

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

**Seventy-fourth Session  
March 8, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:03 a.m. on Thursday, March 8, 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

**STAFF MEMBERS PRESENT:**

Gloria Gaillard-Powell, Committee Secretary  
Wil Keane, Committee Counsel  
Scott Young, Committee Policy Analyst  
Jeanine Wittenberg, Committee Secretary

**OTHERS PRESENT:**

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry  
Lindsay Waite, Ombudsman, Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry  
Karen Brigg, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry  
Stuart L. Posselt  
Teresa B. McKee, Nevada Association of Realtors  
Sandy Ambrose  
Gary Randall  
Rebecca Whitlock

CHAIR TOWNSEND:

This morning, we are going to hear from the Real Estate Division (RED), Department of Business and Industry, on licensing, work flow and common-interest community issues. The purpose is for the Committee to obtain needed information with regard to the RED. Senator Schneider and this Committee both have bill draft requests relating to common-interest communities. When those become bills, this Committee will hear them and that will be the appropriate time for testimony.

**BILL DRAFT REQUEST 10-110:** Makes various changes to the provisions governing common-interest communities. (Later introduced as [Senate Bill 362](#).)

**BILL DRAFT REQUEST 10-234:** Makes various changes to provisions governing common-interest communities. (Later introduced as [Senate Bill 436](#).)

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):

I would like to start this morning speaking about the ombudsman program, which is now fully staffed. That is an accomplishment, considering we have had significant turnover in the investigative staff since the inception. As new investigators have been hired, we have had ongoing investigator training. We have refined the areas requiring focus and how to expedite the complaint process. Most recently, we had all of our investigators from the RED together for training with all six of our Deputy Attorney Generals (DAGs) from the Office of the Attorney General. This program has improved and one of the ongoing focuses has been, "How can the public more clearly hear and see response from the ombudsman's office?" That became the focus when Ms. Waite became our ombudsman last July. We have established a program with procedures that provide the complaining party some immediate contact from the ombudsman's office. Last fall, during the interim, I reported that the common-interest communities program has turned the corner in terms of our processing, our processes and our ability to deal and respond to public requests for assistance.

LINDSAY WAITE (Ombudsman, Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry):

I started in this position last July and quickly implemented a conference procedure. When intervention affidavits come in, I review the files, determine

the issues and send letters to both parties inviting them to meet with me in an attempt to settle the problem. It is not formal mediation, it is a conference. I am pleased to report that so far the results have been good. I have compiled some information for the Committee ([Exhibit C](#)). Since I began in my position, through this last Monday, we have received 175 intervention affidavits. Of those, we have sent 148 invitations to meet with me in an attempt to resolve the problems. The goal is to assist in resolving matters, so obviously, you need representatives from both sides to attend. Usually it is the homeowner who files the affidavit, sometimes the board member or a former board member. When both sides agree, and that has happened in 61 instances so far, we will then have the meetings. Of those 61 conferences I have held, there have been 28 resolutions. We have had six matters withdrawn because I assume the parties have worked out their issues. I have six files on my desk pending resolution. As you know, a board member and manager cannot come in and make a decision for the entire board. That creates a time delay waiting for the next board meeting and final resolution. If you look at those figures, that is 40 of the 61 conferences where I believe the matters resolved themselves and did not require further action.

I am in the Carson City office approximately every six weeks to deal with concerns in northern Nevada. What I like and what I see is fairly common in mediation or litigation. I allocate 90 minutes for these conferences. In the beginning of the conference, people often will not even look at each other. I try to ensure that one side addresses the concerns and then the other responds without interruption. Generally, the conferences have proceeded well. I think I have only had to cancel one conference because the parties became belligerent, argumentative and threatening. I give credit to the people who show up for the conferences because they are obviously coming for resolution and they want to communicate with the other side while having a neutral party present. Those who do not appear for conferences are moved to our compliance division. Those that are not resolved successfully through my process are also moved to compliance for review and determination. From July until now we are seeing an increase in the intervention affidavits. I still think we are processing those fairly quickly. There are 7 on my desk for review and 20 waiting to be logged from February. I have April conference dates available for scheduling those people and set an arbitrary date 15 days ahead of time. I do everything I can to accommodate their schedules. If people tell us they will not be coming, then we immediately process it to the compliance department. If they do not confirm that they are coming on the date set for them, we will wait for that

