

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

**Seventy-fourth Session
May 4, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:06 a.m. on Friday, May 4, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

GUEST LEGISLATORS PRESENT:

Assemblywoman Francis Allen, Assembly District No. 4
Assemblyman William Horne, Assembly District No. 34
Assemblyman David R. Parks, Assembly District No 41

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Wil Keane, Committee Counsel
Jeanine Wittenberg, Committee Secretary
Scott Young, Committee Policy Analyst
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Michael Buckley, Commissioner, Commission for Common-Interest
Communities, Real Estate Division, Department of Business and Industry
Dan Newburn, Pastor, Sun City Community Church
Donna Toussaint, West Sahara Community Home Owners Association

Senate Committee on Commerce and Labor
May 4, 2007
Page 2

Michael Randolph, Homeowner Association Services
David Stone, Legislative Action Committee, Community Associations Institute
Marilyn Brainard, Commissioner, Commission for Common-Interest
Communities, Real Estate Division, Department of Business and Industry
Kevin A. Ruth, Community Association Management Executive Officers,
Incorporated
Harold Bloch
Randy Ecklund, The Howard Hughes Corporation
William A.S. Magrath II, Caughlin Ranch Homeowners Association
Bryce Alstead, Lake at Las Vegas Joint Venture
Samuel P. McMullen, Hotel Condominium Association
Mandy Shavinsky, Hotel Condominium Association
Jon L. Sasser, Washoe Legal Services; Nevada Legal Services
Ryan Works, Southern Nevada Multi Housing Association
Ernest Nielson, Washoe County Senior Law Project
Teresa B. McKee, Nevada Association of Realtors
Chris Crawford

CHAIR TOWNSEND:

I will open the hearing on Assembly Bill (A.B.) 396.

ASSEMBLY BILL 396 (1st Reprint): Makes various changes to the provisions governing common-interest communities. (BDR 10-1284)

CHAIR TOWNSEND:

As you are aware, this Committee has already processed Senate Bill (S.B.) 235, which deals with a number of issues also included in this bill, some of which are in conflict. We have been dealing with matters relating to homeowners' associations (HOAs) and common-interest communities (CICs) for many years now.

SENATE BILL 235 (1st Reprint): Makes various changes concerning homeowners' associations. (BDR 10-681)

CHAIR TOWNSEND:

For the record, my wife is a licensee of the Real Estate Division, Department of Business and Industry, and a certified practitioner of property management.

Senate Committee on Commerce and Labor
May 4, 2007
Page 3

ASSEMBLYWOMAN FRANCIS ALLEN (Assembly District No. 4):

This bill, A.B. 396, contains four major provisions. Sections 1.3, 3, 4, 5, 6 and 6.3 provide for delegate voting. My intent is for A.B. 396 and S.B. 235 to work in concert with one another. Assembly Bill 396 calls for the immediate prohibition of delegate voting for elections of board members only; S.B. 235 prohibits delegate voting in two years for all matters. The two bills should be able to complement each other.

Section 2.5 prohibits an HOA from assessing fees on houses of worship.

Section 6.7 requires two signatures to withdraw money from HOA accounts.

Section 7.5 has to do with reasonable protection against foreclosure to ensure that homeowners get a fair shake. Foreclosure is immense harm to the homeowner, and extraordinary steps should be taken to seek payment before foreclosure occurs. This is one final step that requires the HOA or CIC to get approval from the Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry, before instituting foreclosure proceedings. It is a small step, an extra rubber stamp, that gives the homeowner one last check before losing their home.

Section 8 guarantees homeowners the right of redemption. I have an amendment to this section ([Exhibit C](#)).

Section 9 requires an HOA to publish any opposing position in their normal publication. The right to discuss and debate is central to any democratic process, and HOAs should not be allowed to circumvent an individual's freedom of speech or to use their newsletter to push one political agenda. When individuals submit to self-regulation in their communities, they do not give up the right to be heard.

Section 10 requires that HOA managers and similar agents who oversee what is tantamount to public money be bonded. We already do this for managers of time-share accounts, whose monetary oversight pales in comparison with the funds collected by large HOAs.

ASSEMBLYMAN DAVID R. PARKS (Assembly District No 41):

I am here in support of A.B. 396. I had a similar bill in the Assembly, A.B. 11, of which portions were put into section 1 of A.B. 396. This provision says that

a person who is on the executive board and stands to gain from any matters decided by the board has the responsibility to disclose that interest.

ASSEMBLY BILL 11: Makes various changes to provisions relating to common-interest communities. (BDR 10-195)

SENATOR HARDY:

This would seem to be the same standard to which we are held.

SENATOR HECK:

I have questions on three provisions in this bill. In section 7.5, is there an analogous safety check for people who are not members of an HOA? Is this providing a greater protection for HOA members than for homeowners who are not members of an HOA?

ASSEMBLYWOMAN ALLEN:

The processes are distinct and different. The ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry, facilitates the process for members of an HOA and reviews it with greater scrutiny than occurs elsewhere.

SENATOR HECK:

In section 9, is every opposing view to be given space? In a larger community, if all 4,000 residents have an opposing view, do they all have to be accommodated?

ASSEMBLYWOMAN ALLEN:

The bill provides for equal space in the newsletter. The HOA would have to provide room for a countering opinion or viewpoint. They still have the same editorial authority over the publication. Statements of fact are not contested.

SENATOR HECK:

Regarding section 10, a large association might already carry insurance that covers those types of issues. Are they now going to be required to also have their manager bonded?

ASSEMBLYWOMAN ALLEN:

Yes. This is not new; in *Nevada Revised Statute* (NRS) 119A.530, we already do the same thing for managers of time-shares, and HOA managers have the

Senate Committee on Commerce and Labor
May 4, 2007
Page 5

ability to touch a lot more money. The bill also requires two signatures on checks; this is a good protection, but I have known situations where one person signs several blank checks and the second person fills in the amount and the payee. I have large HOAs in my district with millions of dollars in reserve and operating accounts. We ask for no less from others, and I am asking today to make that uniform.

CHAIR TOWNSEND:

Could you walk us through the amendment you are proposing?

ASSEMBLYWOMAN ALLEN:

Michael Buckley provided the initial language. Several members of the State Bar of Nevada had come together determining that a right of redemption was needed in these situations. It was basically a question from the Legal Division, Legislative Counsel Bureau, because right now NRS 21 deals with the right of redemption. This is a compromise of adding to NRS 116 in statute the requirements of NRS 21 with the 120-day limit. I spoke to folks in the financial institutions arena, and they did not have concerns with the right of redemption as long as there was a stationary time frame. The amendment provides that stationary time frame.

CHAIR TOWNSEND:

Does this afford greater protection to homeowners who are not members of an HOA?

ASSEMBLYWOMAN ALLEN:

I do not believe so.

CHAIR TOWNSEND:

Do those outside of HOAs have a 120-day right of redemption?

ASSEMBLYWOMAN ALLEN:

I believe NRS 21 requires a one-year right of redemption.

SCOTT YOUNG (Committee Policy Analyst):

That is correct.

CHAIR TOWNSEND:

Was this amendment the result of a crisis in your district?

Senate Committee on Commerce and Labor
May 4, 2007
Page 6

ASSEMBLYWOMAN ALLEN:

No, but I can cite examples if you wish.

MICHAEL BUCKLEY (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
I have written testimony that includes the Commission's position on A.B. 396 ([Exhibit D](#)). I have reviewed [Exhibit C](#), for which I supplied the language. However, we did not recommend the right of redemption; we simply said that if there was a right of redemption, the language should look like this. In answer to Senator Heck's question, this bill only covers foreclosures of assessments. If you are not in an HOA, you cannot have a foreclosure of assessments; therefore, this provision only applies to HOA members.

SENATOR HECK:

Is the Commission capable, within its current construct, of processing and reviewing these assessment foreclosures?

MR. BUCKLEY:

The Commission does not support the provision requiring approval of foreclosures by the Commission. The ombudsman already gets a copy of the notice of sale. We feel that is adequate, and the ombudsman is in a better position to protect people. The Commission is more a judicial, regulatory body that moves slowly.

CHAIR TOWNSEND:

Did you want the language in section 7.5, subsection 1, paragraph (c), of the bill?

MR. BUCKLEY:

The Commission does not support the language in section 7.5. If the Committee wished to approve the right-of-redemption provision, that would be better than having the Commission approve foreclosures.

ASSEMBLYWOMAN ALLEN:

Because Assemblyman Parks's bill was enrolled into mine, I would like to have his name added as a sponsor of A.B. 396.

DAN NEWBURN (Pastor, Sun City Community Church):

I am the pastor of the Sun City Community Church, and for 11 years I was pastor at the Summerlin Community Baptist Church. I am here to speak in support of the provision that would prohibit HOAs from imposing assessments on organizations that are exempt from taxation, such as houses of worship. When we purchased the property for the building of the Summerlin Community Baptist Church, there was no discussion during the negotiations that we would be charged an assessment. After we moved into the new building, we received a call that we would need to begin making a monthly assessment to Summerlin North. I was surprised, but they said it was in the documents when we purchased the property. I found it finally hidden in the clause about the kind of trees we could plant. I asked if all nonprofit organizations were paying an assessment, and I was told they were not. We were told that those that came in when Summerlin was being started were granted the right to be in the community without paying a monthly assessment, but new houses of worship would have to pay. We feel it is improper and unfair that there be different assessments for different organizations.

