

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

**Seventy-Fifth Session
March 6, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:12 a.m. on Friday, March 6, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman Richard McArthur (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Joseph M. Hogan, Clark County Assembly District No. 10
Assemblywoman Ellen Spiegel, Clark County Assembly District No. 21

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Robert Gonzalez, Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

Pam Borda, President and General Manager, Spring Creek Association,
Spring Creek, Nevada
Stephanie Licht, Private Citizen, Spring Creek, Nevada
Warren Russell, Commissioner, Board of Commissioners, Elko County,
Nevada
Michael Buckley, Commissioner, Las Vegas, Commission for
Common-Interest Communities Commission, Real Estate Division,
Department of Business and Industry; Real Property Division, State
Bar of Nevada
Robert Robey, Private Citizen, Las Vegas, Nevada
Barbara Holland, Private Citizen, Las Vegas, Nevada
Jon L. Sasser, representing Washoe Legal Services, Reno, Nevada
Rhea Gerkten, Directing Attorney, Nevada Legal Services,
Las Vegas, Nevada
James T. Endres, representing McDonald, Carano & Wilson; and the
Southern Nevada Chapter of the National Association of Industrial
and Office Properties, Reno, Nevada
Paula Berkley, representing the Nevada Network Against Domestic
Violence, Reno, Nevada
Jan Gilbert, representing the Progressive Leadership Alliance of Nevada,
Carson City, Nevada
David L. Howard, representing the National Association of Industrial and
Office Properties, Northern Nevada Chapter, Reno, Nevada
Ernie Nielsen, representing Washoe County Senior Law Project,
Reno, Nevada
Shawn Griffin, Director, Community Chest, Virginia City, Nevada
Charles "Tony" Chinnici, representing Corazon Real Estate, Reno, Nevada

Jennifer Chandler, Co-Chair, Northern Nevada Apartment Association,
Reno, Nevada
Rhonda L. Cain, Private Citizen, Reno, Nevada
Kellie Fox, Crime Prevention Officer, Community Affairs, Reno Police
Department, Reno, Nevada
Bret Holmes, President, Southern Nevada Multi-Housing Association, Las
Vegas, Nevada
Zelda Ellis, Director of Operations, City of Las Vegas Housing Authority,
Las Vegas, Nevada
Jenny Reese, representing the Nevada Association of Realtors,
Reno, Nevada
Roberta A. Ross, Private Citizen, Reno, Nevada
Bill Uffelman, President and Chief Executive Officer, Nevada Bankers
Association, Las Vegas, Nevada
Alan Crandall, Senior Vice President, Community Association Bank,
Bothell, Washington
Bill DiBenedetto, Private Citizen, Las Vegas, Nevada
Michael Trudell, Manager, Caughlin Ranch Homeowners Association,
Reno, Nevada
Lisa Kim, representing the Nevada Association of Realtors, Las Vegas,
Nevada
John Radocha, Private Citizen, Las Vegas, Nevada
David Stone, President, Nevada Association Services, Las Vegas, Nevada
Wayne M. Pressel, Private Citizen, Minden, Nevada

Chairman Anderson:

[Roll called. Chairman reminded everyone present of the Committee rules.]

We have a rather large number of people who have indicated a desire to speak. We have three bills which must be heard today, so we will try to allocate a fair amount of time to hear from those both in favor and against so that everybody has an opportunity to be heard.

Ms. Chisel, do we have a handout from legislation we saw yesterday?

Jennifer M. Chisel, Committee Policy Analyst:

Yesterday we heard Assembly Bill 182, which was brought to the Committee by Majority Leader Ocegüera. During that conversation, Lieutenant Tom Roberts indicated that he would provide to the Committee a list of the explosive materials that is in the Federal Register. That has been provided to the Committee, and that is what is before you ([Exhibit C](#)).

Chairman Anderson:

Mr. Gustavson, I think this was part of the concerns you raised. You wanted to see the specific prohibited materials. With that, Mr. Carpenter, I think we are going to start with your bill. Let me open the hearing on Assembly Bill 207.

Assembly Bill 207: Makes various changes concerning common-interest communities. (BDR 10-694)

Assemblyman John C. Carpenter, Assembly District No. 33:

Thank you, Mr. Chairman and members of the Committee.

[Read from prepared text, [Exhibit D](#).]

Chairman Anderson:

The amendment ([Exhibit E](#)) is part of the copy of Mr. Carpenter's prepared testimony. Are there any questions on the amendment? No? Is there anyone else to speak on A.B. 207?

Pam Borda, President and General Manager, Spring Creek Association, Spring Creek, Nevada:

Thank you, Mr. Chairman and members of the Committee. I am the President and General Manager of the Spring Creek Association (SCA). We have existed for about 38 years, long before the Ombudsman Office was even thought about. When it was created in 1997 and then broadened in 1999, we were exempted from that office and from its fees. In 2005, there was a change to legislation, which compelled us to pay fees, but still exempted us from the services of the Ombudsman Office. We are here today to ask you to change it back and exempt us from paying those fees because we do not utilize their services. We have been taking care of our own problems in Spring Creek for 38 years, and we are pretty good at it. We do not believe we need the services of the Ombudsman Office, and therefore should not be paying fees to them. I have provided you with a handout with a lot of information about the history of Spring Creek. The biggest issue I would like to portray today is that, while this may not seem like a lot of money, our deed restrictions limit the amount that our assessments can be raised, unlike a lot of other homeowners' associations (HOA). Any raise in cost to us generally means we need to cut something out of our budget. If you can imagine, we have 158 miles of road that we are responsible for maintaining, which costs hundreds of thousands of dollars a year. We are not even doing the job that we need to do. This year, for example, we had to cut \$500,000 out of our budget because of a 110 percent increase in our water rates and other utilities. The impact of the Ombudsman fees means that, if we have to pay those fees, we will be cutting out some other service to our homeowners.

Chairman Anderson:

Ms. Borda, you do not use the Ombudsman, at least you have not to date? You are precluded from using the Ombudsman?

Pam Borda:

We are exempt from it, yes.

Chairman Anderson:

That is because you have chosen not to avail yourself of the use of that office?

Pam Borda:

Yes, we have been exempt from it since the office was created.

Assemblywoman Dondero Loop:

I have actually been to Spring Creek many times visiting your schools. You mentioned 5,420 lots. Is this how many homes are actually up there, or simply lots?

Pam Borda:

That is referring to the number of lots. We are at 74 percent capacity.

Stephanie Licht, Private Citizen, Spring Creek, Nevada:

I have been a resident of Spring Creek HOA since September 1987. My first husband was Chairman of the Board for quite a few years in the early 1990s. I have been through eight different general managers, so I have some history of the particular problems that are related to the Association. All of those have been solved by things that are in place in our board—the way they conduct themselves, and the way the Committee of Architecture conducts themselves. Basically, we have taken care of our own problems for 38 years. If you look on the Ombudsman's page on the website, most of the things they deal with are arbitration and disputes between a homeowner and an overzealous board. We do not feel that we should fall under the Ombudsman, primarily because we are quite different from other HOAs. Mr. Chairman, I have brought with me a low-tech visual. If you will allow me to show a map, I would appreciate it.

This map is on loan from the Nevada Department of Transportation. In the upper left hand corner is just part of the mobile home section. The line transecting most of the center of that is Lamoille Highway. You can see that the lots are quite spread out. In fact, we abut a rancher's place on the right. All of our lots are over an acre, and are spread out all over. I think that part of Chapter 116 of *Nevada Revised Statutes* (NRS) at one time requested gated communities. The only way we could do that is by blocking off the state route with a toll gate, I guess. We are spread over most of 25 to 30 square miles.

We cover 19,000 acres that are interspersed with a lot of different kinds of things, some common and some private or federal. You can see some of the common elements in that, but there is quite a bit of Bureau of Land Management (BLM) property that surrounds us. There are some private areas in between. Some of what you see on the map are other small developments. We are just not like the other HOA properties, which are so close to one another.

Pam Borda:

We have four different housing tracts of land in the Spring Creek Association. It covers 30 square miles, and we have 158 miles of road.

Stephanie Licht:

I would be happy to answer any questions.

Assemblyman Horne:

What is to stop other associations from coming to the Legislature and asking to be exempted because they are not like others? Is this not a slippery slope? You say it is different because you are rural and, I think you said, "we take care of ourselves," and you are spread out over 30 square miles. Next time it could be another association with other dynamics who will want to be excluded.

Pam Borda:

That is a good question. The answer would be that our Conditions, Covenants and Restrictions (CC&Rs) are not restrictive like the typical HOA. We do not care what color someone paints his house, or what kind of fence he puts in. It is truly a rural environment where we do not make a lot of rules about how people live. They move out there to be left alone and to live as they choose. You will find that the typical HOA is extremely restrictive and makes more rules for homeowners and how they live. That is one of the primary differences between a rural agricultural HOA and an urban HOA.

Warren Russell, Commissioner, Board of Commissioners, Elko County, Nevada:

Thank you, Mr. Chairman. Two-thirds of my district, which is the Fifth District, is part of the Spring Creek HOA. I try to attend at least half the meetings by the SCA Board, both as a commissioner and as official liaison from the Elko County Commission. We continue to have a very close working relationship with this group. I support this bill, and everything that has been said before.

Chairman Anderson:

Commissioner Russell, are there services that the county provides in that area in which the HOA is treated differently than other organizations? Is that the only HOA you have in the county?

Warren Russell:

No, sir, that is not the only HOA in the county. We subsidize the road program throughout the HOA. The HOA is subject to codes and resolutions that we have established. Many of the issues that might arise for the residents who live in isolated areas would probably have no other recourse for resolution except through the HOA. There might be limited options for recourse pertaining to the laws of the county.

Chairman Anderson:

Do you have a similar relationship with other HOAs in the county in that you maintain their roads?

Warren Russell:

We do not maintain the roads of other HOAs. We do not maintain the roads in the Spring Creek HOA, either. We provide a subsidy.

Chairman Anderson:

Do you have any influence in deciding infrastructural questions such as the upkeep and development of roads, inasmuch as your budget is affected?

Warren Russell:

As a county, our budget would not be affected by this bill. The SCA would be affected. Our primary relationship would revolve around the use of the right-of-ways. All the roads have already been established in SCA, so we are not looking to develop new roads. That would be an exception rather than the rule.

Chairman Anderson:

You are misinterpreting the question. Obviously, this is going to be an economic advantage to SCA. Given the peculiar nature of this relationship between the county and SCA, is there any time when the SCA can place upon the county an economic demand without the input of the county? If the SCA wanted to build additional roads, would they not have to come to the county to gain approval since it is an additional cost to the county?