date to pass and then send them a letter notifying them that the file will be forwarded to our compliance department. I feel that our time frame is as efficient as it can be. Some issues are quite complicated and some are simple. Some people file over 100 pages of intervention affidavits. They are supposed to list their issues on the document, and what some people are doing is submitting what they consider as documentation. In other instances, we are getting intervention affidavits that can go back a year, and many people are bringing unrelated issues. I suspect, because they have a form, they just state all the things with which they are unhappy. That can make the meetings somewhat difficult. There are concerns with homeowners about reserves, finances and how funds are being managed by their homeowners association. I do not know if this has always been an issue or if it is a new concern due to changes in the law relating to reserves and audits. There are a number of conferences where people come in who have asked the board or management for financial information. They are not happy about it and want to review the figures in front of me. Some people are asking for information from boards that go back years, which sometimes can be tough for the boards or managers to go back as far as they have requested. There are times when election or recall issues come before me. Landscaping matters can cause quite a bit of unhappiness with homeowners and boards. I am hearing all types of concerns that all sides have about each other and living in these communities.

As I stated earlier, 40 percent of the issues are being resolved after those involved meet with me and I feel good about that. That is helping to reduce what would normally be forwarded to our compliance section. On the other hand, there are more people bringing their concerns to our attention. We have been working on distance education. Last year, a position was created for an education public-information officer and we are working together on video broadcasting through our Website and have developed educational compact discs.

SENATOR HECK:

When did you start the process of these meetings?

MS. WAITE:

The first one was scheduled at the end of August 2006.

SENATOR HECK:

I received information to the contrary and I would like to clear it up with you after this meeting rather than take up the Committee's time.

SENATOR SCHNEIDER:

Is it mandatory to appear at the intervention conference?

MS. WAITE:

It is not mandatory. I have a concern that if it were, some people would not attend because they are angry and do not want to be in the same room with the other party. I think if they were mandatory, it would just mean I would be a referee. Mandatory may not be anything more than watching people disagree with each other. The other problem is that we would be scheduling people that do not want to attend.

SENATOR SCHNEIDER:

Prior to the start of this Legislative Session, Senator Townsend and I met with one of his constituents who has had problems with multiple associations where he owns properties. One of your investigators was there and I believe he stated that the backlog was now down to a little over a year, and by the end of this year, it will be down to eight months. Eight months still seems too long. Do you need more investigators and could you tell us about that?

MS. WAITE:

That time frame relates to the compliance section. I know they are fully staffed now, but there is a need for more investigators. I think Gail Anderson can address that better than I.

MS. ANDERSON:

The cases in existence before Ms. Waite started were all in investigation. We have cases that have been in the office more than a year. Staffing has been an issue. We were without a DAG for a few months, although we had other attorneys that stepped in and did some work during that period of time. Those things have been stabilized and we do have full-time employees working at all times. We have requested two additional investigator positions in our budget, one position for the Carson City office and one for the Las Vegas office. Currently, there is only one investigator in northern Nevada. That person carries the entire caseload, handles all phone calls, walk-ins and in the course of an investigation leaves the office.

The ombudsman is primarily fulfilling the meeting role, but occasionally an investigator needs to participate. Our goal is to get to six to eight months for something to go through the investigative process. That means it has gone through the intervention-opportunity process and has been turned over to investigation. The other program the Real Estate Commission (REC) has initiated is an Administrative Law Judge (ALJ) program. There are five administrative law judges. However, the issues going before the administrative law judges concern governing documents, fine disputes, architectural-review committee decisions and things that are not violations of statute. That process is more expeditious because the State does not prosecute a case before the administrative law judge. We turn the investigative file that contains the responses and all documentation of the parties over to the judge. The judge then takes care of scheduling hearings, witnesses or any depositions. They hold a hearing, issue a decision and an order in the matter. The decision is appealable to the REC. The REC receives the orders and they may call for a review. The ALJ program, which we just put into place this year, is in the budget and we are hoping to continue this program.