DONNA TOUSSAINT (President, West Sahara Community Home Owners Association):

The delegate issue is something that has created a problem in my community. We need 84 delegates in order to hold an annual election. At the last Legislative Session, it was decided that the delegates would have to be elected. That requirement has dissuaded many from serving as delegates because they were unwilling to go through the election process. This year, out of the 84 delegates we need, we received only 8 applications. The way our documents are written, 90 percent of our community cannot have their votes counted because there is no delegate to represent them. Waiting two years for this system to end is unacceptable. We need your help because we cannot change our documents under the delegate system, and since our community is older, the documents are deplorable. Getting rid of the delegate system for the executive board elections would save us a lot of money and correct the apathy the delegate situation has created in our community.

CHAIR TOWNSEND:

Have you had a chance to look at S.B. 235?

MS. TOUSSAINT:

Yes. That two-year waiting period would cost my HOA close to \$4,000 to hold delegate elections that do not work, and it would disenfranchise 90 percent of the community in the meantime. This is not a workable solution for older communities like mine.

CHAIR TOWNSEND:

We will take a look at your situation. This is an important issue overall, not just for your community. Please fax us your name and address and a brief summary of your situation so we can have that information when this bill goes to work session.

MICHAEL RANDOLPH (Manager, Homeowner Association Services):

My company, Homeowner Association Services, is a licensed collection agency. I have spent the last seven years helping HOAs recover delinquent accounts. Section 7.5, subsection 1, paragraph (c) of the bill requires the Commission to essentially review my clerical work. The way the bill is written, all this provision does is make sure I have mailed correctly. There are already safeguards in place. I do not see that the Commission would have time to hear all the notices of default inside the time frame required for these notices unless they meet at least monthly.

Regarding section 8, subsection 3, currently nonjudicial foreclosure is not subject to the right of redemption. People who are not members of an HOA do not have the right of redemption with a nonjudicial foreclosure. I am sure the district courts in Nevada do not want to see a lot of HOAs trooping in to go through judicial foreclosure.

Regarding [Exhibit C](#), I see a couple of gray areas. When the redemption is done by the owner or the redeemer, that could be abused by investors who quickly purchase the interest as successor in interest of the property, paying the homeowner who has already lost their property a small amount of money, which would then affect the way the auctions are held and the amount of money bid. That would be a definite disadvantage to the homeowner. Also, on line 32 of [Exhibit C](#), it talks about the amount paid by the purchaser for property taxes and assessments, but it does not mention mortgage payments or past due mortgage payments the purchaser may have paid during the 120 days. I do not have a problem as a trustee with the right of redemption, but I think we need to

spend a little more time and clarify it a little bit better for the best interests and safety of the homeowner.

DAVID STONE (Legislative Action Committee, Community Associations Institute): The Community Associations Institute is opposed to A.B. 396. I am also the owner of a licensed collection agency that works exclusively with HOAs, and I agree wholeheartedly with Mr. Randolph. The section regarding right of redemption needs a lot of work. There is no mention of who is responsible to maintain the property or the mortgage during the 120 days. What happens if the lender forecloses on the property during the 120 days because no one is making mortgage payments? This opens a whole Pandora's box of problems.

I have been in business for many years, and in the last 18 months we have only had 3 foreclosures out of many thousands of collection accounts. Of these, two were already in foreclosure with the lender, and an agreement was reached between the buyer and the homeowner in the last one. The question then arises: Is this bill needed?

MARILYN BRAINARD (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry): I share Senator Heck's concern about the provision on equal space in the publication. If only one opposing view is to be published, who is to make the selection? You are asking someone to step in and be a censor. The newsletters are one of the main links of communication with all unit owners.

SENATOR SCHNEIDER:

That provision was included because some HOAs attack people who speak up in meetings. I have seen it over and over again. There is no real freedom of the press in these small governments.

ASSEMBLYWOMAN ALLEN:

My intention was for equal time and fairness across the board without increasing costs.

MS. BRAINARD:

There are other recourses available to homeowners who feel they are not being fairly represented or that the board is squelching them. There is a mandated public comment period at the beginning of every board meeting. Also, some HOAs now have message boards on their Websites where owners can post

messages freely. Both of these are existing outlets for owners who wish to express a different point of view.

SENATOR SCHNEIDER:

As has been stated here before, few people even run for the board, let alone show up for meetings. For that reason, public comment at board meetings reaches only a few people and is not at all the same as publishing an article in the newsletter that is sent to all owners. As for message boards on Websites, I do not know how well used they are at this time. This provision is an attempt to tamp down the inflammatory things that happen in HOAs. Giving someone the chance to speak when two or three people come to a board meeting is not equal time.

MR. BUCKLEY:

The Commission recommends that the language prohibiting expressing opinions on lawsuits be deleted. That would be section 9, subsection 7, the last sentence, which begins, "If an official publication contains or will contain any information concerning a civil action"

SENATOR HECK:

My concern is with the language, " ... provide equal space to opposing views and opinions of a unit's owner, tenant or resident of the common-interest community." That makes it sound like everyone who has a dissenting view is to be given equal space. If it was equal space in its entirety divided up among everyone who wanted to speak, that would be more workable. But it reads as if every unit owner gets equal space, and with 4,000 unit owners, we are going from a newsletter to a *War and Peace*-sized tome.

MR. BUCKLEY:

We had the same concern when this bill was presented in the Assembly. We interpreted the language to mean that the equal space was to be divided between all.

ASSEMBLYWOMAN ALLEN:

That was my intention. Perhaps the problem can be fixed by tweaking the language. One reason for the wording was to ensure that space for opposing viewpoints would be given only to unit owners and not to people who were not members of the HOA.

Senate Committee on Commerce and Labor
May 4, 2007
Page 11

SENATOR SCHNEIDER:

I can see if an HOA is in litigation and the expenses are rolling on, a homeowner could have the opinion that they should quit wasting their money and put an end to the litigation.

MR. BUCKLEY:

I agree. That was the position of the Commission. This is an opinion about a lawsuit that is circulated to members; it is not a confidential document covered by attorney-client privilege. There is no reason why owners may not express an opinion on that.

CHAIR TOWNSEND:

What triggered this language?

ASSEMBLYWOMAN ALLEN:

It was not in the original bill. This language was added by the Assembly Committee on the Judiciary. I am not sure of the reasoning behind it.

CHAIR TOWNSEND:

We will look into it. Regarding section 10, is that not in S.B. 235 as well?

MR. YOUNG:

I believe it was in S.B. 362.

SENATE BILL 362: Makes various changes to the provisions governing common-interest communities. (BDR 10-110)

CHAIR TOWNSEND:

Has anyone done any shopping for bonds like the ones required in section 10? Is there a market for this, or will this create the market?

ASSEMBLYWOMAN ALLEN:

The time-share managers in NRS 119A are required to obtain fidelity bonds.

CHAIR TOWNSEND:

Did you want surety or fidelity bonds?

ASSEMBLYWOMAN ALLEN:

It seems like fidelity bonds are more appropriate. This language came from Mr. Buckley. It gives the Commission regulatory authority to decide what is best.

CHAIR TOWNSEND:

I ask the question because the bond market has changed dramatically. In the past we have required people to get bonds, and when they go to get them they find they are no longer available.

MR. BUCKLEY:

We had a meeting yesterday to talk about this, and the commissioners agreed that we would support a statute that would require all managers to have suitable insurance or bonds. Also, we think section 10, subsection 1, paragraph (b) should apply to managers, not applicants. Because the Real Estate Division already has a system in place requiring insurance for one of their areas, Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry, said she would support this change.

SENATOR HECK:

Does the manager have to carry the insurance or bond himself or simply be covered by it?

MR. BUCKLEY:

We would not want for the manager to have to buy insurance if it was already provided by the HOA or the company the manager works for.

KEVIN A. RUTH (Community Association Management Executive Officers, Incorporated):

We oppose section 10 as it is currently written. The bonding issue is a huge problem for the manager and the management company. My first question is what is the purpose of the bond or insurance? There is a general feeling that it is there to protect the HOA's funds. If someone is doing something improperly to take away those funds, I would question whether they would provide bonds or insurance appropriately. If this issue was a problem generally, it would have reared its head sooner. The proper entity needs to be providing the insurance or bond for its own money. For the HOAs we manage, that is typically how it works: the HOA provides its own insurance to insure its own money.

Secondly, there are a lot of dynamics that happen in managers providing bonds. The amount of money, the portfolio and the employment of each manager change dramatically. To try to come up with one bond that covers all situations is an administrative nightmare.