Warren Russell:

I think that it would be a voluntary decision if there were additional fiscal costs to the county associated with building new roads in Spring Creek. For example,

there are additional units that have decided to connect to utilities and roads that are outside of Spring Creek. That issue is handled by the SCA in a satisfactory manner in coordination with Elko County. I would say there is no impact to the county, but rather it falls upon the residents of Spring Creek, and the tax base in a general way.

Chairman Anderson:

I see no other questions. Thank you very much.

Michael Buckley, Commissioner, Las Vegas, Commission for Common-Interest Communities Commission, Real Estate Division, Department of Business and Industry; Real Property Division, State Bar of Nevada:

The Commission has no objection to the bill that would take these associations out of paying the ombudsman's fee.

Chairman Anderson:

Has the Commission taken a position regarding the loss of revenue that would stem from passage of A.B. 207?

Michael Buckley:

At the Commission meeting on March 2, 2009, we were advised that the compliance department of the Division had not ever had problems with Spring Creek. In that sense, there was never a use of the ombudsman facilities. We did not discuss the loss of revenue.

Chairman Anderson:

That is the heart of the bill. They have always been exempt from your oversight. Now, what they are saying is, "we should not be paying for it."

Michael Buckley:

Mr. Chairman, I think that is right. They have not been paying it in the past. They paid it only one year, I think. The loss would not affect the Ombudsman office.

Chairman Anderson:

Thank you, Mr. Buckley. Are there any questions? Thank you, sir. Is there anyone else compelled to speak in support of A.B. 207?

Robert Robey, Private Citizen, Las Vegas, Nevada:

I am supporting A.B. 207. I found the most interest in the idea of the open meeting law being applied. I wish that applied to all HOAs. I feel that HOAs are taxing authorities. We put assessments on people that they have to pay.

Chairman Anderson:

We are distributing the amendment that was faxed here just before we started today ([Exhibit F](#)). Did you have an opportunity to discuss this with Mr. Carpenter, Mr. Robey?

Robert Robey:

No, sir, I did not.

Assemblyman Carpenter:

I am aware that there are some people who want all associations to be under the open meeting law, but I think that would need discussion with all the people involved. All I know is that it works well at Spring Creek. Whether it would work with all the other associations, I am not in a position to say at this time.

Chairman Anderson:

It sounds as if the maker of the bill does not perceive this as a friendly amendment, Mr. Robey. The question of open meeting may require a longer discussion. The Chair will be placing several bills dealing with common-interest communities in a subcommittee. There are several bills that deal with that, and all of those will be worked out. If you would like, I will add your amendment to their responsibilities to include in the general law, rather than the specific law in this particular piece of legislation. If you would like to pursue it, I would be happy to put it in the work session and put it in front of the Committee. Your choice, sir.

Robert Robey:

I appreciate the time that you took to respond to me. Whatever you think is the wisest and best. I think that the open meetings are very important.

Chairman Anderson:

I do not disagree with you. It would be one of the recommendations that we would want to make to this piece of legislation to deal with all the common-interest communities. I do not disagree with the concept of having an open meeting law. Thank you.

We will not hold it for the work session on this particular piece of legislation unless a member of the Committee wants me to put it into the work session document. Two people have indicated to me a desire to serve on the common-interest community subcommittee. It is my intention to put in the recommendation for open meetings.

Anybody else feel compelled to speak on A.B. 207? Anyone in opposition?

Barbara Holland, Private Citizen, Las Vegas, Nevada:

Looking at number one, which exempts HOAs from paying the \$3, you ask if there would be an impact on the Ombudsman Office. I can tell you right now, it would probably not have an impact. The Ombudsman Office has never had an audit. The \$3 per unit per year is substantially more than what they actually need, so if we are going to exempt people from paying the \$3, maybe we should look at reducing the \$3 for everybody to a different number. I think it is about time the Legislature does something as far as auditing the Ombudsman Office. Number two, the last legislative session, the Legislature approved electronic mail. We can use the computer age electronic mail, which is still available for rural areas, to facilitate open meetings and to reduce scheduling costs. The law allows HOAs to create one newsletter, which they can create at the very beginning of the year, and list every single meeting time, thereby avoiding additional costs associated with the mailing of notices of their meetings.

Let us talk about the reserves. Assembly Bill No. 396 of the 74th Session, for which the Governor's veto was upheld, also had a section that talked about the reserve study. It talked about the counties with fewer than a certain number of people should be exempt from paying fees. I think the slippery slope is a very dangerous situation with many inequities. We have many small HOAs, and right now in southern Nevada, where we have a lot of foreclosures, they would love to be exempt from paying \$3 to the Real Estate Division. As to reserve studies, I will let you know that these reserve studies cost an average of about \$1,200 a year.

Chairman Anderson:

Ms. Holland, I do not believe the issue of reserve studies is in this bill.

Barbara Holland:

I am reading where they would be exempt from conducting a reserve study, as per item number 3.

Chairman Anderson:

So, you are speaking against this particular group.

Barbara Holland:

That is exactly correct, sir. I am against the exemption of HOAs from paying \$3 for the ombudsman fee because: One, I think you can argue that there are many other types of properties that should be exempt. There is a need for an audit, because I think that \$3 is too much. Two, the electronic mail that I mentioned would facilitate the open meeting laws. Three, HOAs should notify homeowners once a year about meetings. Because they do not have many of

the improvements that we have here in the urban areas, whether they are high-rises, condominiums, townhomes, and so forth, the average reserve study costs \$1,200. That reserve study is done once every five years. There is absolutely no reason why they cannot budget for this. One of the Assembly members said something to the effect that, if we allow this exemption, there are many other associations that can come back with their own idiosyncrasies. I agree with this sentiment. Though Spring Creek may have 5,000 lots, there are some large associations in southern Nevada, in the thousands already, that could certainly look for having a reduction in their costs. We have a lot of planned urban developments (PUD) that are single-family homes. There are many associations that are not over-regulated, especially the PUDs. I certainly have many associations that have never been before the Ombudsman Office. We have a very clean record; we try to resolve all of our problems, too. The whole concept of NRS Chapter 116 was to be able to protect the members of the public. I am very glad they do not have any troubles today. People from the county areas other than Clark County have written letters to me about their issues for the column I write in southern Nevada on HOAs.

Chairman Anderson:

Thank you, Ms. Holland. Is there anyone else who wishes to speak in opposition? Is there anyone who is neutral? Let me close the hearing on A.B. 207. We will now turn to Assembly Bill 189.

Assembly Bill 189: Revises provisions governing the eviction of tenants from property. (BDR 3-655)

I will turn the Chair over to Vice Chair Segerblom.

Vice Chair Segerblom:

Is the sponsor for A.B. 189 ready? I will open the hearing on A.B. 189.

Assemblyman Joseph M. Hogan, Clark County Assembly District No. 10:

Good morning, Vice Chair Segerblom. Good to see you this morning. [Read from prepared testimony ([Exhibit G](#)); submitted ([Exhibit H](#)) and ([Exhibit I](#)).]

Vice Chair Segerblom:

Thank you, Mr. Hogan. Mr. Sasser?

Jon L. Sasser, representing Washoe Legal Services, Reno, Nevada:

I appear today in support of A.B. 189. By way of background, I have been involved in the Nevada Legislature since 1983. I have testified on each landlord-tenant bill that has come before this body since that time. This is the third time I have been involved in an attempt to expand the time frames in this

process. The first time was in 1983, when Congresswoman Shelley Berkley (then Assemblywoman, 1983-1984) sponsored a bill that we got through the Assembly, but died in the final days of the session in the Senate. It would have wiped out our summary eviction process entirely, and created a normal summons and complaint process. Then, in 1995, I was involved with a bill to expand the time frame again. I am back today, and my hope is that the applicable cliché is "the third time is a charm," rather than "three strikes and you're out." I represent two legal services organizations that represent tenants in this eviction process. Rarely do we have the luxury of representing tenants in court. Most of the time, we provide advice and brief service, and help with some pro se forms.

The number of evictions in Nevada is staggering. I have given you some statistics in my written testimony ([Exhibit J](#)). For example, in a Las Vegas Justice Court, they have 23,000 evictions filed each year. As you know, there are many good tenants, and some bad tenants. There are also many good landlords and a few bad ones. There are some transient tenants that have little contact with our state, and there are some huge apartment complexes owned by out-of-state landlords who also care little about Nevada. There is much mud that can be thrown in both directions. You will probably hear some of that mud today, unfortunately. However, I ask you to stay above the fray and look at the process dispassionately and try to decide if the process is fair or if it needs change.

Nevada's eviction procedures, as Assemblyman Hogan mentioned, are among the fastest in the country. You have been given a wonderful chart prepared by the Legislative Counsel Bureau (LCB) research staff showing the process in the western states around us. You will see that there are three stages in the process. The first is, prior to any court action, there is a notice that must be given from a landlord to a tenant telling him to do something: pay rent, get out, to cure a lease violation, or to be out after a certain period of time if there is an alleged nuisance. Our time frames are in-line with other states there. Some are actually a little bit shorter. California was mentioned with 3 days for nonpayment of rent, whereas we have 5 days.

The next stage is the court process. That is where Nevada is truly unique. As mentioned in a nonpayment of rent case, you get a five-day notice to pay or quit, or, if you are going to contest the matter, file an affidavit with the court. If you file an affidavit, a hearing is scheduled the next day. If you do not file an affidavit, then on noon of the fifth day, the landlord can go down and get an order removing the tenant within 24 hours. If you lose that hearing the day after you file your affidavit, you again can be evicted within 24 hours. That, too, is unique in Nevada. If you look at the chart provided to you, in all of the

other states, there are somewhere between 2 to 7 days that the sheriff has to put you out at the end of the process, instead of within 24 hours as it is in Nevada. Also, in every other state, there is a regular lawsuit filed, a summons and complaint, where the defendant can either file an answer within a certain period of time, or the summons and complaint contains a court date, which is usually 7 days or more until there is an actual hearing. So the speed in our process is in step two and in step three. Because the summary eviction process is well-rooted in Nevada, we have not proposed changing that. Instead, we ask you to add some time on the front end. We think that would be very helpful in a number of cases. It might even avoid eviction. If a tenant has 10 days instead of 5 days to try and raise the rent, and they pay it, then the landlord is better off and the court system is better off. An eviction has been avoided, and the rent has been paid. Nowadays, with people who had a job two months ago and are now trying to live on unemployment compensation, for example, juggling those bills, that extra time can often make a crucial difference. Also, we have a few programs around the state that offer some rental assistance to tenants in this situation. Unfortunately, those are few and far between. Their processes take some time to go through, and frequently the programs do not have enough money. For example, calls to the Catholic Community Services in Reno indicate they get 300 applications a month, and they have only enough money to help about 10 to 12 families each month. The rest are out of luck.