Part of what has happened during this fiscal year is that Ms. Waite, with the conferencing program, is heading off a number of things on the front end with resolution. This has made a positive impact for the investigators because they are not spending hours on the phone listening to people tell their story. That gives them time to work their caseloads. With the addition of the two investigators requested in our budget, it will also spread out the days they are on call or on the floor, which gives them more time to work their cases. This was a huge problem at the front end of the program. Right now, the investigators carry between 35 and 55 open cases at any given time. We are working very diligently on addressing the backlog of cases and are now seeing progress.

SENATOR SCHNEIDER:

In a legal court system, six to eight months sounds efficient. That amount of time is long for homeowners who are in disputes with boards or neighbors. Is it possible for someone in an official capacity to go out and speak to these people about their issues before they escalate and drag on?

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KAREN BRIGG (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):

We are trying to provide a vehicle to resolve their issues in a relatively short amount of time by going before the ombudsman. The sooner we become involved and help resolve issues, the less likely the dispute will continue to grow.

CHAIR TOWNSEND:

I need to disclose that my wife is a licensee of the RED.

Ms. Waite, we appreciate you coming to this State. Apparently your process seems to be working well. I think part of that is because you have worked together to figure out a good process and a lot of it is just your personal capability. Do we need a second and third ombudsman?

MS. WAITE:

Yes. Not an ombudsperson per se, but I believe it would be helpful to get a program officer within my office who could have preconferences. It would be helpful to have another position in northern Nevada.

CHAIR TOWNSEND:

How you manage it is your business.

MS. WAITE:

Another position would be helpful. I do have some concerns about keeping my time frames without working 90 hours a week.

CHAIR TOWNSEND:

When I look at the conferencing program in the process, [Exhibit C](#), it is fairly understandable to those of us that do not work in your area. Then when we look at the investigative process and the ALJ, it starts to get complex for someone trying to solve a homeowner problem. The point is that we could solve more problems on the front end by having a place for people to go and give their legitimate concerns and get a legitimate answer. How you manage that, wherever they are in the State, is not this Committee's concern. Do we need more people like you?

MS. WAITE:

Yes, it would be helpful to have more conferencing people.

SENATOR HARDY:

I had numerous conversations with the previous ombudsman. The thing that always frustrated him was the fact that he had no power or ability to resolve issues and disputes. I know that we now have the REC, but at some level, perhaps your job would be easier if you had more ability to resolve and make decisions on the disputes. Would that ability be helpful to you?

MS. WAITE:

In Maryland, I was an administrative law judge, and have adjudicated in that capacity. I think resolutions work better when people agree to them. I think part of our compliance review, the REC and the ALJ is where decisions come from. You are suggesting that happens up front rather than down the road. I still think agreements are better between parties if they have agreed to them among themselves.

SENATOR HARDY:

The previous ombudsman felt the problem was that people came to him with an expectation that things would happen. Everyone was frustrated when they found that things could not happen because he did not have the ability to side with one side or the other. I think we need you to have the ability to make things happen or somehow help the public understand what will happen when they go to the ombudsman.

MS. WAITE:

The educational compact discs that I discussed previously would help address that concern. My concern would be, if that becomes the statutory function of the ombudsman, it would almost be evidentiary in nature, where you really would have to make sure that people came there with their evidence. We try to discourage that. That would change the whole nature of the process. I believe that it is good for the RED to have the informal-mediation process.

SENATOR HARDY:

To sum things up, do you think we are better off leaving things as they are but educating the public on the role of the ombudsman?

MS. WAITE:

Public education is always important. Getting more investigators would help them in moving things more quickly to the adjudicators.



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CHAIR TOWNSEND:

In your submission, [Exhibit C](#), at the top of page 2, the second bullet point down, how long does that usually take?

MS. WAITE:

Since a board has to decide, it takes anywhere from one to three months.

CHAIR TOWNSEND:

All day long this Committee tries to learn, educate ourselves and find solutions. What I do not understand is if a homeowner comes in under this situation and reaches a resolution with either a property manager or a board member, then they have to go back and wait for the board to approve it. Why would I negotiate with someone who has no authority? If you send a property manager or board member to a conference with the ombudsman, they should have the authority to make the deal at that time. The homeowner is looking for finality then, not three months down the road.

MS. WAITE:

Three months is the longest example. It is generally one to two months. An individual board member cannot decide, the entire board must decide the issue.