CHAIR TOWNSEND:

That brings up an interesting question. The bond or insurance would need to be on a sliding scale, but how do we figure the bond for a private-sector manager with multiple HOAs of different sizes? When they add or subtract one account, do they need to renegotiate the bond? This provision sounds like a good idea, but how do you implement it?

MR. BUCKLEY:

That was the Commission's initial reaction. It is complicated, as you say. The Commission would only be able to adopt regulations on this based on input from the insurance industry.

CHAIR TOWNSEND:

This issue of making sure money brought in by homeowners is protected has been one that Senator Schneider has been pursuing ever since we started working on HOA regulations.

MR. BUCKLEY:

The Commission's regulations require the management contract to state if there is insurance and what it is. We could require the management contract to require insurance, if we have the authority to do so. That might be one way to fix it.

HAROLD BLOCH:

I am a resident of an HOA in Las Vegas. I am here to represent the views of the Volunteer Associations for Leadership, Understanding, and Education (VALUE) Alliance, which is a group formed of HOAs to accentuate the positive aspects of living in an HOA community and of good management. I would like to speak on three sections of this bill, and my focus is on practicality.

First, the involvement of the Commission in the foreclosure process is, in Assemblywoman Allen's words, simply adding another rubber stamp to the process. The process leading to foreclosure is long and difficult, and it should be; it is not a process to be taken lightly. However, another rubber stamp along

the way is only obstructive, not additive. How will the Commission be able to find against an HOA that has followed the process to the point of foreclosure?

Second, section 8, regarding the right of redemption, reflects a disproportionate concern for the parties affected by foreclosure. We need to worry about the rights of the majority of homeowners who are affected by a foreclosure within their HOA. This is particularly applicable to small HOAs, where delays that can be substantial can accrue to the point where it may affect their assessments.

Third, regarding equal space in publications, the cost of this would be significant, especially in large HOAs. If you are going to have effective dialogue between opposing viewpoints, it needs to be timely. In the HOA I live in, if someone saw something in the May issue of the newsletter they wished to comment on, it would probably not appear until the July issue because of the lead time required for publication. That is not practical. The best place to air opposing views is in the public comment part of the board meeting. This is not perfect representation, but nothing is perfect. From my experience, if a homeowner believes his personal bull has been gored, he will appear at the board meeting.

SENATOR SCHNEIDER:

I still support section 9. Speaking for three minutes at a board meeting where no one but the board is present is not equal time with a full-page article that is mailed to every house in the community. I have here a newsletter from an HOA ([Exhibit E](#)) in which the entire front page is a call to action to come to the Legislature and oppose every bill having to do with HOAs. This message went to all the members of this specific HOA, and the author ends with, " ... Please ask your friends in other homeowners associations to do the same." This article is an editorial opinion, with no opposing view in the entire newsletter. They are picking things out of bills and stating political opinions as facts, and these HOAs are becoming political action groups, which is what the VALUE Alliance is. Do these groups risk jeopardizing their nonprofit status?

CHAIR TOWNSEND:

These newsletters are important communication documents for homeowners, and they should have information in them about important issues. However, when they start to step into political activism, that is a fine line, and they should be sensitive to it. The question of whether that puts them in jeopardy of losing their tax-exempt status is an important one.

MS. BRAINARD:

I am concerned about a newsletter like [Exhibit E](#) that would present one viewpoint only. This is why education is so important; the president of that HOA should come to an opportunity for education to learn why that is inappropriate. This is one individual who is not acting appropriately. Homeowners who are concerned about this kind of situation in their HOA should go to the ombudsman so remedial action can be suggested.

RANDY ECKLUND (The Howard Hughes Corporation):

Regarding the delegate concept, we worked with Assemblywoman Allen and Senator Beers on this language. We are fans of the delegate system; it has worked well in our residential communities. The language in [A.B. 396](#) on this matter is positive. We are nervous, however, about how it will impact the mixed-use developments on our planning boards. We are hoping for an opportunity to work with Assemblywoman Allen and Senator Beers if the two ideas are merged together to make something that works for everyone.

MR. BUCKLEY:

Regarding section 2.5 on the exemption of churches, the Commission has tried to steer clear of the policy issue here. We do have some concern that if this is applied retroactively, the HOAs will have to go back to the homeowners with more assessments to fill the gap. We would suggest this be applied only prospectively.

Regarding section 8, when our bar committee met, we realized that this whole issue was a Pandora's box. If you have an equity redemption, it raises a lot of questions. It may be a good idea, but we did not support it; we simply said that if we ever have one, this is what it might look like. There is the potential for other abuses in these foreclosures apart from the foreclosure itself.

Finally, I have a couple of technical corrections to make on [Exhibit C](#). It says the right of redemption is 120 days from the date of the sale, and there must be a certificate of the sale in recordable form. Whoever conducts the foreclosure sale must record the certificate, or it could just be sitting out there and never recorded. The other thing is in our bar committee bill, we talked about the fact that under NRS 21, a person who buys at a foreclosure sale gets a return on what they paid at the sale. That has been removed from this language. In execution sales, it is 1 percent a month. Our bar language had 25 percent. The idea was that it would probably be a smaller amount that would be paid at the

sale. But there does need to be some return to the person who bought the property. Mr. Stone raised some good questions about what happens to the payments that are made on the loan during this redemption period. Something like a right of redemption almost needs a separate task force with input from the lending community, title companies, debt collectors and the Commission.

SENATOR SCHNEIDER:

With regard to the church issue, in Summerlin, a Jewish temple, a Catholic church and a Mormon church do not pay assessments, and a Methodist church, a Lutheran church and a Baptist church do pay assessments. I do not know the reason for this. Perhaps they had a deal that the first churches to move in did not have to pay, but it does not feel right all the same. I have a problem with making all churches exempt because I can pick up a matchbook and see that I can become a minister in five easy lessons, then declare my property a church to avoid paying assessments.

MR. ECKLUND:

You have hit on all the nerves of this discussion. When I came into this in 1992, the churches that bought property were taking a chance coming into the community because there were no homes there. For this reason, the first two or three sites sold to churches were not encumbered with HOA assessments. As the community grew, all subsequent churches were contracted to pay some margin of assessment to recapture some of the costs for streets, landscaping and utilities. Several of the sites purchased by private schools are also paying assessments. As a point of clarity, it should be noted that they are not members of the HOA. This is a contractual obligation in their purchase documents. Pastor Newburn was unaware that this was a cost that would eventually hit their books, but we did not intend it to come as a surprise to anybody.

That said, Summerlin North went through a deep analysis a few years ago when this issue came up, and to the best of the board's ability, they tried to maintain the equity they could. They felt they did not have the right or authority to either ask everyone to pay or to dismiss all obligations.

SENATOR CARLTON:

It is hard to go backwards. Perhaps if churches provided documentation of nonprofit status, that could be taken into account at the next reevaluation of assessments. In this way, there would not be an immediate loss, but the cost

could be factored into the future and possibly worked down over a couple of years. Would that be a possibility?

MR. ECKLUND:

At this point, all of our churches are being encumbered because of inequity concerns. We cannot go back to 1990 when the first sites were purchased.

SENATOR CARLTON:

Are you not willing to consider having houses of worship not have assessments?

MR. ECKLUND:

I am not in a position to hold to that assessment concept. The boards do not feel they have the authority to forgive that without a vote of the membership, since it is a revenue stream. They have taken a posture at this point of waiting to see what the Legislature does in this regard. Some work needs to be done on how to deal with those who are currently being assessed.

CHAIR TOWNSEND:

We are trying to be equitable and fair, and to look at the logic of this issue. Your situation is unique because of the way the community has evolved over the last 20 years.

WILLIAM A.S. MAGRATH II (Caughlin Ranch Homeowners Association):

I have an amendment to section 3, subsection 2 of the bill ([Exhibit F](#)). I am asking that the term of office of members of the executive board of an HOA be changed from two years to three years. With two-year terms, a board is vulnerable to a hostile takeover. With an odd number of people on the board, every two years a majority of the board will be up for reelection.

Caughlin Ranch has been one of the most stable HOAs in northern Nevada for 22 years. Last October, we faced a sudden surprise attack by a small group of individuals who ran a slick marketing campaign that actually included television commercials. They were elected, and at their first meeting they terminated the 16-year contract of the manager. In the second meeting, they terminated the HOA's longstanding attorney. At that point, Caughlin Ranch homeowners reacted by filing a recall petition. That recall petition went to the board, and the four board members ignored it, refusing to set a recall election. Fortunately, the ombudsman and the Real Estate Division stepped in at this point and ordered

the manager to proceed with the election. We ultimately had to file a lawsuit and get a temporary restraining order to confirm the election. At the election, 1,300 HOA members voted to recall the 4 board members, and 60 voted against recall.

That is how a small minority took over our board. Every HOA in Nevada is vulnerable to this scenario with two-year terms. If you change the term to three years with staggered terms, the majority of the board will never come up for reelection in a single election. This provides greater stability for the board and the HOA, and it also gives new board members a longer chance to learn how the board works.