Let me walk you through the bill. First, in section 1, we are expanding the nonpayment of rent notice from 5 to 10 days. In section 2, we are expanding from 3 to 5 days the notice for waste or nuisance. Section 3 talks about a breach of lease. Today, you get a 5-day notice. You have 3 days to cure that breach, and then you have to be out 2 days later. We would change that from 7 to 10, and I have provided in my testimony some comparison to other states in our region and around the country. Section 4 goes into the eviction process itself in the statute. It repeats the change from 5 to 10 days for nonpayment of rent, expands from the eviction within 24 hours to 5 days. Then there is another section, for which I have received a number of calls. It might inadvertently create a problem, if the Committee chooses to process this bill. It might need to be looked at and some issues resolved. There is an unusual problem sometimes in the courts where a 5-day notice is given. A tenant goes down the next day and files his answer. Then, he gets a hearing 1 day later. If he loses, he is out within 24 hours. He is out before the rent is actually due under the 5-day notice to pay or quit. The way this bill is drafted, it would propose to give the tenant up to the end of the 5-day period to actually pay the rent. I have received some concern from the constables' offices in southern Nevada, that this may create a problem with them if they have a notice in hand. How do they know the rent was paid? There are complications contacting the constable and stopping them in their tracks. Court clerks have expressed some

concern. How do they know this receipt for the rent that the tenant brings is a legitimate receipt? I think that does create some logistical complications. I have some ideas about how that might be solved, and would like an opportunity, if you go forward, to meet with the parties, and we can resolve that one.

On the next two sections of the bill, the bill drafter went a little further and gave the tenants a little more than we had originally contemplated. I am glad to have that, of course, but I would say upfront that it gave us more than what we contemplated. It amends *Nevada Revised Statutes* (NRS) 40.254, which deals with evictions that are from other than nonpayment of rent. Now the time frame is, at the end of their notice period, say a 30-day notice for a no-fault eviction. The landlord then gives a 5-day notice to tell the tenant to be out or to file an affidavit with the court. The bill extends that to 10 days. That is wonderful, but it is not what we had asked for originally. I am not pressing that at this time. You have already had your 30 days, you have already had your 5 days, and it is stretching it a little bit to ask for 10 days instead.

Also there is an amendment in the bill to NRS 40.255 that deals with evictions, post-foreclosure sale. That is the subject of another bill in the Commerce Committee, Assembly Bill 140 that expands the time frame for single-family dwellings to 60 days. This bill, as drafted, would change it from 3 to 5 days. Again, that would affect those who are in a sale situation or in a foreclosure sale situation. That would be nice, but it is not something that we specifically asked for. We have also been approached by Jim Endres, who has called our attention to the fact that the way the bill is drafted, it may affect commercial property as well as residential property. It was certainly not our intention to change the law as to commercial property. I believe he has offered an amendment that I believe the sponsor of the bill has seen. I do not want to speak for him, but I have no problem with it. Finally, we believe the time has come to level the playing field. This is a value difference between my friends, the realtors, and me. Normally, we can work things out over the years, but I think things are out of balance and in favor of the landlords in Nevada. The playing field needs to be leveled, as compared to these other states. They do not feel this is the case. I ask you again to rise above the fray and look at the fairness of the process to decide, and I ask you to pass A.B. 189 as may be amended in work session. Thank you, Mr. Vice Chair.

Vice Chair Segerblom:

Thank you, Mr. Sasser. Could you briefly walk through the typical time frame of eviction? Say I have rent due the first of the month, and I do not pay it. These dates get a little confusing. Please go through the different stages.

Jon Sasser:

I would be happy to, Mr. Vice Chair. If my rent is due on the first of the month, and I do not pay on the first, and it is now the second of the month, the landlord has the legal right to give me a 5-day notice to pay or quit my rent by noon of the fifth day after the receipt of that notice.

Vice Chair Segerblom:

Let me stop you there. The law seems to say 3-day notice. Is that a different 3 days?

Jon Sasser:

For nonpayment of rent, the notice is 5 days. There are other notices that we are affecting as well: notice for breach of lease, and notice for nuisance and waste. But for nonpayment of rent, we propose to change the current 5-day limit to 10 days. Again, going back to the current law, at noon on the fifth day, if the tenant has not filed an affidavit, paid the rent, or left, then the landlord can go to the court and apply for an order of removal. He can get it that day, and the tenant can be evicted within 24 hours. If the tenant files the affidavit by noon of the fifth day, the court schedules a hearing as soon as possible—at least in Reno, that is typically the very next day—and if the tenant loses, he can be evicted within 24 hours. I would note, these are judicial days and not calendar days. When you start adding in the weekends, it does lengthen it out a bit. That is the way it works for nonpayment of rent. For something that is not a rent case, it is a little different. You get a 30-day notice for no cause (we are not trying to change that), then at the end of that 30 days, if the tenant is still there, the landlord gives that 5-day notice that says be out within 5 days or file an affidavit with the court, or we can go to court and seek relief.

Vice Chair Segerblom:

So, right now, I do not pay the rent on the first of the month. The second, they give me a notice to quit. I have 5 days to go to court and file an affidavit. You are requesting that it be changed to 10 days?

Jon Sasser:

That is correct.

Vice Chair Segerblom:

Right now, if I file an affidavit and go to court, and I lose, I get evicted the next day. Are you extending that time?

Jon Sasser:

We are asking for that to be extend to 5 days.

Vice Chair Segerblom:

Okay. Any questions? Mr. Hambrick.

Assemblyman Hambrick:

Thank you, Mr. Vice Chair. Mr. Sasser, the bill, as it is presented right now, appears to throw out the baby with the bathwater. I think things have to be worked over. There are so many consequences that I do not think we really realize what is coming down the pipeline. Who is this bill really meant to protect? When we start talking about large conglomerates, we have one mind-set. But when we are talking about individuals, I think we have a different mind-set. We need to address those issues. I am cognizant of the possible unintended consequences. I hope we can address those issues.

Vice Chair Segerblom:

Are there any questions? I see none. Assemblyman Hogan, do you have anyone else you wish to speak on your behalf?

Assemblyman Hogan:

Yes, Mr. Vice Chair. In Las Vegas, we have Rhea Gerkten of Nevada Legal Services who is familiar with the process in that locale and could add a little something and also answer questions that might be on the minds of some of your members who are from Las Vegas.

Rhea Gerkten, Directing Attorney, Nevada Legal Services, Las Vegas, Nevada:

I am testifying in support of A.B. 189 ([Exhibit K](#)). We at Nevada Legal Services at the Las Vegas office represent clients who receive a federal subsidy or a county subsidy for their rent. We have a tenants' rights center that assists individuals who are in private landlord situations that do not receive a subsidy. We are primarily going to court only on tenants in subsidized apartments because the need is so great for eviction defense work. Because of that, we see a lot of disabled, elderly, and single mothers with small children as our clients. It is extremely difficult at times for our clients, especially in these difficult economic times, to come up with the money, for various reasons, within the 5-day time frame. Some of our disabled clients might, for one reason or another, not have received their social security benefits on the third of the month, as they had hoped, and are therefore unable to pay by the fifth day of the month. Some of our clients are individuals who are applying for unemployment benefits. The unemployment rate, as per my written testimony, is 9.1 percent; however, it may be higher than that now in Nevada. It takes at least three months to get a hearing if someone is initially denied unemployment benefits. The actual claims process can take some time, so even someone who applies for unemployment benefits is not necessarily going to be approved right away. Dealing with unemployment benefits and trying to find a job makes it

difficult to juggle bills. Some of our clients have to choose whether they are going to buy food for their children or pay rent, late fees, and utilities. Again, some of our clients are single mothers with small children who rely on child support payments. If, for some reason, they do not get their child support checks that month, they are going to have a difficult time coming up with the money to pay. This is not designed to get rid of late fees; these tenants are still required to pay late fees. Late fees are designed to protect the landlords against some financial loss. Certainly, this is not going to do away with any late fee provisions in a lease agreement.

I think Mr. Sasser mentioned social services and tenants applying for rental assistance. That also is not a quick process. Even if money is available, it can take time for tenants to receive financial assistance. The landlords first have to agree to accept the money from the social services agency, so it is not like the tenant can just walk in, say "I need help," get the money, and go pay the rent. There is a back and forth with landlords and with the tenants before they are even eligible to receive the financial assistance, and it does take quite a bit of time in some instances. We would also support the lengthening of time from 24 hours to 5 days after a family receives the order for summary eviction. It is very difficult for a disabled or elderly tenant to pick up and move within 24 hours after a judge tells him that he is going to be evicted. Giving someone a little additional time might mean he gets to remove his property out of the landlord's house or apartment prior to the constable coming to lock him out, which should save the landlords a lot of headaches in the long run. If former tenants remove all their property, landlords would not be required to store and keep the property for 30 days, as per Nevada law. With these changes, the Nevada eviction law would still be one of the fastest in the country. In most other states, it takes quite a bit longer to see an eviction through. We just ask that tenants be given a little bit of extra time in these difficult economic times in which to pay their rent or cure lease violations.

Vice Chair Segerblom:

Because of the tough economic environment, have you seen an increase in evictions in the past year or six months?

Rhea Gerkten:

What we have seen is a huge increase in the number of denials of unemployment benefits. Eviction cases have been increasing, especially with the foreclosure crisis. We are seeing a lot more tenants come in that are being evicted after foreclosure. So, yes, in the general sense, evictions have been increasing, but I cannot give you any numbers.

Assemblyman Ohrenschall:

I was looking at the flow chart, and looking at our neighboring states that have the more generous time periods. Do you think if we did process this bill and extend the time periods that either your office, or the other parts of the social services network, might be able to help evicted tenants avoid falling into homelessness? Do you think that is realistic?

Rhea Gerkten:

In a lot of cases, it would be realistic. Some of the things that we have actually seen are tenants who received the 5-day notice, cannot get the money together in 5 days, file the affidavit, and get a hearing set. In Las Vegas it used to be that you would get a hearing set within 3 days, now most of the courts have changed the process a little bit, so the quickest hearing might be 5 days. But for tenants, a lot of the time what they needed was either that extra time to come up with the money, to borrow the money, or to get a social services agency to approve their applications. There are a lot of times where we have seen tenants who come up with the money prior to their court hearings, which is within the 10-day time frame that is in the bill.

Assemblyman Hogan:

Assemblyman Hambrick raised a good question about who would benefit. I kept hearing that question as I was listening to the last witness. I think our witness has indicated that the most severe need may be those who are disabled or elderly. We would certainly concur that those are the people for whom we are trying to level the playing field. We think they would benefit.

Vice Chair Segerblom:

This would also be the single mothers with small children. Anyone else wish to come forward to testify?

James T. Endres, representing McDonald, Carano & Wilson; and the Southern Nevada Chapter of the National Association of Industrial and Office Properties, Reno, Nevada:

This bill came to our attention in the past week, and after studying it, we realize that it does apply to commercial real estate. As Mr. Hogan and Mr. Sasser pointed out this morning, it was not the intent of A.B. 189 to apply to commercial real estate. Real estate transactions in the commercial sector are very complex, and the leasing negotiations are very detailed. Some of the underpinnings that go through those lease agreements are grounded in part in the current statute.