CHAIR TOWNSEND:

That is the problem. Three months is an eternity for the homeowner that had a good meeting with resolution and now has to wait for the board to meet.

MS. WAITE:

If there are fines, they have to go to an executive session to hear the executive board discuss it.

CHAIR TOWNSEND:

I am trying to solve a personality problem between the parties. If a homeowner walks into a conference, they feel disadvantaged because they are negotiating with a ghost with no authority. The reality is that the conference needs to be final and the board should have to give authority to their representative or manager going into that conference. Whatever is decided and agreed is the end of the process.

MS. WAITE:

I do not sense that.

CHAIR TOWNSEND:

You may not sense that, but that is the reality. It needs to be final and a board needs to give the authority to their representative or manager to make a final decision. The representative or manager would then have to report back to the board on what occurred. I am trying to help you understand how we are trying to help you move the process along. I can tell you, whether it is a property manager or board, whether they win or lose, they want these things final and off their docket.

MS. WAITE:

There are instances where the manager and the board will say, "We know the board will agree to this." I have not felt any frustration from homeowners.

CHAIR TOWNSEND:

I am trying to convince you that there should not be three or four layers in this process. I believe Senator Hardy was correct in that people want finality. Does the final letter to the homeowner come after board approval?

MS. WAITE:

Yes.

CHAIR TOWNSEND:

Would you consider moving the process more quickly?

MS. WAITE:

My concern is that if we tell a board member they have to come to the conference with the authority to resolve, it may mean fewer meetings because some of the boards are being blindsided. They do not even know of the concern. The board then needs the information from the conference. I think it could cause a problem. I am not seeing frustration from the homeowners on the fact that they must wait for their board to meet. I think what we have is working.

CHAIR TOWNSEND:

I think what Senator Schneider is trying to say is that you have made huge strides and we are appreciative. The flip side of that is because you are doing well, the word is getting out and it is increasing your workload. Because of growth, particularly in southern Nevada, we do not think that you can continue to operate the way you have. As good as you may be, you cannot do it all.

I am not trying to make you think I am taking away your authority by having this discussion. If the conference process is working, then there will be more, which will require additional staff. Of the 60 percent you do not resolve, how many of those end up with ALJs?

MS. WAITE:

I cannot give a percentage. I can say there are a number of intervention affidavits that in my opinion do not involve violations of law or governing documents. They are more personality disputes.

CHAIR TOWNSEND:

Please get that information to us before the end of this Legislative Session.

MS. WAITE:

I will start compiling that information.

CHAIR TOWNSEND:

If they are not addressing a violation, then why are they there?

MS. WAITE:

In a few instances, I have suggested that I believe the community needs mediation such as from the neighborhood justice center or something comparable. I try to do this in a helpful, not critical, way.

CHAIR TOWNSEND:

What is the percentage of that?

MS. WAITE:

Ten to fifteen percent of the time, which is more than I expected.

CHAIR TOWNSEND:

Do they take you up on that?

MS. WAITE:

I do not know because I do not get the follow-up on that. The Las Vegas Metropolitan Police Department will go out and perform community meetings. They have noticed that a number of concerns involve threats of violence, restraining possibilities, neighbor disputes, fighting with the board and those types of incidents. We have agreed with them that we would come to speak to

their communities. We are also going out to speak with some homeowner associations that have concerns with tension in their community. There are some serious hostilities in some of these communities.

MS. BRIGG:

I ask that people remember that ideas are created every day. What makes the difference between good and great ideas is the vision. I think that this legislative body put forth a vision for common-interest community associations. We were tasked with putting that together for you and it has not been easy. The industry is difficult and it has taken time. Over the several years we have been diligently working on this, it continues to improve. In the beginning, it took time because people had to embrace the change. Change is difficult and people do not readily accept it. Some people feel it has taken an extended amount of time.