CHAIR TOWNSEND:

This is the reason the Senate has the terms it does, to guard against a coup in a period of incendiary hostility.

SENATOR SCHNEIDER:

Anyone can go out and get 10 percent of the signatures to do a takeover at any time. The good guys can take over a hostile board, or you can be raided by hostiles. There is a way to do that without changing the board members' terms.

MR. MAGRATH:

I understand the recall process. I am suggesting that under existing law, you force every HOA to face this risk every other year. The law puts every HOA at risk, and it is a better policy to have a slower process of change. With three-year terms, at no time is a majority of the board subject to being wiped out and replaced by beginners with a single agenda. By making this change, you will add stability to HOAs and eliminate the risk of a hostile takeover or surprise attack. Stability is what we are looking for. Yes, there are recalls, but we would rather avoid the situation in which a recall is the only alternative.

BRYCE ALSTEAD (Lake at Las Vegas Joint Venture):

I am proposing an amendment to section 1 of A.B. 396 ([Exhibit G](#)). We consider this a clarification of the section, which we support. The amendment states that a board member appointed by the declarant will not be considered to be gaining any sort of personal profit simply by virtue of being employed by the declarant.

Senate Committee on Commerce and Labor
May 4, 2007
Page 19

ASSEMBLYWOMAN ALLEN:

It was not our intent that this section would apply to communities that are still run by the developer.

CHAIR TOWNSEND:

I will close the hearing on A.B. 396 and open the hearing on A.B. 431.

ASSEMBLY BILL 431 (1st Reprint): Establishes provisions governing condominium hotels. (BDR 10-1056)

CHAIR TOWNSEND:

This is something actually that Senator Schneider brought to us—oh boy, seven, eight years ago, and alerted this Committee that this was going to be a growing need to address. He was right then. I believe the effort that is put in by the sponsor and all the competing entities have brought a substantial bill here. If you'll notice, Committee, there's a definition in here on the first page, section 2: "This chapter may be cited as the Condominium Hotel Act." And then it carries a great deal of physical weight to it. And I believe it's fair to say that a tremendous amount of this was lifted directly out of the current statutes that the Committee, with Senator Schneider's leadership, has drafted in the other areas. As a result, this may—most of this, if you've spent any time glancing through it, let alone going through it line by line, is probably fairly familiar to us. There are some concerns that we've identified already, but that is only because fresh eyes will have a perspective. And I know that Assemblyman Horne is here now, and we appreciate your time, given up from your responsibilities on Judiciary, from either putting people in prison or letting them out. I know that's a great debate this session, but we welcome you here, and whatever time you need—I know there's some individuals that do have a commitment at the Capitol that would like to get on the record before that, if that's okay.

ASSEMBLYMAN WILLIAM HORNE (Assembly District No. 34):
"That's fine, Mr. Chairman. Your pleasure."

CHAIR TOWNSEND:

"Fire away."

ASSEMBLYMAN HORNE:

Thank you, Chairman and the Committee, for hearing A.B. 431, which basically creates a new chapter for hotel condominiums. They were—they currently sit in chapter 116, along with other common-interest communities. The problem being with that is it doesn't fit cleanly in there because of the unique nature that this Committee is more than familiar with. Senator Schneider has led the charge in this area of expertise, and I appreciate that—his knowledge on bringing this bill forward. This bill has—basically provides all the protections that 116 does for our typical common-interest communities for property owners and the like, but also provides, you know, operational measures that are going to be different, and which was drafted for 116B. When I was approached and asked if I would help with this legislation, that was—one of the things that I demanded was that all those protections for 116 for property owners still apply. We're only trying to find those mechanisms that don't fit, primarily in the operational portion of these hotel condominiums, because in these senses you have a hotel, you also have the residential area, you have mixed-use areas, unlike a typical common-interest community that many of you are familiar with where a majority of the residents there are also the owners, where in a hotel condominium situation most of your residents are not necessarily going to be your owners. And so this was—has been worked on for quite some time. And I would yield the floor to those individuals who want to get on the record so they can get back, and also I believe there's—to walk you through the bill and some of the technicalities. I know there's attorney Mandy Shavinsky. I believe it's Snell & Wilmer is supposed to be down south, I know—oh, she's sitting right behind me. And along with—Mr. McMullen is here as well. I'd be more than happy to answer any questions from the Committee. At this time, I'll yield the dais.

SENATOR SCHNEIDER:

"Thank you, Mr. Horne. Good job on the bill, and we'll call your people up in the order you want them to come up."

ASSEMBLYMAN HORNE:

"Well, Mr. McMullen, come on up."

SAMUEL P. McMULLEN (Hotel Condominium Association):

Good morning, members of the Committee. My name is Sam McMullen, for the record, representing an informal group of hotel condominium developers that we've titled the Hotel Condominium Association. For purposes of this, I'd like to just make sure we disclose it's people like the Palms, Turnberry, Trump, MGM Mirage, and I think I've—Cosmopolitan. But it's those people that are actually our clients in this. But again, I think—I won't speak very long, but it's basically—The main drill on this is to try to pull out the provisions that could really ruin 116 by trying to confuse and complicate it. So, consequently, we've done that. As Mr. Horne said, I just want to reiterate, we basically took 116 as a starting point and moved it over. I have Mandy Shavinsky with me, who's an attorney who does this kind of work daily—I think actually, knowing her, daily and nightly, so she's very, very skilled in it, and of course I have Gary Milliken, who's representing us as well and helping on this bill. So I just want to make one last set of points, and that is that we made sure that we were absolutely neutral, and I'd like to say this for the audience as well as the Committee, on issues like construction defect in terms of the initiation of lawsuit issues relating to conversions, reserves, proxies, flags, political signs, any of the things that have been negotiated through the years in 116 were carried neutrally through and been checked and double-checked. And we had basically hours' worth of work sessions after the Assembly with outside people to make sure that those people who had an interest in 116 in this area had every chance to make comments, including the surveyors and other people, to make this—to make this tuned right and correctly so it didn't change any of those rights. And with that, I'll turn it over to Mandy so we can just have her give a short summary, and we'll be happy to answer questions as you want us to. Thank you.

MANDY SHAVINSKY (Hotel Condominium Association):

I'm an attorney with Snell & Wilmer in Las Vegas, and I represent the same informal group of condominium hotel owners and developers that Mr. McMullen does. Sam McMullen and William Horne already hit many of the points that I had intended to make, and I don't want to reiterate those in the interest of time,

but I'm going to go through very briefly and state four reasons why we think this bill is necessary and why we think that it contains adequate protections. And at that time, if you have any questions, I'm more than happy to answer any of them.

The first point that Sam did make and Senator Horne made is that these products are very unique and very different from traditional condominiums. Chapter 116, the Nevada Common-Interest Ownership Act, was intended to address planned communities like Summerlin or like the Caughlin Ranch, single-family residential communities and traditional condominiums. That Act provides structure for those types of communities, and chapter 116 does not adequately address in our opinion this type of product, in which more than one use is contemplated for a unit. And we think this bill provides a statutory framework that's very flexible for that type of product.

A couple of points on how a condominium hotel is different from a traditional condominium. The first thing that's important to know is that transient use in these types of development is permitted, and it's actually intended that these will be used for transient use mostly on a daily basis, although you could—if someone wanted to live in these products, they certainly could. In traditional condominiums, I think the thought is usually that you wouldn't want to see a parade of different people coming through. Therefore, in their documents, transient use isn't typically permitted. But because of the hotel use that is contemplated here, transient rentals are contemplated. Secondly, as I mentioned, it is possible but unlikely that you will have full-time residents in these types of properties. The people that are purchasing these units are generally very wealthy, very sophisticated purchasers who are looking to use these as either in some cases a second home, in many cases as a unit that they can come to one or two weeks a year, and then rent out through the hotel's rental program or rent out themselves when they're not there. Lastly, 116 as currently drafted does not contemplate the presence of a full-service hotel operator, and in all of these hotel condominiums you do have a hotel operator present on site.

In my experience, I have confronted a number of issues and problems trying to fit the condominium hotel product within the statutory framework of 116. The current framework is all that we have now, but we think this framework is necessary to clarify the many ambiguities and the many unanswered questions that we've encountered trying to fit this product into 116. And as Mr. McMullen stated, we started out with chapter 116 and tried to take what—we took what worked from that chapter, and then built in the hotel concept.

Secondly, we think this bill provides flexibility and control that's needed for these hotel operators. Hotel operators typically have to maintain certain quality standards and service levels in order to make their hotel an attractive destination for both guests and unit owners. As Mr. McMullen pointed out, some of the operating and soon-to-be operating condominium hotels include companies like the Palms, and also Hyatt is coming in as an operator, and people expect—when they think of those names, they expect a certain level of quality that's not really—you can't really provide in a traditional condominium. Essentially, in this structure, the residential unit owners, the guests and the hotel unit owners are really all stakeholders that have a mutuality of interest in making the condominium hotel a successful enterprise.