Vice Chair Segerblom:

Have you offered an amendment?

James T. Endres:

Yes, we have ([Exhibit L](#)).

Vice Chair Segerblom:

Have you shown it to Mr. Hogan?

James T. Endres:

Yes, we reviewed it this morning with him and Mr. Sasser. We believe that the amendment we offer this morning may be a solution to distinguish between residential and commercial properties. We suggest that, in *Nevada Revised Statutes* (NRS) Chapter 118, the solution has already been found by referring to residential properties or residential dwellings as "dwellings" to distinguish them from commercial. Whether or not that is the most appropriate solution in this instance, we are not totally clear. But we think, without any question, there is a solution to distinguish between commercial and residential and allow the bill to move forward in its normal progress.

Paula Berkley, representing the Nevada Network Against Domestic Violence, Reno, Nevada:

I think we are a group of people to which Assemblyman Hambrick has been referring. As you know, domestic violence is about control. Quite often, a key sector of control is controlling the money. With so many women that are victims of domestic violence, their partners either take the money or they do not pay the child support and women find themselves unable to pay their rent. This is certainly not due to any problem on her part, but rather her money has been taken. She finds herself potentially evicted. Especially with kids; that is a tremendous pressure and a concern for her sense of security if she gets kicked out of her house. An additional five days, if she can get that money together, certainly protects her children as well as herself. We would urge support of this bill. Thank you.

Vice Chair Segerblom:

Are there resources that woman could go to in order to get the money to help pay the rent?

Paula Berkley:

There are limited resources. For example, the network has the Jan Evans Foundation. We collect money for just such emergencies, but, unfortunately, it is not anywhere near what it needs to be.

**Jan Gilbert, representing the Progressive Leadership Alliance of Nevada,
Carson City, Nevada:**

One of our main goals is to create more humane solutions to problems in Nevada. We support this bill. Years ago, I sat in the welfare office to interview women who were applying for food stamps and health care. A hundred percent of the people I interviewed said the unreliability of their child support was the reason they were there. It was an amazing experience to hear about the amount of money they were owed in unpaid child support. Most of these people want to stay in their homes and keep their children protected, and without child support, they struggle. I would urge you to think about Nevada's laws and try to make them more consistent with our surrounding states.

Assemblyman Cobb:

For purposes of disclosure, Ms. Gilbert is one of my constituents. Whatever response she gives, she is correct. We are talking about the humaneness of all the things we are dealing with here. It is a very laudable goal to help people and give them enough time to move, or to give them whatever they need to aid the individual. I think my colleague from the south referenced the other side of the coin. A lot of people that I know own homes and rent them out. They are not huge corporations, they are just individuals. In Nevada, we are seeing people who cannot afford these homes anymore with 9 percent unemployment. A lot of times they are renting out their homes and living in much smaller ones so that they can pay the mortgage on their homes. I worry about the unintended consequences here for that individual who cannot afford to pay a mortgage and another rent. Are we tying the hands of the individuals who are also hurting right now in this economy, and who would not be able to cover a renter for an extra 10 days?

Jan Gilbert:

That is a very good question. I know we are very sensitive, because you are right. A lot of people I know have rentals. I think the example that Mr. Sasser gave of all the neighboring states contrasts the severity of our laws. It seems unrealistic to me. According to Ms. Gerkten's comments, she actually had tenants get the money before the end of the 5-day period. I know my husband gets his social security check deposited into our account, and it is quite frequently late. I do not know if that is just the way our situation works, but you have to know that these people are living very close. They want to pay the rent; they just need a little extra time. This is not an extreme bill. As Assemblyman Hogan said, we would still have the most severe laws in the country. I am sympathetic to both sides, but I really feel that we want these people to pay the rent. Let us give them that extra time to do so.

Assemblyman Cobb:

I think there is a lot of common ground. Many people are agreeing on all sides of this issue. The people I know who rent out their homes do not, on day 5 or whenever they are allowed to, walk into the court and start paying fees to have people evicted. They want to give them that extra time, and oftentimes just do give them extra time. There might be a slight late fee or something to encourage prompt payment. Nevertheless, I hope we have a good examination of where we are in this economy with the people who are going to be hurt on both sides, while also realizing that common sense oftentimes prevails and allows these people that extra time anyway. Thank you.

David L. Howard, representing the National Association of Industrial and Office Properties, Northern Nevada Chapter, Reno, Nevada:

We are here to go on record that we are in support of the amendment that would make the distinction between commercial property and residential property. Thank you.

Ernie Nielsen, representing Washoe County Senior Law Project, Reno, Nevada:

We support this bill. We assist and represent hundreds of seniors in eviction cases each year. A great percentage of our clients are disabled and are extremely frail. Many of these evictions are very avoidable. As Ms. Gerken points out, some of the reasons for having the nonpayment is very unique to that month; otherwise, the rent is very affordable to that person and sustainable. There are remedies. There are emergency funds, such as the 15 percent from the Low-Income Housing Trust Fund that is available for emergency housing. However, you must have sustainability with respect to your ability to pay your rent thereafter. There are also representative payee programs for seniors who are beginning to lose their ability to ably manage their funds. However, we need time to be able to engage these systems to be able to save the tenancy. We think that there is a win-win approach here. Both the tenant and the landlord win when we can get involved and have time to work these things out. The cost associated with getting people out of homelessness is far greater than the cost of keeping them from becoming homeless.

Assemblyman Hambrick:

Mr. Nielsen, I appreciate when you say you need the time to be effective. You are representing many seniors and disabled people. This might be a rhetorical question, but how many of your clients find out on the first or second of the month that they cannot pay that month's rent. Can they not backtrack to the middle of the previous month and foresee something coming down the pipeline and say, "Uh oh, I have got a problem. I better let somebody know about this situation?" Can they not do this, instead of waiting until the last minute, which puts the landlord into a difficult situation? As my colleague from the north

states, we do have individuals owning these homes who also have to meet their obligations. Where is the middle?

Chairman Anderson:

Mr. Nielsen, what other material would you like add to the discussion?

Ernie Nielsen:

Our clients are generally less able as they grow older. We find that many of our clients need our assistance to work themselves out of the issue. Certainly, even I would prefer to stave off a problem when we see that it is going to occur. But many of our clients do not have that capability, and they may not feel that they have any options. They try to do the best they can.

Shawn Griffin, Director, Community Chest, Virginia City, Nevada:

I am in favor of A.B. 189. I have been working in a nonprofit organization called Community Chest in Virginia City for the past 20 years. I see these individuals after they are evicted. We do not have this discussion; this discussion is over. The discussion we have is, "where am I going to stay tonight," "how am I going to eat," "how am I going to feed my kids," and "how am I going to get my job?" It is absent housing and it is just not the right thing to do. We do not have the luxury of putting more people out on the street. All of you know this. Every single social system we have is overrun right now; every single one. There is not another place to turn to. I will tell you where they go. They go back to the endlessness of living without shelter. Every person working on this problem would tell you that it is going to take much more time, energy, and taxpayer resources to find them shelter than it takes to evict them. If this were health care, they would say "do not send them to the emergency room to get fixed." They would say, "treat them before the problem occurs." We can do better. We need to do better. Let us give them a few more days and enable them to find the resources they need to stay in their shelter. That is all I have.

Chairman Anderson:

Mr. Griffin, thank you for your testimony and your service to the folks up in Virginia City through Community Chest. Let us now hear from those who are opposed to A.B. 189.

Charles "Tony" Chinnici, representing Corazon Real Estate, Reno, Nevada:

I am opposed to A.B. 189 ([Exhibit M](#)). Overall, the effect of this legislation would be minimal to negative for good tenants, fantastic for bad tenants, and bad for landlords. Going back to the analogy of throwing out the baby with the bathwater, this bill would create a huge benefit for people who are abusing the eviction process. When seniors particularly have a problem making their rent, I

always hear from them long before there is an issue. For instance, in the previous month, I would get a phone call from them. Because I represent landlords who recognize that it costs a great deal more to make a property ready for the next tenant, they are supportive of my efforts to negotiate the best possible outcome for both the tenant and the landlord. That means working out some sort of payment arrangement. Any of the community groups who spoke today, if they are working with a tenant who is having financial difficulty, they contact me and I work with them. In the owner's best interest, if there is an opportunity to receive funds from someone who is helping the tenant, that is just as good for the landlord. Some practical aspects of extending the periods involved in eviction would be that it shifts the risk of renting to a marginal tenant to the landlord. The landlord is going to have to compensate for that. Some ways in which that would happen are in a rental agreement where you would typically see a grace period 5 days like our rental agreement has in it. A tenant has 5 days already written into the agreement where no notice is filed, in which they could come in and pay the rent. That way they are covered for things like weekends when they get paid. They can also call me and say, "I am going to be in on the seventh of the month to pay my rent." The first thing that is going to happen is we are going to have to get rid of the grace period of our evictions. Then, we are going to have to file eviction notice for nonpayment on the second day of the month.

Over ten years of managing properties, I have rented to thousands and thousands of tenants. A lot of those tenants were people who, on paper and on their applications, had some things on their credit report that would make me concerned. But, looking at their application as a whole, they were worth taking a risk on to rent them a property. Now, if we were to pass this bill, the majority of those people I would have been willing to take a risk with in the past are people I would no longer be able to afford to take that risk with. Again, we are hurting a lot of good tenants who would be worth renting to but who maybe had some hardships in the past and they do not look so great when they apply to rent your property.

Finally, another way in which we would have to adjust for the risk involved in the extended eviction process is that we would have to increase the security deposit that we charge tenants up front. Or, we would ask for prepaid rent to cover this period. In practical terms, it is about once in a blue moon that it is an actual 5-day process for nonpayment, or for breach of lease, or an actual 3-day period for a nuisance eviction, due to the court restrictions based on whether a tenant received a notice in person or had it mailed to them, due to holidays, and due to weekends. What effectively winds up happening is that it is about a three-week to one-month process already to evict a tenant. So, it does not really make sense to create this extension when, in Nevada, regardless

of what is happening in regional states, this bill would result in more than one month to remove tenants from property. That is why this law is bad for landlords.

The corporate landlords that were mentioned earlier make business decisions, so typically they are going to work with tenants in the first place. But, what they are going to start doing as a matter of procedure is that they are going to be filing eviction notices on everybody. So, you are going to see the number of notices processed start to go way up. For practical reasons, I ask that you vote against A.B. 189. This bill would only serve the interests of bad tenants, people who do not do what they promise to do, and those who exploit the system that is in place.