The reality is that the State of Nevada is at the forefront of creating history. It takes time to do this correctly. Another commissioner and I attended a conference and found that it is not just Nevada that is plagued with homeowner-association problems. Many states have these same problems. At the conference, it was obvious that Nevada is much more advanced in our process of trying to become involved in resolving the issues. What needs to be remembered is that the ombudsman's office and the commission were not created to rid the industry of problems. They were created to alleviate and assist people through the problem process so it becomes easier to deal with. It is to educate people so they do not make the same mistakes over again and learn from them. I think we have accomplished that. As a commissioner, I am thankful to the RED. I noticed when I met with other states' real estate division administrators, they were very reluctant to take this on because they had never dealt with such a creature. I think Ms. Anderson represented the State of Nevada very well at the conference. We had answers to some of the problems presented. I think they have started to look at us and have begun to embrace the idea to help them through their issues. I do not want us to be shortsighted and say that the process is taking too long. We are into it and have extremely dedicated staff. If you do not understand the process, spend a week in their office and see for yourself how hard they work.

CHAIR TOWNSEND:

We did create this out of whole cloth and, thanks to Senator Schneider's leadership, we walked into unknown territory. We only meet every other year

and want to make sure that you have the appropriate staffing levels to get you through the interim without a crisis. We are trying to be proactive for you.

SENATOR SCHNEIDER:

Every year we leave here and think that we have fixed things. Then the attorneys in Las Vegas go through the changes to the statute and look for the loopholes. In my opinion, they really are not practicing law in favor of the homeowners. If you have knowledge of where attorneys are using loopholes in the statutes, please bring that to our attention. We want the attorneys to work for homeowners and not tyrannical board members. I constantly hear that the attorneys say, "I don't work for the homeowners, I work for the board." That does not seem right to me, the attorney should be helping everyone and they sit there in an adversary role and stir the pot. I would like to be able to identify the loopholes to minimize that in the future.

MS. BRIGG:

Depending on their issues, I am amazed at how many loopholes individuals can find. If it is serious enough, and they come before the commission, we are trying to define things in the *Nevada Administrative Code* (NAC) and are beginning to render opinion letters that will be available to the public to try to stop some things without having to change law every single Legislative Session.

CHAIR TOWNSEND:

Are you now working well with your DAG?

MS. BRIGG:

Yes.

CHAIR TOWNSEND:

Do you have a different DAG than the RED?

MS. ANDERSON:

The DAG is the same for all three commissions.

CHAIR TOWNSEND:

It is important that those letters of opinion become part of your record. Ultimately, if you think they need to be put into regulation, that gives guidance to the parties.

Please do not take Senator Schneider's remarks lightly. We want to know about odd things that happen so we can begin to formulate what we can do for the next Legislative Session.

MS. BRIGG:

Thank you, we appreciate that.

SENATOR SCHNEIDER:

There is a group that sends me e-mails on homeowners associations across the nation. The entire nation is watching what we are doing, and we want to get this right.

MS. WAITE:

We have learned that in most states the only remedy is to go directly to court. Frankly, most trial or municipal court judges do not understand common-interest law and do not have the expertise. It is a very obscure part of law, but most people, if they have concerns, have to go to court. Nevada and Hawaii are the only two states that have the administrative process.

CHAIR TOWNSEND:

We often hear from homeowners about their inability to be properly informed of board decisions. You cannot make people read newsletters, but one of the things I have found in speaking with a number of the managers is that they get various newsletters from all over the valley in southern Nevada and then they start to get them from some of the larger developments in California, Arizona and Florida. They then start to copy the parts they think are really informative and structure the newsletters in an eye-catching way so that people are more likely to read it and get the information they need. Think about that because that is something that seems to be prevalent in terms of homeowners not being able to get information quickly on board actions.

MS. WAITE:

I agree with you. This has been a subject of discussion in some of the board meetings. On the other hand, with a good manager, there are good newsletters and the homeowner will admit to not reading the newsletter.

CHAIR TOWNSEND:

Ms. Anderson, please provide the Committee with information on real estate licensees. Are you seeing any changes in the growth patterns in the last few months?

MS. ANDERSON:

I have provided the Committee with statistics ([Exhibit D](#)). We are not seeing much change in the last few months. We still have over 5,000 new licensees through January of this fiscal year. One thing I am watching very carefully is the nonrenewal rate, licenses that are allowed to expire and then close out a year after expiration. I am watching that carefully because fiscal projections are important in that area. We are seeing a slight increase in the nonrenewal rate from 2006 to 2007 for real estate broker/salesman and are watching that closely for revenue projections. So far there is not a significant difference through January of this fiscal year. We are anticipating growth, probably not 30 percent, as we saw in the last biennium. From 2000 to 2006, growth was 101 percent.