I'm not going to reiterate the safeguards that Senator Horne provided. I have a list of them down here if you'd like to go through them. Common-Interest Community Commission applies; the ombudsman will have jurisdiction over these. We still have to give people—we retain the right to rescind, five-day right to rescind, that's currently in 116, and we also kept the provision for a public-offering statement that is required to provide a large number of disclosures to purchasers, in addition to keeping the requirement for a reserve study to be done every five years.

We think this bill creates structure and predictability for everyone, developers and unit owners alike. We have some statistics on how many of these developments are coming on-line, both in Clark County and in Washoe County currently. The majority of these units, both in Clark and Washoe, are located within large

mixed-use and hotel-casino projects that are purchased by—you know, these units are purchased by frequent visitors to Las Vegas and Reno, and we think this legislation encourages continued development by providing structure and flexibility.

With that, if any of you have any questions at all, I'd be very happy to answer them at this time.

SENATOR SCHNEIDER:

Thank you. You had mentioned that in these—you said the owners could live in these if they wanted full-time. Because I have seen ones where under the contract, you cannot do that. You could only use your unit like 45 days a year, and then it has to be in the rental pool the other days.

Ms. SHAVINSKY:

"The—you mean—I'm sorry, go ahead."

SENATOR SCHNEIDER:

And I do know that like the Hotel Del Coronado is doing that right now on theirs. So you can only use it 45 days, and I believe—aren't there some in Las Vegas that are contemplating that, where—right, so—

Ms. SHAVINSKY:

"Yeah. The distinction there—"

SENATOR SCHNEIDER:

"So that's a totally different thing than what you're describing."

Ms. SHAVINSKY:

Yeah. The distinction there is that if you do enter into the hotel-sponsored rental program, then that's a—you know, that will be a contractual set of obligations you would enter into with the hotel operator. Federal law prohibits the hotel operator from mandating that a unit owner enter into their rental program. The unit owner can rent the unit out through the hotel if it chooses to, can rent it out themselves, and can rent it out through any third-party operator. Or, if they don't want to be in the rental

program at all—say they bought a, you know, a \$3 million penthouse and they don't really think there's going to be a market for that, then as long as there's not local zoning restrictions that prohibit that—and to my knowledge, in Las Vegas, the majority of these, there is no 30-day restriction that there would be for other transient properties—then they could live in these full-time. But it's really a function of whether they want to be in the hotel-sponsored rental program or not.

SENATOR SCHNEIDER:

Then if they are—and I did notice in there, and I didn't bring my marked-up one, I'm sorry, but—It said if you're behind in your dues, you couldn't use the facilities, the pool, you know; the amenities, I guess I should say. And the owner would be barred from that, okay? So if you had it in the rental pool, and let's say—and as you indicated, the buyers here are different buyers, and they're—most of them are fairly wealthy, so they're probably businesspeople. And if a person's business has a bad quarter, there's a little downturn, and he's waiting for cash to come in—I mean, I know businessmen operate like this all the time, and they delay making some of their payments. Now he—his tenants would be barred, and you're in the rental pool, and he hasn't made his dues, and you're splitting the rent with him, I guess, but he hasn't made his dues for two or three months. Does that automatically eject him out of the rental pool, then?

Ms. SHAVINSKY:

"It would really depend on the individual rental program agreement that that person entered into. And with every property—they're generally very different."

SENATOR SCHNEIDER:

"But then you said in the law, he is barred. And now you said well, it kind of depends, so—"

Ms. SHAVINSKY:

Well, I think in the bill—there's really no—I don't think there's any type of remedy in the bill as it currently exists to—there may be a remedy to restrict someone from using the amenities, just like there is in chapter 116. If you don't pay your assessments, then at a

certain point the association can bar you from using the amenities. Practically, it's pretty difficult to restrict somebody from doing that. You can never, ever restrict somebody from getting access to their unit; they have an easement in any case to do so.

SENATOR SCHNEIDER:

"Okay. All right. And I have another question, and it's—"

MR. McMULLEN:

Mr. Schneider, can I just clarify on that track? Just wanted to make clear for the record that the issue is really that you're not forced to ever enter into the rental program. If you do, what she was trying to say was of course—and I'm sure you understand this, but I just want to state it for the record—that when you do that, you enter into a set of contractual relationships and arrangements. And so in—as part of that, you would have contractual interplay that you'd have to pay the fees so that your guests could use it, et cetera, et cetera, and you could participate fully. So I know you said that they're two different things, but in a sense they're related that way. I just wanted to clarify. Thank you.

SENATOR SCHNEIDER:

Thank you. Another question, and I think, Mr. McMullen, you and I kind of discussed this a little bit last night. Let's say you—I would think that most of these would be in the rental pool, most of the people are from out of town. So let's say they have a contract with Hyatt or Sheraton or MGM or Palms or whatever to rent these. Now we have a downturn in the economy, and MGM has their hotel that they're renting, and they're out marketing worldwide, as they do, and now here come the guests. What prevents them from steering people from the condo unit and that rental and the transient thing over to where they have their debt service on their building? Because the debt service over here is being taken care of by, you know, John Smith, but over here, the stock market guys aren't going to like a short revenue, so they just adjusted the occupancy over to their building. And what prevents that? And I realize that may be some contractual thing, but that's what we'll get complaints on, maybe. And obviously, I'm looking down the road six, eight years. But now the Common-Interest Community

Commission is going to get these, and it could happen that hey, I'm stuck in this contract, and they're not filling my unit, but they're filling their units over here. What prevents something like that, or—And obviously, I'm—this is kind of hypothetical—I'm taking the side of the consumer now, trying to ask the questions.

MR. McMULLEN:

Good point. Mr. Chairman, through you to Senator Schneider. If I can, I'll start on that. She may have some things that would add in. But in discussing this, the first thing is that—and I don't know that we need to necessarily override this, but of course there are contractual relationships, and there would be a covenant of good faith, fair dealing. That may or may not be sufficient, but I think the fact that we can monitor if in fact there are any complaints about that, and through the Common-Interest Communities Commission, we could find out exactly what issues are coming up. Because I think the first point is that there are so—going to be so many different arrangements, almost one arrangement for every property, that we're not sure, and these are generally not one-size-fits-all types of things. The second thing I would say that I think is some real practical guidance on this—but again, I think this sort of begs for some time to see exactly how this would work, especially since we took 116 and tried to cookie-cutter right on top of it in terms of the protections we know. We may need to analyze this as we've gone through the years as with 116 and add things to this new chapter and protect things on a common basis if in fact we find that things aren't fair. But my fundamental practical point is that this is basically a niche-marketing type of scenario. This product is being built because there is a drive for that product that would be separate and apart, you would think, from the products that these hotel companies currently have, and that in fact they wouldn't be putting millions of dollars into this if in fact they didn't discern that there was a market there. It could be multiple things; it could be a facility that has a different and more exclusive set of amenities than maybe a hotel, it could be that they don't want gaming in the lobby, it could be so many things, and again it's all—it's definitely not cookie cutter, it's definitely property by property, market by market. And so I think there is some practical protection in the fact that you can't switch

someone who wants a sort of a condo-type suite into Sam McMullen's Express Inn over here, but—I'm joking to overstate the point, but I think that is some real protection. Other than that, I think we're just going to have to practically see how it works out, and hopefully we won't be back in front of you with some clarifications and corrections, but you will know.

SENATOR SCHNEIDER:

And then, some other things. I noticed that some of the time frames have been changed on the meetings and meetings aren't required like they are. And I can understand that, but it seems like some of the meetings were delayed quite a bit in between meetings, and board meetings weren't required except like once a year, something like that, as I recall. And the reserve account, that's, that could be a big issue here. And then the money out of the reserve and the assessments that come in, and the management company, which would be the hotel company, MGM, Mirage, or someone like that, they have the discretion on how to spend that money. And in here it appeared, and maybe I'll have to sit down with staff and go over this and—with you, but it appeared that if the hotel company wanted to improve some of the amenities, then they'd just do it, maybe without any input from the homeowners, and they could take the money, the assessment money, and improve the casino or improve whatever they wanted without input or direction from the owners of the units. And I think—we probably need some real clarification on that because I think the unit owners, even though this is a different thing, they still have a lot of input as to how they—how the money would be spent, and you know, that's a pretty tough area, so—

MR. MCMULLEN:

"May I start on that again, and for the record my name is Sam McMullen, Mr. Chairman, through you to Senator Schneider."

CHAIR TOWNSEND:

Before you answer, let me put this on the record. The plan is to continue this hearing Monday morning at 8. I believe all the Committee members will be here, because we hadn't planned on doing anything—couple of—the speaker and I were going to have

to be in front of the Tax Commission. We think that has been averted. And so we'll, we will make sure we do—this is too important to just take, you know, limited testimony. We want the Committee to be able to work this, give them a chance to really go through it over the weekend and think about some of your answers. So I just wanted people to know that because we're planning on warming up the temperature slightly by Monday, so in case you have to come back. We don't want you to think harshly of our harsh weather.