Jennifer Chandler, Co-Chair, Northern Nevada Apartment Association, Reno, Nevada:

I am speaking in opposition to A.B. 189. [Read from prepared text ([Exhibit N](#)).]

A lot of properties we are seeing with Section 8, Section 42, and the Department of Housing and Urban Development (HUD) housing, are those where people are paying portions of people's rent and trying to assist in that. A lot of those programs are tax credit properties where, if they do not maintain a certain occupancy rate, they are in jeopardy of losing their tax credit. We are not getting eviction-happy. The only ones who are not being worked with are the ones who seem to be predominately doing the same repetitive thing over and over again. [Continued to read from prepared text (Exhibit N).]

All in all, we have the laws we have because we are Nevada. We are not California, Massachusetts, Oregon, Vermont, Washington, or Arizona; we are Nevada. We are proud of our state and our abilities. That is what makes Nevada worth investing in. To model ourselves after other states makes us no more enticing for investors than any other state to invest in. How the law is now is an economic benefit to investors. If you take that away, investors will just go somewhere else. Thank you.

Chairman Anderson:

We have two handouts from you that will be entered into the record ([Exhibit N](#)) ([Exhibit O](#)). We appreciate you putting forth the information. Are there any questions for Ms. Chandler? Mr. Manendo.

Assemblyman Manendo:

Thank you, Mr. Chairman. What is the average rent in northern Nevada?

Jennifer Chandler:

The average rent as far as the cost?

Assemblyman Manendo:

Rent for your units or apartments. You are with the Northern Nevada Apartment Association. Am I wrong? What are the rents?

Jennifer Chandler:

Right. I am on the legislative committee. They range anywhere from about \$675 to \$1,200, depending on the area you are in.

Assemblyman Manendo:

You had mentioned something about a tax credit. Can you explain that to me? What is the tax credit based on occupancy that you get?

Jennifer Chandler:

There are programs that investors can partake in, with regards to their purchasing of a property. If they were to make their property—and each program is different, that is why you have Section 8 and Section 42, they all have different levels of qualifications—partake in those programs for the complex, it renders them a tax credit. To be able to partake in the tax credit, they have to maintain a certain percentage of occupancy. They have to be above 82 percent, 88 percent, or 89 percent, depending upon how many units there are in the complex or on the property. If they go below that, they do not get the tax credit because they are not conforming to the guidelines of the program, which is to maintain a certain amount of occupancy. If they go below that, they do not get the tax credit, there is no benefit for them to have that complex as a Section 8 or Section 42 complex.

Assemblyman Manendo:

So, keeping a high occupancy and keeping people in their homes is a benefit to you.

Jennifer Chandler:

It is key.

Assemblyman Manendo:

I just wanted to get that into the record. Thank you, Mr. Chairman.

Assemblyman Hambrick:

Ms. Chandler, from your expertise in the area, would the effect of this bill, one way or the other, directly impact the number of investors that would step up to the plate to offer their properties for Section 8?

Jennifer Chandler:

I think, right now, where our law states having the time frame that we have, we are in the middle of the road. To increase the time frame is going to be consequential. To lower the time frame would not make a difference. We have neighboring states: Wyoming, Arizona, and other states that have a 3-day, pay or quit notices. We have 5-day pay or quit notices. California and other states have even higher time frames. As we sit right now, we are in the middle of the road. I like to think of us as being pretty neutral. We are not pro-tenant, and we are not pro-landlord. The landlords are not beyond working with people, especially in these hard economic times. It is just as hard on the investors. They are having a hard time making their payments and mortgages when people cannot afford to pay their rent. It is hard for everybody. So I think, for the investor side, if we were to go with A.B. 189, they would be less likely to invest in our areas of Nevada where we are steadily growing exponentially. It is going to be detrimental. It is not going to be worth it to them to have somebody in their units for a month without paying rent when they cannot turn around and receive the same time extension to pay their debts and bills.

Rhonda L. Cain, Private Citizen, Reno, Nevada:

I am speaking in opposition to A.B. 189. I am a property owner and investor in Nevada. I am also on the Northern Nevada Apartment Association board. I have been an investor in Nevada for about 20 years. I came here from California; I was an investor in California as a property owner. It is beyond me why we would want to mirror California at this point. Last I looked, they are not doing so well. The laws were so prohibitive for property owners there that I got out. I can speak firsthand to investors wanting to come to Nevada because I have several investors right now from California who are looking to invest and have done so in the last six months. When this bill came on the radar screen, the investors backed off to wait to see what happened. They do not want to invest here if they could have the same laws and invest in California.

I am a property owner and I have been for 15 years. I work with tenants. I do not file a 5-day notice on day 2. We do not do that; we do not want vacancies. With this new legislation, I will change the way I do business. I will probably eliminate my 5-day grace period, and I will start filing those notices on day 2. So, it is just prohibitive. We have mortgages to pay and vendors to pay; we have taxes, sewer bills, water bills, and with all of that, we still have to pay them. The reality is right now, even with the 5-day notice, it takes about

30 days to get someone out. When we extend that to 10 days, it is going to extend that far beyond another 5 days. So the reality is we do not want vacancies, and we work with tenants at this point. As was testified to before, it is the bad tenants that this law will protect, because we try to protect the good tenants at this point. We want good tenants. My investors from California want to come to Nevada, and they want me to manage and oversee these properties. They do not want me evicting good tenants. They want me to work with them. But, when they see the laws going down the slippery slope as California is going, where they are not investing, they are not going to bring their investment dollars here and provide rental housing in Nevada.

Assemblyman Manendo:

Your investors have invested in northern Nevada before?

Rhonda L. Cain:

They have invested extensively in the last six months. We have made several purchases.

Assemblyman Manendo:

Are they interested in converting the apartments into condominiums? That happened a lot in southern Nevada, where we had a lot of apartment units reconfigured and made into condominiums.

Rhonda L. Cain:

That was happening at the beginning of 2007. We invested in many properties with the intent of conversion. Now, what is happening is what is called a reversion. They are going back from the condominiums to rentals. The mindset of most investors right now is to find a safe place to park their money. They are not comfortable with the stock market, and they are not comfortable with 1 percent interest in the banks. So, if they do have a little bit of funds, they want to invest it in a place where it can sit for two to three years.

Assemblyman Manendo:

Thank you, I appreciate that. I am sure that they will invest, build some apartments, or invest in some apartments, flip those over and make some more money later on when the economy changes. Maybe that is why you see many places where people are struggling to find a place to live, because a lot of these units have gone over into single family dwellings. I am sorry your investors were not making as much as they thought they were going to at the time. Thank you, Mr. Chairman.

Assemblyman Cobb:

You made an interesting point about automatically filing for evictions if the law is changed. My question has to do with the costs involved on the rental property side. I know, in Carson City, it is \$69 to file for eviction, and then another \$69 to lock out a tenant. I am assuming that, if we are changing the law and you are going to automatically file for eviction on day 2, that action would raise your costs: Rental rates would go up for people throughout Nevada; therefore, it is going to be more costly to have a place to live. Finally, there is going to be less opportunity for people who do not make a lot of money to find apartment spaces to live in. Is this correct?

Rhonda L. Cain:

Correct. The costs will go up considerably when we have to change the way we do business. I thought about how I will run my business should this legislation pass, because it is an enormous impact. It sounds like 5 days, but it is much more than that. I will probably raise my security deposit on those tenants that are a little iffy on their application because I am taking a risk. It is more money out-of-pocket for them. It does not help anyone in the long run.

Kellie Fox, Crime Prevention Officer, Community Affairs, Reno Police Department, Reno, Nevada:

Good morning, Mr. Chairman and members of the Committee. [Read prepared testimony ([Exhibit P](#)).]

Assemblyman Gustavson:

You brought up the point of illegal activities. I know we are having a lot of problems with homes being foreclosed on and people removing appliances and fixtures in the home. Are they having the same problem with rental properties too? If time would be extended, would they have more time to remove these items from the homes?

Kellie Fox:

I am familiar with a specific house in my cul-de-sac that was foreclosed on. The people living there moved out and took everything, including the kitchen sink. All my neighbors came to me because of what I do, and we referred that to code enforcement. We, as a police department, did supervise it as far as making sure there were no kid parties, it did not get broken into, or other criminal activity until it was repaired. We had a neighborhood watch.

As far as rentals and apartments, I have not seen that happen. I do not think that would come to the police department per se; however, I do not know.

Chairman Anderson:

Let us turn our attention to the people in the south. Is there anyone who wishes to speak in opposition to A.B. 189?

Barbara Holland, Private Citizen, Las Vegas, Nevada:

I would like to comment on some of the other comments that have been made. If anyone thinks that a landlord, owner, or manager wants to put people out on the streets, that is absolutely incorrect. Our job is to have apartments rented; occupied with paying renters. There are very few residents who are evicted because they are waiting for social security checks. I do not even know anybody in southern Nevada that would do that. Most of the management companies in southern Nevada all have grace periods of anywhere from three to five days. If a person has not paid his rent on the first, he would not even see a 5-day notice until either the fourth or sixth of the month. Also, I want to talk about the timeline. Here in southern Nevada, the 5-day period is not a 5-day period. You cannot serve a 24-hour notice until after eight days. We already have an extended time period that has been done here locally. For all of southern Nevada, if you serve a 5-day notice, you will actually wait eight days. It does not count the day that it was served, weekends, or holidays. In addition, we cannot bring any more than five evictions per property per day because the courts cannot process the notices. Right now, if this law were to pass, it would complicate the situation even more. A statistic was made by another person showing there were about 23,000 evictions a year. Do you know what that means in southern Nevada? That means less than one person evicted per year per apartment property.

One of the things that has not been stated is that we go out of our way to talk to the residents about what is happening. Most of us will knock on doors and say, "Please, talk to us. Give us an idea. Are you going to pay rent or not pay rent? Should we put you in a promissory note? Are you changing jobs and waiting for another two-week period before you get paid?" These are things that are not being mentioned by the people that spoke in favor of the bill. We will even talk to people who have lost their roommates and offer them cheaper accommodations.

As far as damage to property, there is a tremendous relationship between the people that do not talk to us and those who we are forced to evict, that abuse the system and damage the property. I can show you multiple units in southern Nevada over the years that have that relationship. Also, I want to distinguish on foreclosures. If a foreclosure was happening in a single family home, and there was a tenant who was elderly or handicapped, there is already a state law that states you can go to the courts and ask for an additional 30 or 60 days.

Those who have started the legal aid services can certainly help tenants who are elderly and handicapped, and who are affected by bank foreclosures.

As far as giving people an extra five days for nonpayment of rent, I doubt whether they are going to be able to come up with any money. There are very few government programs left right now for people to have additional money. The other thing that people have misstated is that a lot of times tenants will say, "my rent money is sitting at the craps table at one of the local casinos." That makes us different from other states in the United States. I am from Connecticut and Massachusetts, where the eviction process was difficult. Obviously, we do not have a 24-hour town that offers a lot of vices. I tell my friends, if you move to this state, do not come here if you have a vice, because it will kill you.