CHAIR TOWNSEND:

Senator Carlton, have we come to a resolution with regard to a provisional license so people can go to work without having to wait for the background check to be completed? How long does it now take to get a license?

MS. ANDERSON:

The licensing time is taking about six weeks from the federal government and about eight weeks from the State repository. Combined, it takes eight to ten weeks to issue a license upon application for those background investigations.

CHAIR TOWNSEND:

The State is taking longer than the federal government?

MS. ANDERSON:

Yes.

SENATOR CARLTON:

I respectfully disagree. In the meeting I had the other day with Captain Philip K. O'Neill, Chief, Records and Technology Division, Central Repository for Nevada Records of Criminal History (the Repository),

Department of Public Safety, those numbers are getting much better. When the RED receives the information, when does the clock start?

CHAIR TOWNSEND:

Do future licensees know that they should begin the background-check process prior to completing their courses and applying for their license?

MS. ANDERSON:

Yes. The Realtor industry has helped us to promote that.

The clock starts when the vendor submits to us whose prints were taken on what date and the date they were submitted. This is required weekly via e-mail and is entered into a data system. The RED takes about two weeks to turn around the paperwork. If everything is in good order, they are processed in about two weeks. Our goal is to get that down to one week.

Senator Carlton, if you did meet with the Repository people, I look forward to hearing how things are working.

SENATOR CARLTON:

I did meet with the Repository chief earlier this week. Mr. Chairman, after this meeting I will be meeting with Ms. Anderson to go over some things such as the possibility of issuing a provisional license. Captain O'Neill shared some concerns he may have on how those would be done for people "Just blowing in and out of the State."

CHAIR TOWNSEND:

I think it would be good to look at those things. Ms. Anderson, do you have anything else to add?

MS. ANDERSON:

I am pleased with the Governor's recommended budget for three additional staff in Las Vegas and one in Carson City. This will help the RED with efficiency and work flow.

CHAIR TOWNSEND:

We appreciate the information and updates you have provided to us today.



SENATOR SCHNEIDER:

The Nevada Association of Realtors (NAR) had some questions they brought to my attention. They want to know about the real estate license application. On the form it asks if you have ever been arrested or convicted. The convicted question is appropriate but I was wondering about the arrest question. Are those on other applications like the reinstatement application? Are people being denied licenses if they check that they have been arrested? It is my understanding that some people forget about the arrest or they thought it had been expunged from their record. An arrest does not necessarily mean there was a guilty conviction.

Ms. ANDERSON:

The REC has had this discussion with the NAR. *Nevada Revised Statute* (NRS) 645.330 addresses the general qualifications of an applicant. The first qualification is that they have a good reputation for honesty, trustworthiness and integrity and offer proof of those qualifications satisfactory to the RED. That is the first qualification for a real estate license. The RED has used the background questions to make a determination. If anyone answers yes to any of those questions, they must attach an explanation. The NAC 645.095 states that the RED may deny an application for registration. That is the basis for the question on the application form. One of my DAGs had some research done on other state boards that ask applicants to disclose whether they have been arrested and the REC received a report on that in July 2006.

SENATOR SCHNEIDER:

I am concerned that this is not taken too far and it comes down to the RED being the "morals cop."

SENATOR CARLTON:

My concern is that it is almost a "double whammy." We are asking for arrest and conviction information and are also doing a basic criminal background check. If we are doing a background check, it should be up to us to find those things.

Ms. ANDERSON:

If someone explains what happened and it was a long time ago; they had a DUI when they were young or it was several years ago, that would not be denied. When the RED denies a license for failure to disclose an arrest or conviction, it is appealable to the REC. The REC has had more appeals than usual on the

denials. Testimony is taken in closed session and the decision is in public. I think the license-denial appeal process has been effective and a number of denials have been overturned by the REC. We just want people to disclose the information because it is in the NRS and the NAC.

SENATOR HECK:

Ms. Anderson, do you know roughly how many licenses are taking longer than the mandated 60-day turnaround time?

MS. ANDERSON:

I would have to get recent statistics from my licensing manager.

SENATOR HECK:

I have a concern with those that take longer than 60 days and the RED utilizing the other part of the statute that allows additional time if further investigation is necessary on the license application.