MR. McMULLEN:

Mr. Chairman, if I may, just to sort of accelerate that on Monday, the provisions that we would be talking about on reserve start on page 55, generally section 117 on. We basically have tried to make sure that they operate the same way. There are two reserves in hotel condominiums, one for common elements and one for shared components. "Shared components" as a technical term is the differentiation between those items that are within the control of the hotel unit owner that would normally be called "common elements" in all other circumstances, but to try and make sure that we differentiated those correctly, that's the term that's been created for those. And so there's a reserve for common elements similar to HOAs, and then there is a reserve for the shared components, and that—which are the—within the hotel unit offering, and I won't take any more time on that, we'll do that Monday, but—

CHAIR TOWNSEND:

"No, no, why don't you give the definition? Are those both in your common elements and shared components?"

MR. McMULLEN:

Common—well, yeah, absolutely. We have defined those, if you'll flip to pages—basically, they're alphabetically on page 3, I believe. No, excuse me, at the bottom of page 2, section 9. That is the standard definition for common elements, although of course it uses condominium hotel, you'll see there, as opposed to common-interest community. If you keep going alphabetically, you will move to a couple of sections that I'll stop you with, at

section 31 and 32, because these are the important definitions for purposes of reserving, because what you reserve for is for the repair rehabilitation of the major components of those. And then, of course, if you move over to page 6, section 42, you will see the definition of shared components. But the issue is of course making sure that those reserves are disclosed. I would say first, for the Committee, and maybe I'm talking too long and we can do this on Monday, but we kept all of the ten-year rules that you guys worked hard to put in last time in terms of the reserves, especially for conversions, which this also accommodates. And the point is that—I believe this is true, but we'll talk about it more specifically—a lot of these can't be dispersed—in certain reserves, they can't be dispersed without the HOA doing that.

Again, it is a different animal, and it's important to understand the differences. And one of the key differences, and that'll be my last point, is that we basically are talking about a business enterprise here that has to keep its quality up to compete with the other products inside the Las Vegas market. So the chances of things running down or being stretched out are sort of minimal. There are circumstances where I guess things could go into disrepair because of economics, but not to make a successful property and not to continue the viability of a successful property. Thank you.

CHAIR TOWNSEND:

"We will—go ahead. We'll let a couple of questions go, and then we'll move on to the next bill. Senator Heck, and then Senator Carlton."

SENATOR HECK:

"Thank you, Mr. Chair. And in—I wish I would have known the bill was 128 pages; I would have opened it up a little bit earlier than last night. But in—"

CHAIR TOWNSEND:

"I opened it up over the weekend. It didn't seem to matter."

SENATOR HECK:

In quickly scanning those 128 pages last night, there's two areas that I have questions about, and we don't necessarily need to go into all of them in detail today, but I'll get it out there so we can

look at some answers. And it deals with two areas: one are the voting rights, and the other are the assessment of the homeowners' fees. For instance, when it comes to voting rights, if the hotel unit has more units than the residential side, does that mean then that the hotel unit owner is always going to have an overriding majority, and how that—you know, the votes of the association come out. And I'm looking specifically at section 75, where it says that—you know, an amendment to the declaration that doesn't affect the hotel, it still has to be passed by a majority of the unit owners; and if the hotel has a majority of the units, it seems like it's possible that it could override the will of the residential owners. And then when it comes to assessments, I'm curious as to whether or not assessments on the unit owners, the residential unit owners, will be somehow utilized to subsidize the activities or the costs associated with the hotel units. Because in section 29, it talks about unit owner's liability for shared expenses, including maintenance, insurance, repairing and so on and so forth, of the hotel unit, and not the residential unit. So I don't want to drag it out today, but that's the area that I'd like to get some granularity on.

MR. MCMULLEN:

Mr. Chairman, if I could just take a few seconds. First of all, a hotel unit is different than a residential unit. While the common parlance for "hotel unit" is "hotel room," that is not what it means in this bill, and we tried to clearly define that. And second, I'd like everyone to understand that what we're—there may be a situation where the "declarant," as you're used to it in 116, is the owner of these and until they do it that would be the situation. But the goal is to sell them all out, and so we made it clear that the units were basically residential units by definition, not hotel units. And then it works exactly like any other condominium association, where those are the people who vote. The hotel unit would only be basically another unit in it, okay? And so consequently, there's always that issue while the declarant or the developer owns it. But after that, when they're all sold out, it should work exactly like any other condominium association, okay?

CHAIR TOWNSEND:

"Perfect. Not sure I understood that. I understood his question, but if there are 75 hotel rooms and there are 25 condominium units, even after it's all sold out, does that mean the 75 always can override the 25?"

MR. McMULLEN:

"Well, again, we can do this more definitively on Monday. But my understanding is those hotel rooms aren't going to be part of the condominium or the common-interest community. Those would be hotel rooms."

CHAIR TOWNSEND:

"Well, that isn't—"

MR. McMULLEN:

"Not included in the association."

CHAIR TOWNSEND:

"They're not?"

MR. McMULLEN:

"Yeah. And actually, they would—"

CHAIR TOWNSEND:

"I read it the same way he did."

MR. McMULLEN:

Well, that's why this is such a different animal, and that's why this bill is so important. But basically, those will be parceled—let's just assume that the top 4 floors were condos, and the bottom 20 floors were hotel rooms. Those would be parceled entirely separate. There would be actually a hotel parcel for assessors' purposes and other purposes, but that would not have anything to do with the condos, okay? The condos up here would be parceled separately as airspace units, and then we can get into more technical. But that would be the association up there, not have anything to do with the hotel rooms per se. And those are not included in the bill for any of the condos.

SENATOR HECK:

"Okay, so if you could just direct me somehow to the section that spells that out in the bill, then that'll solve my issue. Thank you."

CHAIR TOWNSEND:

"Okay. Senator Carlton has a question, and then we'll go back to Senator Schneider, and then we'll wrap up."

SENATOR CARLTON:

Actually, it's more of a statement, because I still haven't figured out why we're even doing this. To quote Senator Neal, I don't see the public purpose in this thing. Homeowners' association protection is for homeowners, and basically I've heard things like hotel condo, lives in it 2 weeks, lives in it 45 days—I have lots of questions about how the property tax on this works, how the door tax works, how the transiency tax works. Mr. McMullen just said this is a business entity trying to keep its product up. I mean, I'm very confused as to why we are giving protections for homeowners to a business entity. So I haven't even gotten to step one yet on this bill as far as being able to figure out exactly why we're doing it and how it's all going to fit together, because all these products are very, very different. And in interests of full disclosure, I do work for MGM Mirage. I did get a very nice walk-through with a little laser light of everything that they're planning on doing at City Center, Turnberry Place—not Turnberry Place, but the residences—as part of my corporation. I understand what's going on there. All these properties are very, very, very unique. Some have separate, some are combined, and it's just very complicated to me, and I'm very wary of being in a position, long after I've been term-limited out, of having the same hearing we just had before this one on homeowners' associations dragging in hotel rooms on top of it all. So I just want to make sure everyone understands how apprehensive I am about this whole thing, and I just have not been convinced this is the right way to go yet. And if somebody can figure out how to convince me, they're more than welcome to come find me.

MR. McMULLEN:

"I'll be happy to answer that statement that sounded like a question later, when we're with you directly."

CHAIR TOWNSEND:

"Senator Schneider?"

SENATOR SCHNEIDER:

Thank you, and to keep this short, there's something on Monday that maybe you could explain better, and that's—like the Mandarin Oriental Hotel. You have kind of a reception area or a lobby at the bottom, and then you have hotel rooms up 30 stories or whatever, and then you have the main lobby, you have the restaurants and bar and health club and all that stuff. And then above that, maybe you have 20 or 30 stories of condos, and I don't know the height or anything. But it's like split between hotel and condos. But then that common area there, and who pays for that, and can the hotel operator take that association money and pay for some of that? And I guess that's what we're looking at, because above, now, all those condos above, those are fee simple. So you own your own unit, and it's fee simple. And then you have the mixed use below, and so I guess that's—and that would help, I think, Senator Carlton too. But how do those dues-paying members above, how does their money go into paying for common area, and can it be just—can you rake the money off and remodel the restaurant, even though the restaurant is open to the public and all that, and how do you separate that, and the maintenance of the elevators and everything? I guess that's what we need some help with, and you can do that Monday. Thank you.

CHAIR TOWNSEND:

Okay. Anyone else need to get on the record on this bill? Mr. Horne, let me ask you one question, because you've brought quite a large effort here to us. With regard to your research on this, did you look at—and it's either yes or no, and if it's yes you can elaborate later—but did you look at Miami Beach, New York, Chicago, Tokyo, London, etcetera, who've had a number of these kinds of approaches over time for a while? Did you look at anything they do?

ASSEMBLYMAN HORNE:

Not really, Mr. Chairman. For the record, William Horne. I did find where there is various places that had it, but also I was—it's apparent to me the differences with Nevada, especially those places, particularly because of the gaming aspect to it. But my focus remained there.