Our industry creates jobs. We spent over \$16 million dollars in southern Nevada in goods and services last year on all the properties that we managed. When we have vacancies caused by evictions because people are not paying their rent, two things happen. Number one, we stop doing maintenance, or the maintenance gets slower, because we have to pay our mortgages. Also, not everybody that owns an apartment complex is a corporation. We have many retired people that own over a hundred units as well as many that own 50 units or less. These units are their retirements. Obviously, between everything else that is happening in our country right now, they are not seeing very much money.

It was mentioned before about the single-family homes. Many homeowners, in trying to prevent losing their single-family homes, have moved into apartment communities and then have asked property managers to help lease those homes. They are willing to subsidize, so if I can find a tenant to pay \$1,200 a month towards the mortgage and the homeowner that does not want to lose his home can contribute \$300, which enables the homeowner to keep that home. This bill has a horrible effect for the individual homeowner with a single-family home.

Chairman Anderson:

Thank you. I see no questions for you, Ms. Holland.

Bret Holmes, President, Southern Nevada Multi-Housing Association, Las Vegas, Nevada:

I want to reiterate a few of the points and point out that the Southern Nevada Multi-Housing Association represents hundreds of property managers and owners in the Las Vegas area that are all opposed to A.B. 189.

The good landlords do work with the tenants. The way that this was presented in the beginning was like we were following the letter of the law. Generally, landlords do not do that, especially the good ones. People will not get their notice to pay rent or quit until the fourth, fifth or sixth day. Then it turns into a lengthy process. When you talk about the current process being approximately three to four weeks, extending that out to six to eight weeks and having a landlord or owner go through that period of time with no income on that unit really hurts a number of people. The decrease in income would have to be made up by an increase in rent, security deposits, and tightening up the credit. The other side that this affects is the employment side and the problem of employing a full staff to keep up the property and maintain tenant relations. There are an extensive number of reasons why this bill should be tabled and put down, some of which you have heard today.

Chairman Anderson:

Mr. Holmes, you also sent up by fax your position statement. I will make sure it is entered into the record ([Exhibit Q](#)).

Zelda Ellis, Director of Operations, City of Las Vegas Housing Authority, Las Vegas, Nevada:

We would like to go on record opposing section 2 of A.B. 189 in regard to the nuisance extension to serve a notice. The housing authority rarely serves 3-day notices, but in the event that we do, it is because there is a serious situation on the property. Because we are the owners of low-income public housing property, numerous times we have illegal activity occurring on our property. We are working with our local police department. When we have a situation where there is gun violence, illegal drugs being sold, search warrants being served, the housing authority absolutely needs the ability to get those residents out of our property as soon as possible in order to maintain the quality of life for the law-abiding citizens that are living in our units. When you extend the time frame from three to five days, including the time these residents have to go through due process within the Housing Authority with the grievance procedure, it extends that time for them to continue to damage the property that they are living in. By the time we eventually evict them, many lives have been affected by the continued illegal activity. To increase the time frame from three to five days would be a disservice to the population that we serve, especially those who are law-abiding citizens.

Jenny Reese, representing the Nevada Association of Realtors, Reno, Nevada:
The realtors are in opposition to A.B. 189.

Chairman Anderson:

Mr. Kitchen, do you have written documentation that you want to submit to the Committee? We will have that submitted for the record ([Exhibit R](#)). Is there anyone else who feels compelled to speak, whose position has not been fairly represented, in opposition to A.B. 189?

Roberta A. Ross, Private Citizen, Reno, Nevada:

I am here against A.B. 189. I own a 162-unit weekly/monthly apartment building in downtown Reno. I am the President of the Motel Association. We have an unintended consequence here with the majority of the people who are in extreme poverty, living in motels. In 2001, I came in front of this Committee to try to pass legislation that people who lived in weekly motels did not have to pay room tax. At that time, I think it was around an 11 percent tax. Now it is up to 13.5 percent tax. That started in 2001. Since that time, I was very politely told here that this was a local issue, not a state issue. I went back locally. I became President of the Motel Association, and then I was on the board of the Reno-Sparks Convention and Visitors Authority (RSCVA) and worked diligently to get this passed. Those people who live in weekly motels do not have to pay the room tax if they can pay 10 days all at one time. The other thing that is in place and stays there is that if a person pays weekly, they will be charged room tax until the 28th day. So, in Washoe County, that will be 12.5 and 13.5 percent. If this bill passes, I would say that it will probably happen that those people who live in weekly motels are going to be hit hard. The landlords of those motels will no longer let them go in ten days because you can usually weed out your bad tenants in 28 days. They will be charged 13.5 percent room tax. If they leave in under 28 days, we as the landlords have to pay the 13.5 percent tax. So, now the people in weekly motels will probably be charged that 13.5 percent for the landlords to protect themselves.

The other issue is that, in the 28-day stay, those people who sign a contract stating that they will live there for 28 days do not have to pay the room tax. If they get knocked out prior to that, they will have to pay the room tax. My point is that the people who are barely scraping by and living at weekly rentals will be affected by this because landlords will not take them in for 30 days, keep them at the weekly rental rates, and absorb the 13.5 percent tax. They will probably begin raising their deposits up from the \$35 or \$50 deposits to \$100 or more. I would ask that you do not pass A.B. 189.

Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association, Las Vegas, Nevada:

Normally, the bankers would not care about a bill like this; however, due to foreclosures and the progress of Assembly Bill 140, which is over in the Commerce and Labor Committee, we may well become landlords for a period of

60 days following a foreclosure sale. Mr. Sasser made reference to section 6 of A.B. 189, which is the notice to quit after a foreclosure sale. He said that he did not really care about that section, as it was a result of the enthusiasm on the part of the Legislative Counsel Bureau. I would suggest that section 6 needs to fall off of the bill.

Chairman Anderson:

So, the bankers would like us to remove section 6 as being unnecessary. Have you prepared an amendment?

Bill Uffelman:

I could prepare one very quickly, Mr. Anderson ([Exhibit S](#)).

Chairman Anderson:

Did you raise these concerns with the primary sponsor of the bill?

Bill Uffelman:

I have spoken with Mr. Sasser, who was acting as a representative of the sponsor of A.B. 189.

Chairman Anderson:

Thank you, sir. Does anybody have any amendments that need to be placed into the record? Ms. Rosalie M. Escobedo has submitted testimony, and that will be entered into the record ([Exhibit T](#)). We will close the hearing on A.B. 189.

[A three-minute recess was called.]

I will open the hearing on Assembly Bill 204.

Assembly Bill 204: Revises provisions relating to the priority of certain liens against units in common-interest communities. (BDR 10-920)

Assemblywoman Ellen Spiegel, Clark County Assembly District 21:

Thank you for having me and for hearing this bill. As a disclosure, I serve on the Board of the Green Valley Ranch Community Association. This bill will not affect me or my association any more than it would any other association in this state. My participation on the board gave me firsthand insight into this issue. That is what led me to introduce this legislation. I am here today to present A.B. 204, which can help stabilize Nevada's real estate market, preserve communities, and help protect our largest assets: our homes. Whether you live in a common-interest community or not, whether you like common-interest communities or hate them, whether you live in an urban area or a rural area, the

outcome of this bill will have a direct impact on you and your constituents. Just as a summary, A.B. 204 extends the existing superpriority from six months to two years. There are no fiscal notes on this. In a nutshell, this bill makes it possible for common-interest communities to collect dues that are in arrears for up to two years at the time of foreclosure. This is necessary now because foreclosures are now taking up to two years. At the time the original law was written, they were taking about six months. So, as the time frames moved on, the need has moved up.

Since everyone who buys into a common-interest community clearly understands that there are dues, community budgets have historically been based upon the assumption that nearly all of the regular assessments will be collected. Communities are now facing severe hardships, and many are unable to meet their contractual obligations because of all of the dues that are in arrears. Some other communities are reducing services, and then simultaneously increasing their financial liabilities. They and their homeowners need our help.

I recognize that there are some concerns with this bill, and you will hear about those later this morning directly from those with concerns. I have been having discussions with several of the concerned parties, and I believe that we will be able to work something out to address many of their concerns. In the meantime, I would like to make sure that you have a clear understanding of this bill and what we are trying to achieve.

The objectives are, first and foremost, to help homeowners, banks, and investors maintain their property values; help common-interest communities mitigate the adverse effects of the mortgage/foreclosure crisis; help homeowners avoid special assessments resulting from revenue shortfalls due to fellow community members who did not pay required fees; and, prevent cost-shifting from common-interest communities to local governments.

This bill is vital because our constituents are hurting. Our current economic conditions are bleak, and we must take action to address our state's critical needs. I do not need to tell you that things are not good, but I will. If you look, I have provided you with a map that shows the State of Nevada and, by county, how foreclosures are going ([Exhibit U](#)). Clark, Washoe, and Nye Counties are extremely hard hit, with an average of 1 in every 63 housing units in foreclosure. People whose homes are being foreclosed on are not paying their association dues, and all of the rest of the neighbors are facing the effects of that. Clark County is being hit the hardest, and we will look at what is going on in Clark County in a little bit more depth just as an example.

In Clark County, between the second half of 2007 and the second half of 2008, property values declined in all zip codes, except for one really tiny one, which increased by 3 percent. Overall, everywhere else in Clark County, property values declined significantly. The smallest decline was 13 percent, and that was in my zip code. The largest decline was 64 percent. Could you imagine losing 64 percent of the equity of your home in one year? Property values have plummeted, and this sinkhole that we are getting into is being affected because there is increased inventory of housing stock on the market that is due to foreclosures, abandoned homes, and the economic recession. People cannot afford their homes; they are leaving; they are not maintaining them. It is flooding the market, and that is depressing prices. You sometimes have consumers who want to buy homes, but they cannot get mortgages. That keeps homes on the market. There is increased neighborhood blight and there is a decreased ability for communities to provide obligated services. For example, if you have a gated community that has a swimming pool in it (or a nongated community, for that matter), and your association cannot afford to maintain the pool, and someone is coming in and looking at a property in that community, they will say, "Let me get this straight: you want me to buy into this community because it has a pool, except the pool is closed because you cannot afford to maintain the pool; sorry, I am not buying here." That just keeps things on the market and keeps the prices going down, because they are not providing the services; therefore, how do you sell something when you are not delivering?

Unfortunately, we are hearing in the news that help is not on the way for most Nevadans. We have the highest percentage of underwater mortgage holders in the nation. Twenty-eight percent of all Nevadans owe more than 125 percent of their home's value. Nearly 60 percent of the homeowners in the Las Vegas Valley have negative equity in their homes. This is really scary. Unfortunately, President Barack Obama's Homeowner Affordability and Stability Plan restricts financing aid to borrowers whose first mortgage does not exceed 105 percent of the current market values of their homes. There are also provisions that they be covered by Fannie Mae or Freddie Mac. Twenty-eight percent owe more than 125 percent, and cannot get help from the federal government. And for 60 percent of homeowners, the help is just not there. So, we need to be doing something.