STUART L. POSSELT:

Thank you for the opportunity to make my presentation ([Exhibit E](#)). I am a retired architect and worked in real estate development with building codes for over 30 years. I previously documented, started and managed five homeowner associations. There are several loopholes in the NRS. One of them is for what the homeowners association is responsible. When I purchased my home in March 2004, I asked the real estate agent for information on the responsibilities of the homeowners association. I did not like the answer I received from the agent, so I wrote a letter to the developer asking the same question. To this date, I have not received a reply. Because of my experience, I have proposed amended language for the NRS in my presentation, [Exhibit E](#). I would appreciate your support of my proposed amendments.

CHAIR TOWNSEND:

You did an excellent job with your presentation and submission. We will be hearing bills on this next week and would be happy to have you come back for those hearings.

TERESA B. MCKEE (Nevada Association of Realtors):

I am the legal counsel for the NAR. I welcome any questions you may have of us. I want to let you know that our members still report delays in licensing. We have been working for more than two years with the RED and the Repository to

correct the licensing-delay problems. Things are better than they were a year ago. We would like to reduce some of the hurdles that new licensees face in becoming part of this profession. Last year the REC and the RED had considered regulations to have background checks on all license renewals. While we applaud the RED for the intent of the regulation, we saw the nightmare this would cause in the increased workload for the Repository and the RED. Thankfully, that regulation was rejected. The NAR has a problem with the license-denial process and the additional delays from the arrest questions. Thank you for listening to our concerns.

SANDY AMBROSE:

I am a resident of Las Vegas and a homeowner in the Los Prados Homeowners Association. I received a copy of the information provided to the Committee by Ms. Anderson, [Exhibit C](#). To read through this is confusing and frustrating. I think there were some good comments made by the Senators on the length of time of the investigative process. I think the contention that takes place during that length of time within homeowners associations only escalates the problem. There were comments that Ms. Waite made during her testimony about boards not being aware of the issues when they are brought in for mediation. That is completely erroneous. One of the statutes mandates that a homeowner must provide in writing to the board, via certified return-receipt mail, what their issues are and give them ten working days to respond before a homeowner can even file an affidavit to the RED. Boards are fully aware of the issues before they are contacted by the ombudsman. One of the other issues raised was that a board member or manager should be given authority when attending a conference. I think that must be mandated by statute.

GARY RANDALL:

I am with the Los Prados Homeowners Association. We have filed a number of affidavits with the RED. We have found that our problems with the board were fairly simple compared to the problems we have experienced with the RED. If you make a flowchart for the procedures in [Exhibit C](#), you would find that people just go around in circles. We have some simple issues that arise that should be simple to resolve. As an example, this past November we approached the board prior to the executive board meeting and informed them that we intended to audio record the meeting. We were denied and so we showed the statute to the president of the association. She stated that it did not make a difference what the statute said, they had a long-standing policy that they would not allow it. We were then required to submit a letter to the board

outlining our complaint. We had to wait ten business days for a response and did not receive one. In accordance with the ombudsman's intervention procedures, we had to send a second letter so we had to wait another ten days. It was 30 days before we could even file an affidavit. This was a simple matter that the statute dictates that homeowners may audio record a meeting. We wanted to go to mediation with the ombudsman and the board did not want to do that. Now we have to go through the investigative process. I am wondering what kind of procedure we are working with when they have to investigate something that simple. It will take six to eight months to try to resolve a simple problem. They are making a mountain out of a small anthill.

MS. AMBROSE:

Senator Schneider made a comment regarding having someone from the ombudsman's office visit the homeowners association. I think that should be put into statute because it could resolve simple issues rapidly.

I believe that Senator Townsend made a good point about possibly having deputy ombudsmen because you cannot even meet with the ombudsman until you have filed an affidavit. There needs to be more of a frontline approach in the office so issues could possibly be resolved more quickly. It is absurd to me that you can walk into the office and not speak with the ombudsman but an investigator is available. The investigator should be investigating, not on the floor meeting with homeowners. It is my opinion that the policies within the ombudsman's office, administered by the RED, are pathetic.

