind their purchase within five days of the execution of the purchase agreement. There will also be a reserve requirement for major components as there is in NRS Chapter 116. We believe this legislation will create structure and predictability for, not just the unit owners who have purchased and wish to rent their units out under the structure, but also for the developers that have come in and the hotel operators that are looking to this product as the new wave of hotel and resort development in Nevada.

Michael Buckley, Chairman of the Nevada Commission for Common-Interest Communities, Nevada:

We support the concept of having a separate chapter for hotel condos.

Bruce Arkell, Representing the Nevada Association of Land Surveyors:

We have a couple of minor amendments to Section 71 and Section 77 of the mock-up ([Exhibit N](#)). The amendments basically take out language that violates licensure laws, and one provides for a vertical datum so that you can find the units from space. The last one allows for a better definition of the units.

Karen Dennison, Representing the American Resort Development Association and Lake at Las Vegas Joint Venture Community, Nevada:

I would like to put on the record that we are in favor of a separate NRS Chapter for condominium hotels for many of the reasons that Mandy Shavinsky pointed out to you. We have not yet had an opportunity to review the amendment, but we will do so and work with the others in support.

Sam McMullen:

I would also be happy to work on this bill. If there are any questions or concerns, please direct them to me.

Chairman Anderson:

Is there anyone else who needs to get on the record? [There were none.]

Let me close the hearing on A.B. 431.

It is the intent of the Chairman to assign A.B. 431 to Assemblyman Horne.

[Meeting adjourned at 10:48 a.m.]

RESPECTFULLY SUBMITTED:

Kaci Kerfeld
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 3, 2007

Time of Meeting: 7:43 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 371	C	Nevada Legal Press	Email to Assemblyman Goedhart
A.B. 396	D	Francis Allen, Assemblywoman District 4	Prepared testimony
A.B. 396	E	Francis Allen, Assemblywoman District 4	Proposed amendment mock-up
A.B. 396	F	Michael E. Buckley, Nevada Commission for Common Interest Communities	Prepared testimony
A.B. 396	G	Kevin Ruth, Cameo, Inc.	Proposed amendments
A.B. 396	H	Judy Farrah, Capital Consultants Management Corporation	Comments on A. B. 396
A.B. 399	I	Francis Allen, Assemblywoman District 4	Prepared testimony
A.B. 399	J	Michael E. Buckley, Nevada Commission for Common Interest Communities	Prepared testimony
A.B. 399	K	Judy Farrah, Capital Consultants Management Corporation	Comments on A. B. 399.
A.B. 431	L	William Horne ,Assemblyman District 34	Proposed amendment
A.B. 431	M	William Horne ,Assemblyman District 34	Executive summary of proposed condominium hotel legislation from Snell & Wilmer
A.B. 431	N	Bruce Arkell, Nevada Association of Land Surveyors	Proposed amendments to A. B. 431