What does this mean to the rest of the people who are struggling to hold onto their homes in common-interest communities? Their quality of life is being decreased because there are fewer services provided by the associations. There is increased vandalism and other crime. As I mentioned earlier, there is a potential for increased regular and special assessments to make up for revenue

shortfalls, and then there is the association liability exposure. Let me explain that.

If you have a community that has a pool, and you were selling it as a community with a pool, and all of a sudden you cannot provide the pool, the people who are living there and paying their dues have a legal expectation that they are living in a pool community, and they can sue their community association because the association is not providing the services that the homeowners bought into. That could then cause the communities to further destabilize as they have financial exposure with the possibility of lawsuits because they are not providing services since the dues are not paid.

That all leads to increased instability for communities and further declines in property values. I went to see for myself. What does this really mean? What are we talking about? Through a friend in my association who generously helped send out some surveys, we received responses to this survey from 75 common-interest community managers. Fifty-five of them were in Clark County, 20 of them were in Washoe County. Their answers represented over 77,000 doors in Nevada. That is over 77,000 households, and they all told me the same thing. First of all, not one person was opposed to the bill. They gave me some comments that were very enlightening. They are all having problems collecting money; they all do not want to raise their dues; they do not want to have special assessments; they are cutting back; they are scared.

I want to share some comments with you and enter them into the record. Here is the first one: "Dollars not collected directly impact future assessment rates to compensate for the loss of projected income. Also, there is less operating cash to fund reserves or maintain the common area." That represented 2,001 homes in Las Vegas. Another one: "Our cash reserves are severely underfunded and we have serious landscaping needs." This is 129 homes in Reno that are affected. This one just really scared me: "Increase in bad debt expense over \$100,000 per year has frustrated the majority of the owners who are now having to pay for those who are not paying, including the lenders who have foreclosed." That is from the Red Rock Country Club HOA, over 1,100 homes in Las Vegas. This last one: "The impact is that the HOA is cutting all services that are not mandated: water, trash, and other utilities. The impact is that drug dealers are moving into the complex, and homicides are on the rise, and the place looks horrible. Special assessments will not work. Those that are paying will stop paying if they are increased. The current owners are so angry that they are footing the bill for the deadbeat investors that they no longer have any pride or care for their units. I support this bill 100 percent. The assessments are an obligation and should not be reduced." That is from someone who manages several properties in Las Vegas.

I mentioned an additional impact, and that I really believe that this bill will affect everybody in the state, even those who do not live in common-interest communities. Let me explain that. There could be cost shifting to local government. I gave you a couple of examples in the handout: graffiti removal, code enforcement, inspections, use of public pools and parks, and security patrols. Let me use graffiti as an example.

My HOA contracts with a firm to come out and take care of our graffiti problem. We do this, and we pay for this. Clark County also has a graffiti service for homeowners in Clark County. There are about 4,000 homes in our community, and our homeowners are told, "If you see graffiti, here is the number you call. It is the management company. They send out American Graffiti, who is the provider we use, and they have the graffiti cleaned up." If an association like mine all of a sudden says, Well, you know, we do not have the money to pay our bills and do other things. We could cut out the graffiti company and we could just say to our homeowners, 'You know what, the number has changed.' So instead of calling the management company, you now call Clark County. There is a cost shift. There is a limited number of resources available in Clark County, and that will have to be spread even thinner.

It goes on into other things too. You have the pools that are closed. The people are now going to send their kids to the public pools, again, taking up more of the county resources and spreading it out thinner and thinner. There are community associations that are now, because of their cash flow problems, having to pay their vendors late. Many of their vendors are small local businesses. They are being severely impacted because the reduced cash flow is having a ripple effect on their ability to employ people.

Chairman Anderson:

Let us go back to the graffiti removal question. I understand the use of pools and parks. Are you under the impression that the HOA and common-interest community would allow the city to go and do that?

Assemblywoman Spiegel:

It is my opinion, and from what I have heard from property managers, especially that big long quote that I read, that people are cutting back on everything and anything that they deem as nonessential.

Chairman Anderson:

That is not the question. The question deals specifically with graffiti removal and security. Patrols by the police officers are usually not acceptable in gated communities and other common-interest communities. This would be a rather

dramatic change, and it would probably change the city's view of their relationship with, or their tolerance of, some common-interest communities.

Assemblywoman Spiegel:

Mr. Chairman, one thing I can tell you is that my community, Green Valley Ranch, last year had our own private security company who would patrol our several miles of walking trails and paths. We have since externalized our costs and now the city of Henderson is patrolling those at night instead of our private service.

Chairman Anderson:

So, for your common-interest community, you have moved the burden over to the taxpayers and the city as a whole.

Assemblywoman Spiegel:

Yes, but our homeowners are also taxpayers of the city.

Chairman Anderson:

Of course, they choose to live in such a gated complex.

Assemblywoman Spiegel:

It is not gated. Parts of the community are, and some parts are not. Overall, the master association is not a gated area.

Chairman Anderson:

You allow the public to walk on those same paths?

Assemblywoman Spiegel:

Yes. They are open to all city residents, and non-city residents.

Chairman Anderson:

Okay. Are there any questions for Ms. Spiegel on the bill?

Assemblyman Segerblom:

Is it your experience that the lender will pay the association fees when the property is in default, or will they let it go to lien and then the association fees are paid when the property is sold?

Assemblywoman Spiegel:

My experience has been that, in many instances the fees are just not being paid. The lenders are not paying the fees. There may be some exceptions, but as a general rule they are not.

Alan Crandall, Senior Vice President, Community Association Bank, Bothell, Washington:

We have approximately 25,000 communities here in the State of Nevada. I am honored to speak today. I am a resident of Washington state. The area I want to specialize in my discussion is with loans for capital repair. We are the nation's leading provider of financing of community associations to make capital repairs such as roofs, decks, siding, retaining walls, and large items that the communities, for health and safety issues, have to maintain. Today, in Nevada, we are seeing associations with 25 to 35 percent delinquency rate. We are unable to make loans for these communities because we tie these loans to the cash flow of the association. If there is no cash flow coming in to support their operations, we cannot give them a loan. We do loans anywhere from \$50,000, and we just approved one today for \$17 million, so there are some communities out there with some severe problems that need assistance.

Now you may ask, why do we care about the loan? The loan is important in that it empowers the board to offer an option to the homeowners. Some of you may live in a community, and some of you may have children or parents who live in one. Because of a financial requirement for maintaining the property—the roof, the decks that may be collapsing, or a retaining wall that may be failing—they have to special assess because they do not have the money in their reserves. It was unforeseen, or they have not had the time to accumulate the money for whatever reason. These loans allow the association to provide the option to the homeowner to pay over time because, in effect, the board borrows the money from the bank, which is typically set up as a line of credit; they borrow the portion that they need for those members who do not have the ability to pay lump sum. So, whether that is \$5,000, \$10,000, \$40,000, or \$50,000, or my personal record which is \$90,000 per unit, due in 60 days, it is a major financial hardship on homeowners. The typical association, based upon my experience of 18 years in this industry, is comprised of one-third of first time home buyers who may have had to borrow money from mom and dad to make the down payment, and who have small children for whom they are paying off their credit cards for next Christmas. Another one-third is comprised of retirees on a fixed income. Neither of those two groups, which typically make up two-thirds of an average community, are in a position to pay a large chunk of money in a very short period of time. The board cannot sign contracts in order to do the work unless they are 100 percent sure they can pay for the work when it is done. That is where the loan assists.

I urge your support of this bill. It will give us the ability to have some cash flow and guarantees that there will be some extended cash flows in these difficult times, and make it easier for those banks, like ours, who provide this special

type of financing that helps people keep their homes, to continue to do so. Thank you.

Bill DiBenedetto, Private Citizen, Las Vegas, Nevada:

I moved to Nevada in 1975 when I was 11 years old. The first time I was here was in 1982 as a delegate to Boys State. If you told me at that time that I would be testifying, I would have said, No way, you have got to know what you are talking about. Well, I was up here at an event honoring the veterans, and I saw this bill. I serve as the secretary-treasurer of my HOA, Tuscany, in Henderson, Nevada. The reason I became a board member was I revolted against the developer's interests in raising our dues. You see, we were founded in 2004, and we are at 700 homes out of 2,000, which means we are under direct control of our declarant, Rhodes Homes. We are at their mercy if they want to give us a special assessment or raise our dues. The reason I am here today is I also serve as secretary-treasurer. I am testifying as a homeowner, not as a member of the board. As of last year, our accounts receivable were over \$200,000, which represented 13 percent of our annual revenue. Out of our 600 homeowners, 94 percent went to collections. Out of those, there were eight banks. When a bank takes over a home, they turn off the water; the landscaping dies; our values go down. We need these two years of back dues. Anything less, I believe, would be a bailout for the banks that took a risk, just like the homeowners. When it comes right down to it, out of the 700 homes that we have, we have to fund a \$6.2 million reserve. Why? Because the developer continued to build a recreation center, greenways, and other amenities. So, our budget is \$1.6 million. We have \$200,000 in receivables. We receive 90-day notices from our utility companies. We can barely keep the lights and the water on. Our reserve fund, by law, is supposed to be funded, but we cannot because we have to pay the utility bills. I moved into that community because it was unique: We have rallied the 700 homes. We are not looking for a handout, but we are looking for what is right. When the bank took over the homes, they assumed the contracts that were made: to pay the dues, the \$145 a month. I have banks that are 15 months past due, 10 months past due, 12 months past due. Thank you for listening to me.

Assemblyman Segerblom:

In regards to the banks owning these properties, at least under current law, what they owe for six months would be a super lien which you would collect when the property is sold. Have you been able to collect on those super liens?

Bill DiBenedetto:

Yes, we have.

Assemblyman Segerblom:

Is it your experience that the banks never pay without this super lien?

Bill DiBenedetto:

The banks never pay until the home is sold.

Assemblyman Segerblom:

Now, they are just paying for only six months?

Bill DiBenedetto:

They are paying for six months, and we are losing money that should be going into our reserve fund.

Chairman Anderson:

Does the bank not maintain an insurance policy on the property as the holder of the initial deed of trust?

Bill DiBenedetto:

I do not know. I would assume they would have to have some kind of liability insurance with the property.

Assemblyman Cobb:

When the banks foreclose, do they not take the position of the owner in terms of the covenants?

Bill DiBenedetto:

They do.

Assemblyman Cobb:

Do they have to start paying dues?