CHAIR TOWNSEND:

No, I'm not saying you did anything wrong. I'm just curious if there was—little nuggets from Miami Beach, because they have a lot of these that we might use. But we can always double-check on that. I didn't know if there was something could answer some of the questions that have been brought up.

But we will continue this, Committee, on Monday at 8 o'clock, because this is an important bill. It'll give all of us time to actually get through it a second time, now that we kind of have a, you know, cursory hearing, get through it a second time and get our laundry list of questions. We did appreciate the effort all of the parties have put in on a very important issue. I know Senator Schneider brought us this issue maybe close to ten years ago, and he did preface it by saying that in fact, you know, we're going to have to deal with this; it may not be this session. And now it's just kind of evolved to the point where that part of the community is really starting to grow. We even have some in Reno, so some of my questions will be based on some of the properties that have converted some of their—to some of these types of units, so we really appreciate what you've done.

ASSEMBLYMAN HORNE:

And if I may, Mr. Chairman, some of the concerns raised by the Committee were concerns that I initially had as well. And also, and it's not an attempt to punt or anything like that, but I also recognize because we're venturing into a new area, I recognize that to some extent, and hopefully we'll try to make it as we'll try to make it as small an extent as possible, that some of this we're going to have to see how it fleshes out once it's in operation, and then we start kind of seeing where the leaks in the valve are and

et cetera and address those at those times. Sometimes we do pass legislation that unfortunately has things we didn't think about, but we tried very hard to think of what those could possibly be and address them.

CHAIR TOWNSEND:

No, I think you're to be commended for the effort you put in. I can tell you, when Senator Schneider brought his first homeowners' bill here, there was a point at which we all kind of went, "Wow, there's so many questions. We don't know if we should pass anything because we didn't get them answered." But you can't—we'd never be here today if you didn't get that started. So we passed it—boilerplate bill that we worked on, and then we adjusted it and lived with it over time. We created it out of whole cloth. That's the only way you can deal with this. Otherwise, you'd never pass a bill if you constantly said well, we didn't get every question answered. The fact is we don't know what's going to happen, and that's okay. But everybody's going to have to understand that we don't have answers to everything, and that we've made a good-faith effort, and that we all hang together. And if something happens in the interim, all of the folks out there have our phone numbers and our e-mails. They will find us, and we'll be working on it to correct or tweak, whatever we need to do in, you know, next session. But I mean, you've got to start. We didn't get to the moon by just standing there looking at the moon and saying, "Hey, we ought to go there some day." Somebody actually shot a rocket up there. We moved on from there. So I think what you've done is a monumentous effort, and we appreciate the work you put in on this.

ASSEMBLYMAN HORNE:

"Thank you, Mr. Chairman."

CHAIR TOWNSEND:

I do have one question, because this is one I always like to ask. You have a number of co-sponsors from both sides of the aisle, both north and south. Did any of them read it? Or do they trust you that much?

ASSEMBLYMAN HORNE:

"I don't know about the trust level, Mr. Chairman."

CHAIR TOWNSEND:

We appreciate it, and I know it's tough. You know, we have a lot of interns running around; we just sign so-and-so's bill. You want to read it, then come to find out it's this thick, and oh boy. Anyway, we appreciate what you did.

ASSEMBLYMAN HORNE:

"Thank you, Mr. Chairman."

CHAIR TOWNSEND:

All right. We'll close the hearing on A.B. 431. We will continue that—for public announcement, we will suspend the hearing, I guess is the appropriate term, and reconvene the hearing on Monday at 8 a.m. You will all be here, I presume? Nobody's going to be out of the country or anything? Okay. We will start again at 8, and we will start with that bill and that bill only, so prepare to spend about three hours on that. It may not take that long; we just want to allocate the time in case we really get into things that we don't know about, and we want to make sure all the questions are answered, and if there are things that need to be, you know, adjusted that either you thought up or we stumbled across, then we want to be able to do those. Okay, Mr. Horne? Senator Schneider.

SENATOR SCHNEIDER:

I just wanted—because I'll forget this Monday, but I'd like to put on the record that my brother has entered into a contract to purchase one of these type of units at City Center, so I just want to disclose that. Thank you.

CHAIR TOWNSEND:

We have an amendment from the Hotel Condominium Association ([Exhibit H](#)). I will open the hearing on A.B. 195.

ASSEMBLY BILL 195 (1st Reprint): Makes various changes relating to residential landlords and tenants. (BDR 10-1127)

JON L. SASSER (Washoe Legal Services; Nevada Legal Services):

I have written testimony in support of this bill ([Exhibit I](#)). The bill was amended in the Assembly in a way that resolved all the conflicts between the Northern Nevada Apartment Association and the Southern Nevada Multi-Housing Association, with the exception of one item. Mr. Works will present an amendment that resolves that final issue.

This bill accomplishes two things. It is a cleanup bill that addresses two nagging problems that have existed for years, and it also addresses one issue regarding condominium conversions that arose during the 2004-2005 real estate boom. Section 1 deals with conversion. It does not create any new rights for tenants under NRS 116.4112, but it does make it more difficult for new owners to evade those rights. During that boom, we had some situations in Las Vegas where someone would buy an existing apartment building, evict all the tenants and then make a declaration that they were going to convert it to condominiums. By doing this, they evaded tenants' rights under current law to receive 120 days' notice and to be given the opportunity to purchase a unit if they wished. Once they were gone, it was too late to avail themselves of those remedies. This bill creates a rebuttable presumption that if there is a declaration within six months after evicting a tenant for no cause, the tenant can come back in, say their rights were being evaded and sue for damages for that evasion.

Section 1.5 adds a new section to NRS 118A to expand the rent-withholding remedy to cover a landlord's failure to maintain the unit in an inhabitable condition or comply with orders of a government agency. We already have rent withholding in several places in NRS 118A; the most recent addition was in NRS 118A.380, which deals with the failure to provide essential services. We had a concern about this portion in the Assembly, but hopefully Mr. Works's proposed amendment addresses that.

Section 2 requires that landlords give tenants a free copy of the lease when they enter into the lease. They must also give copies whenever the tenant asks for them, but they may charge a reasonable copying fee. Often when disputes arise between landlord and tenant about the lease, the tenant has lost his copy of the lease or never got one, and we believe the contract basis for the dispute should be in front of everybody prior to resolution.

Section 3 amends NRS 118A.260 to require out-of-state landlords to designate a Nevada resident to accept notices or service of process. We have had some difficulties with out-of-state landlords, and some of our laws require notice as short as 48 hours, which is difficult when the landlord is out of state. It also creates a difficulty if a tenant wants to sue in small claims court, since it is not easy for the court to serve a landlord who is out of the state. If the landlord designates a person, serving that person would be the same as serving the landlord.

Section 4 amends the warranty of habitability under NRS 118A.290 to include not only the violation of that statutory right but also local housing and health codes.

Section 5 amends NRS 118A.320, which specifies which changes in the rental agreement can be handled by a rules change rather than a change in the lease. The bill says neither the tenant's obligation to pay utilities nor the tenant's right to keep a pet can be changed by a rules change. We have seen situations in which in mid-term, the landlord suddenly decides to have the tenants pay utilities where they had not been before, or suddenly changes the rules to not allow pets.

Section 6 deals with NRS 118A.350 to separate statutory remedies for lease violations. There is a separate section for lease violations that affect habitability.

Section 7 expands rent-withholding for essential services to include situations where the tenant gave a notice to the landlord and in which the landlord has received an order from a local government agency regarding essential services.

Section 8 amends NRS 40.2514 to provide a clear distinction between nuisance and breach of the lease. There are two procedures in the law for evictions around violation of the lease. If tenant conduct is so serious that it rises to the level of a nuisance, the landlord can provide a three-day notice to tenant; if the tenant is not out in three days, the landlord can file an eviction action on a five-day notice. If, on the other hand, it is merely a breach of the lease, the landlord may give a five-day eviction notice and then give three days to cure the breach. We are basically separating out the more serious violations from the minor ones.

Section 9 corrects a long-standing numbering error regarding proof of service when a landlord gets a default judgment in court.

RYAN WORKS (Southern Nevada Multi Housing Association):

I would like to put on record that my firm also represents the Northern Nevada Apartment Association.

As Mr. Sasser stated, I have an amendment to offer ([Exhibit J](#)) that does three things to the bill, only one of which is substantive. The change to section 1.5, subsection 1, on page 5 of [Exhibit J](#) conforms the language to the existing language of NRS 118A.350 and 118A.380 by changing the word "may" to "shall."

The more substantive change can be found in section 1.5, subsection 5, which is on page 6 of [Exhibit J](#). As currently worded, there would appear to be a lack of due process in the new withholding provision. Habitability is a much more subjective complaint by the tenant and is subject to greater scrutiny. Allowing the tenant to simply withhold rent can cause the landlord substantial financial harm. Subsection 5 would require the tenant to deposit the rent into an escrow account set up by the court if they feel they have a habitability defense to an eviction proceeding. We have received support for this from various justice court judges throughout Las Vegas and Henderson, and Judge Dahl of North Las Vegas, who is the chair of the Nevada Judges Association, indicates there will be no opposition to this amendment. In addition, Justice Smith from the Las Vegas Township is not in opposition, and the two judges from Henderson that were contacted support the change and perceive it as a good thing that will cut down on judicial costs relating to eviction proceedings.