CHAIR TOWNSEND:

I can assure you that when the bills are heard on this we will take these policy issues of this process seriously. There are a lot of complaints that have come forward relative to the process that are in these upcoming bills. The process of getting to the frontline person will be looked at then. This is not a product where we say it is all done. This is a constant process that we will continue to fine-tune.

MS. AMBROSE:

We have another member of the association with us today that was put through an egregious process through the Alternative Dispute Resolution (ADR) process. It has been five years and she is now fighting this in court. I lay blame for this on the previous ombudsman.

CHAIR TOWNSEND:

What is the issue confronting this homeowner?

Ms. AMBROSE:

The original construction of her home had a balcony and a patio cover on the back of her home. There was a fire and no way to get out of the home. When the home was rebuilt, she had an extended balcony and patio cover built onto the back of the home. She was not aware she needed homeowner-association approval to do that. The homeowner association notified her that she needed permission so she then submitted the drawing plans to the board. The master association approved the building of the balcony and patio. For personal reasons, beyond just the balcony and patio, her neighbor was upset. The neighbor wrote a letter to the board explaining to them that she was upset with them for approving it, and she was going to sue the association. She never sued the association but waited until the next year and ran for a board position. She did not win election but a good friend of hers did, became the board president and then resigned. After the resignation, the board appointed this neighbor as a board member. At that point, the board took action against Ms. Whitlock and how the home had been rebuilt. The board submitted an arbitration mediation affidavit and Ms. Whitlock went to speak to the ombudsman's office about what she could do. The ombudsman at the time literally threw his hands in the air and told her there was nothing he could do because authority had been taken from him. To date, Ms. Whitlock has spent \$70,000 trying to remedy what should not have been a problem.

CHAIR TOWNSEND:

I am not sure that a process other than a court of law can fix that type of problem. Your point is taken that it was far too laborious and complex.

MR. RANDALL:

We have also experienced the same issues that Mr. Posselt testified to earlier regarding the letter of instruction.

CHAIR TOWNSEND:

What is a letter of instruction?

Ms. ANDERSON:

Following an investigation, if there is not substantial evidence to prosecute a case, we will issue a letter of instruction to a licensee saying, "Do not do this

again." We just address it, and it is not considered formal discipline which is why it is not public. However, it is kept in the licensee's file with the RED so that if someone filed another complaint regarding the same issue, it would clearly be brought forward in a formal complaint and a hearing. In the past, there were times before the recent implementation of the ALJ, where there were disputes over governing documents that would not go to the REC and the only alternative was to go to an ADR. For example, if a letter of instruction was issued to a board to provide documents, that is in the file for that association but it is not considered formal discipline.

CHAIR TOWNSEND:

The question for this gentleman is either they did or did not have to provide the homeowner-association documents. Provide the documents or you will be penalized.

I understand your licensee issue about trying to help someone when there was not a violation. This is simple, if they are required to provide the homeowner with the documentation, then they need to do it.

MS. ANDERSON:

We have really been evolving in this process but if someone has not been provided records and they let us know, we do something about that. I have instructed the compliance section to request a subpoena. The issues with the gentlemen may be older. I know that more recently we have been very aggressive about, "Just let us know and we will get them."

REBECCA WHITLOCK:

If the RED licenses Realtors, then why are they not licensing property managers?

CHAIR TOWNSEND:

They do.

MS. WHITLOCK:

My board members and property manager do not know the statutes they operate under. How are the board members and property managers supposed to run a board if they are not compelled to learn the statutes?

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CHAIR TOWNSEND:

From memory, as I understand it, anyone who runs for a board position is required to sign an affidavit that states they have read and understood NRS 116, and when they hire a property manager the property manager must be licensed.

Ms. ANDERSON:

That is correct. I have the authority to require that statement and I do. One of those law loopholes may be that there is no requirement for the RED to be informed of a change in board membership. That may be something to consider including in the upcoming bills.

Ms. Whitlock;

I attribute part of my problems to the fact that the RED did not do their job.

CHAIR TOWNSEND:

I will have either Ms. Anderson or Ms. Waite contact you directly.

The meeting is now adjourned at 10:26 a.m.

RESPECTFULLY SUBMITTED:

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Jeanine Wittenberg,  
Committee Secretary

APPROVED BY:

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Senator Randolph J. Townsend, Chair

DATE: \_\_\_\_\_