Bill DiBenedetto:

They have to start paying dues, and they have to abide by the covenants, which includes keeping their landscaping living.

Assemblyman Cobb:

How are they turning off the water and destroying the property?

Bill DiBenedetto:

They just shut off the water at the property.

Assemblyman Cobb:

And you do not do anything to try to force them to abide by the covenants?

Bill DiBenedetto:

There is nothing that we can do, unless we want to absorb legal costs by taking them to court. We cannot afford that. We have called them; we have begged them; there is just no response.

Assemblyman Cobb:

You cannot recover those legal costs if you do take them to court?

Bill DiBenedetto:

I have not pursued that any further with my board or the attorneys. Thank you.

Chairman Anderson:

Thank you, sir.

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

I have emailed a prepared statement to members of the Committee ([Exhibit V](#)). I do not want to belabor the point. There is a statutory obligation of HOAs to maintain their common areas and to maintain the reserve accounts for their HOAs. I also believe that there is a direct impact on homeowners when there is only a six month ability for the HOA to collect because we have to be much more aggressive in our collection process. If that time frame was to be increased, we would be more willing to work with homeowners. Recently, our board at Caughlin Ranch changed our collection policy to be much more aggressive and to start the lien process much more quickly than we had in the past, which eventually leads to a foreclosure process. I think that has a direct impact upon our homeowners.

Chairman Anderson:

Mr. Trudell, you have been associated with this as long as I can recall, and you have been appearing in front of the Judiciary Committee. In dealings with the banks, have there been these kinds of problems in the past with your properties and others that you have been with?

Michael Trudell:

Yes, sir. Mr. Chairman, in the past, banks were much more receptive in working with us to pay the assessments and to get a realtor involved in the property to represent the property for sale.

Chairman Anderson:

Since the HOA traditionally looks out to make sure that everyone is doing the right thing, when there is a vacant property there, you probably become a little bit more mindful of it than you would in a normal community. Do you think that

this is the phenomenon right now because of the current economic situation? By extending this time period, are we going to be establishing an unusual burden, or changing the responsibility of the burden in some unusual way? In other words, should it have originally been this longer period of time? Why should there be any limit to it at all?

Michael Trudell:

From the association's standpoint, no limit would be better for the HOA, because each property is given its pro rata share of the annual budget. When we are unable to collect those assessments, then the burden falls on the other members of the HOA. As far as the current condition, banks in many instances are not taking possession of the property, so the property sits in limbo. There is a foreclosure, and then there is no property owner, at least in the situations that I have dealt with in Caughlin Ranch. We have had much fewer incidences of foreclosure than most HOAs.

Chairman Anderson:

Thank you very much. Let us turn to the folks in the south.

Lisa Kim, representing the Nevada Association of Realtors, Las Vegas, Nevada:

The Nevada Association of Realtors (NVAR) stands in support of A.B. 204. Property owners within common-interest community associations are suffering increases in association dues to cover unpaid assessments that are uncollectable because they are outside of the 6-month superpriority lien period. Many times, these property owners are hanging on by a thread in making their mortgage payment and association dues payment. I talk to people everyday that are nearing default on their obligations. By increasing the more-easily collectable assessments amount, the community associations are going to be able to keep costs down for the remaining residents. Thank you.

Chairman Anderson:

Thank you.

John Radocha, Private Citizen, Las Vegas, Nevada:

I cannot find anywhere in this bill, or in NRS Chapter 116, where a person, who has an assessment against him or her, has the right to go to the management company and obtain documents to prove retaliation and selective enforcement that was used to initiate an assessment. If they come by and accuse me of having four-inch weeds, and my next door neighbor has weeds even taller, and they are dead, that is selective enforcement. I think something should be put into this bill where I, as an individual, have the right to go to the management company and demand documentation. That way, when a case comes up, a person can be prepared. This should be in the bill someplace.

Chairman Anderson:

We will take a look and see if that is in another section of the NRS. It may well be covered in some other spot, sir.

John Radocha:

On section 1, number 5, I was wondering, could not that be changed to "a lien for unpaid assessments or assessments is extinguished unless proceedings to enforce the lien or assessments instituted within 3 years after the full amount of the assessments becomes due"?

Chairman Anderson:

The use of the words "and" and "or" are usually reserved to the staff in the legal division. They make sure the little words do not have any unintended consequences. But, we will take your comments under suggestion.

Michael Buckley, Commissioner, Las Vegas, Commission for Common-Interest Communities Commission, Real Estate Division, Department of Business and Industry; Real Property Division, State Bar of Nevada:

We are neutral on the policy, but we wanted to point out that one of the requirements for Fannie Mae on condominiums is that the superpriority not be more than six months. Just for your education, the six month priority came from the Uniform Common-Interest Ownership Act back in 1982. It was a novel idea at the time. It was met with some resistance by lenders who make loans to homeowners to buy units. It was generally accepted. We are pointing out that we would want to make sure that this bill would not affect the ability of homeowners to be able to buy units because lenders did not think that our statutory scheme complied with Fannie Mae requirements.

My second point is that there was an amendment to the Uniform Common-Interest Ownership Act in 2008. It does add to the priority of the association's cost of collection and attorney's fees. We did think that this would be a good idea. There is some question now whether the association can recover its costs and attorney's fees as part of the six-month priority. We think this amendment would allow that and it would allow additional monies to come to the association.

Chairman Anderson:

Are there any questions for Mr. Buckley who works in this area on a regular basis?

Assemblyman Segerblom:

I was not clear on what you were saying. Are you saying that this law would be helpful for providing attorney's fees to collect the period after six months?

Michael Buckley:

What I am saying is that, with the existing law, there is a difference of opinion whether the six-months priority can include the association's costs. The proposal that we sent to the sponsor and that was adopted by the 2008 uniform commissioners would clarify that the association can recover, as part of the priority, their costs in attorney's fees. Right now, there is a question whether they can or not.

Assemblyman Segerblom:

So, you are saying we should put that amendment in this bill?

Michael Buckley:

Yes, sir. This was part of a written letter provided by Karen Dennison on behalf of our section.

Chairman Anderson:

We will make sure it is entered into the record ([Exhibit W](#)).

Assemblywoman Spiegel:

I have received the Holland & Hart materials on March 4, 2009 at 2:05 p.m. They were hand delivered to my office. I am happy to work with Mr. Buckley and Ms. Dennison on amendments, especially writing out the condominium association so that they are not impacted by the Fannie Mae/Freddie Mac provisions.

David Stone, President, Nevada Association Services, Las Vegas, Nevada:

All of my collection work is for community associations throughout the state, so I am extremely familiar with this issue. Last week, I had the pleasure of meeting with Assemblywoman Spiegel in Carson City to discuss her bill and her concerns about the prolonged unpaid assessments ([Exhibit X](#)).

Chairman Anderson:

Sir, we have been called to the floor by the Speaker, and I do not want them to send the guards up to get us. I have your writing, which will be submitted for the record. Is there anything you need to quickly get into the record?

David Stone:

The handout is a requirement for a collection policy, which I think would affect and help minimize the problem that Assemblywoman Spiegel is having. I submitted a friendly amendment to cut down on that. I see that associations with collection policies have lower delinquent assessment rates over the prolonged period, and I think that would be an effective way to solve this problem. Thank you.

Chairman Anderson:

Neither Robert's Rules of Order, nor Mason's Manual, which is the document we use, recognizes any kind of amendment as friendly. They are always an impediment. Thank you, sir, for your writing. If there are any other written documents that have not yet been given to the secretary, please do so now.

Wayne M. Pressel, Private Citizen, Minden, Nevada:

Myself and two witnesses would like to speak against A.B. 204. I realize that this may not be the opportunity to do so, I just want to make sure that we are on the record that we do have some opposition, and we would like to articulate that opposition at some later time to the Judiciary Committee.

Chairman Anderson:

There will probably not be another hearing on the bill, given the restraints of the 120-day session. The next time we will see this bill is if it gets to a work session, at which time there is no public testimony. I would suggest that you put your comments in writing, and we will leave the record open so that you can have them submitted as such. With that, we are adjourned.

[Meeting adjourned at 11:20 a.m.]

RESPECTFULLY SUBMITTED:

Robert Gonzalez
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 6, 2009

Time of Meeting: 8:12 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
<u>A.B. 182</u>	C	Jennifer Chisel, Committee Policy Analyst	Federal Register, list of explosive materials
<u>A.B. 207</u>	D	Assemblyman John C. Carpenter	Prepared testimony introducing <u>A.B. 207</u> .
<u>A.B. 207</u>	E	Assemblyman Carpenter	Suggested amendment to <u>A.B. 207</u> .
<u>A.B. 207</u>	F	Robert Robey	Suggested amendment to <u>A.B. 207</u> .
<u>A.B. 189</u>	G	Assemblyman Joseph Hogan	Prepared testimony introducing <u>A.B. 189</u> .
<u>A.B. 189</u>	H	Assemblyman Joseph Hogan	Chart comparing the various eviction processes of various states.
<u>A.B. 189</u>	I	Assemblyman Joseph Hogan	Flow chart of the California eviction process.
<u>A.B. 189</u>	J	Jon L. Sasser	Prepared testimony supporting <u>A.B. 189</u> .
<u>A.B. 189</u>	K	Rhea Gerkten	Prepared testimony supporting <u>A.B. 189</u> .
<u>A.B. 189</u>	L	James T. Endres	Suggested amendment to <u>A.B. 189</u> .
<u>A.B. 189</u>	M	Charles "Tony" Chinnici	Prepared testimony against <u>A.B. 189</u> .
<u>A.B. 189</u>	N	Jennifer Chandler	Prepared testimony against <u>A.B. 189</u> .
<u>A.B. 189</u>	O	Jeffery G. Chandler	Prepared testimony against <u>A.B. 189</u> .
<u>A.B. 189</u>	P	Kellie Fox	Prepared testimony opposing the change in section 2 of <u>A.B. 189</u> .
<u>A.B. 189</u>	Q	Bret Holmes	Prepared testimony against <u>A.B. 189</u> .
<u>A.B. 189</u>	R	Charles Kitchen	Prepared testimony against <u>A.B. 189</u> .

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<u>A.B. 189</u>	S	Bill Uffelman	Suggested amendments for <u>A.B. 189</u> .
<u>A.B. 189</u>	T	Rosalie M. Escobedo	Prepared testimony against <u>A.B. 189</u> .
<u>A.B. 204</u>	U	Assemblywoman Ellen Spiegel	Presentation of <u>A.B. 204</u> .
<u>A.B. 204</u>	V	Michael Trudell	Prepared testimony in support of <u>A.B. 204</u> .
<u>A.B. 204</u>	W	Karen D. Dennison	Prepared testimony with suggested amendments for <u>A.B. 204</u> .
<u>A.B. 204</u>	X	David Stone	Suggested amendments for <u>A.B. 204</u> .