SENATOR CARLTON:

I understand what you are trying to do, but how does this change get the apartment repaired? The idea behind this provision is that if the heat or the water does not work, it will get fixed or the landlord does not get the rent. We are talking about major life-health-safety type standards. If they know the money is in an escrow account, what incentive do they have to fix it?

MR. WORKS:

What you are referring to are essential services—heat, gas, running water, air conditioning and so on. Those withholding provisions remain unchanged by this amendment; we did not provide a similar mechanism for NRS 118A.380. The

concern is still valid with habitability issues. This provision will not kick in unless eviction proceedings have been brought by the landlord. If a landlord goes to court on an eviction proceeding and the tenant claims there are habitability issues, the eviction will be denied and the court will have the tenant deposit the rent into an escrow account until the problems are fixed. This will prevent scenarios in which tenants claim habitability issues when they simply do not have the money for rent.

The last amendment proposed is on page 10 of [Exhibit J](#). We have deleted much of the added language in section 6 of the bill because much of NRS 118A.350 relates only to the contractual relationship between the tenant and the landlord, and it is now unnecessary.

ERNEST NIELSON (Washoe County Senior Law Project):

We support the bill and the amendment. We see many of these cases, so we know how these issues affect seniors.

TERESA B. MCKEE (Nevada Association of Realtors):

We support this bill and the amendment.

CHRIS CRAWFORD:

I have been a renter in Las Vegas for about five years, and I have some concerns about A.B. 195. All of these laws seem to be primarily protecting the landlord. When I lived in Washington, the landlord worked with me when I had difficulty paying the rent. Down here, it is the opposite; if you do not pay up within a week, you are basically kicked out. I am voicing some concerns about that and seeking more protection for the tenant.

I also have a question regarding mobile home rentals for senior citizens. Is it legal for the owner of a senior mobile home park to include property tax in the rent? If it is, is he allowed to raise the rent to do that?

MR. BUCKLEY:

I have written testimony regarding the Commission's position on section 1 of the bill ([Exhibit K](#)). We do not have a problem with the concept, but there are some difficulties with language, as shown by the underlined phrases on page 1 of [Exhibit K](#). Section 1, subsection 6 uses the word "purchaser" to describe the buyer of an apartment complex. However, in NRS 116, "purchaser" means "consumer," which in this case would be the person buying a condominium

unit. This same section of the bill refers to NRS 40.255, which deals with eviction following a foreclosure sale, a trustee sale or where somebody sells their property. That reference does not make sense to the Commission. Also, we do not have a problem with some kind of rebuttable presumption, but we do not think the standard should be "clear and convincing evidence," which is the standard for fraud.

CHAIR TOWNSEND:

Do you know if the provisions in this with regard to apartment-to-condominium conversions have the same conditions that you have for closing a mobile home park? There are a number of things specific to mobile homes in that section, but there are also provisions regarding declarations of time and so on. Are they common to this, or is this an entirely new approach?

MR. SASSER:

The rights of tenants in apartment complexes are already in current law and are listed in section 1 of the bill. We have not changed those substantive rights; we are trying to get at the situation in which someone tries to evade those rights. Our intent was that "purchaser" in section 1, subsection 6 refer to the person who buys the apartment complex. I would be happy to work with Mr. Buckley to come up with new language.

CHAIR TOWNSEND:

I will close the hearing on A.B. 195 and open the work session on A.B. 2.

ASSEMBLY BILL 2 (1st Reprint): Revises provisions relating to automotive repairs. (BDR 52-92)

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 2.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:

I will open the work session on A.B. 43.

Senate Committee on Commerce and Labor
May 4, 2007
Page 43

ASSEMBLY BILL 43: Requires public utilities in larger counties to provide a list of customers for use in the selection of jurors. (BDR 58-651)

SENATOR HARDY:

At the first hearing of this bill, I had concerns about issues with determining whether the people polled were eligible for jury duty. I spoke with the bill's supporters, and they said this would be used as a cross-reference with other tools to select jurors. With that in mind, I do not have a problem with the bill.

CHAIR TOWNSEND:

As I understood it, this is not for the selection of the actual jury pool. Is that correct?

SENATOR CARLTON:

It is in addition to the existing lists.

SENATOR HARDY:

I was told they were going to merge the lists to create one pool from which to draw. They also have a process for weeding out those who are not eligible. The obligation to serve on a jury is one of the most important things, and we ought to make sure everyone has that opportunity.

CHAIR TOWNSEND:

Who brought this bill?

SENATOR HARDY:

It was brought by Nevada's Supreme Court.

SENATOR CARLTON:

As I recall, a question was asked about how the other 16 counties deal with people who are not be eligible to be jurors. I do not believe we got an answer to the question. They must do it in some way in other counties.

MR. YOUNG:

I spoke to Rick Loop, who used to be the Assistant Administrator in Clark County, on this. He said they cross-check them against lists that help them determine if someone is a felon, is not a resident of Nevada or is not a U.S. citizen. This helps them refine the list down to a suitable pool of jurors.

Senate Committee on Commerce and Labor
May 4, 2007
Page 44

SENATOR CARLTON:

I still have concerns about this.

SENATOR HARDY MOVED TO DO PASS A.B. 43.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR CARLTON VOTED NO.)

* * * * *

CHAIR TOWNSEND:

I will open the work session on A.B. 88.

ASSEMBLY BILL 88 (1st Reprint): Revises provisions governing the collection of debts by collection agencies. (BDR 54-630)

CHAIR TOWNSEND:

We have a mock-up of the bill with the proposed amendment ([Exhibit L](#)). If you recall, there were arguments that there was only reference to one section of the Fair Debt Collection Practices Act, and that they were wandering off into other areas rather than just making reference to the entire act. In discussion with Steven Kondrup, Financial Institutions Division, Department of Business and Industry, as well as his predecessor and representatives of the bankers, they and the collection industry said it is quite confusing for us to start redefining what is already in federal law. In this amendment, I removed the provisions that put us in conflict with federal law and made reference to all sections of the Fair Debt Collection Practices Act. This would mean that if you violate federal law, you have violated state law as well.

MR. YOUNG:

In addition, there is a change on page 4 of [Exhibit L](#). There was testimony that the federal law did not address what happens when a collection agency tries to get someone to reaffirm a debt.

CHAIR TOWNSEND:

That was probably the biggest concern the Committee had. When the statute of limitations on a debt expires, a collector will sometimes call the debtor to try to collect all the same; and if the debtor even responds, that is an affirmation of

Senate Committee on Commerce and Labor
May 4, 2007
Page 45

the debt that overrules the statute of limitations. The amendment adds a subsection 9 to section 7 of the bill prohibiting collection agencies from either collecting or obtaining an affirmation of the debt once the statute of limitations has passed.

SENATOR HECK MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 88.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:
I will open the work session on A.B. 215.

ASSEMBLY BILL 215 (1st Reprint): Limits interstate banking by certain entities that open branch offices in this State pursuant to certain statutory provisions. (BDR 55-1125)

SENATOR HECK:
The question I raised on this bill was that there did not seem to be a large number of banks that utilized this rural exception. No one has utilized it in the last several years other than to try to make their way into the state via a back door. My question was whether we need the exception at all. William Uffelman and representatives of the rural banking industry have since told me they think the rural exception needs to remain. This bill will prevent banks from using the rural exception as a back door to the state. With that understanding, I am okay with the bill as is.

SENATOR HECK MOVED TO DO PASS A.B. 215.

SENATOR HARDY SECONDED THE MOTION.

CHAIR TOWNSEND:
For disclosure, I am a shareholder in a bank and I sit on a bank board. I do not know if they are in the rural counties, but since they are already in Nevada, this bill does not affect them.

Senate Committee on Commerce and Labor
May 4, 2007
Page 46

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:

I will now open the work session on A.B. 303.

ASSEMBLY BILL 303 (1st Reprint): Adds provisions relating to insurers who require medical examinations before issuing, renewing, reinstating or reevaluating policies of insurance. (BDR 57-919)

CHAIR TOWNSEND:

We have a mock-up of an amendment to this bill ([Exhibit M](#)).

SENATOR HECK MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 303.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:

I will now open the work session on A.B. 329.

ASSEMBLY BILL 329: Requires adoption of regulations concerning nontraditional mortgage loans and lending practices. (BDR 55-1044)

SENATOR SCHNEIDER MOVED TO DO PASS A.B. 329.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Senate Committee on Commerce and Labor
May 4, 2007
Page 47

CHAIR TOWNSEND:

Is there any further business to come before this Committee? Hearing none,
I will adjourn the meeting at 11:17 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____