

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

**Seventy-Fifth Session
March 25, 2009**

The Committee on Judiciary Subcommittee was called to order by Chair Tick Segerblom at 1:39 p.m. on Wednesday, March 25, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 5100 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).

SUBCOMMITTEE MEMBERS PRESENT:

Assemblyman Tick Segerblom, Chair
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen

SUBCOMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Harvey J. Munford, Clark County Assembly District No. 6
Assemblyman James A. Settelmeyer, Assembly District No. 39
Assemblyman Richard McArthur, Clark County Assembly District No. 4
Assemblywoman Ellen B. Spiegel, Clark County Assembly District No. 21
Assemblyman John C. Carpenter, Assembly District No. 33
Assemblyman Mark A. Manendo, Clark County Assembly District No. 18

STAFF MEMBERS PRESENT:

Alison Combs, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Monica Wise, Private Citizen, Las Vegas, Nevada
Robert Robey, Private Citizen, Las Vegas, Nevada
Paula McDonough, President, Park Tower Homeowners Association,
Reno, Nevada
Bill Magrath, President, Caughlin Ranch Homeowners Association, Reno,
Nevada
Neena Laxalt, Elko, Nevada, representing Nevada Association Services,
Inc., Las Vegas, Nevada
Garrett Gordon, Reno, Nevada, representing Olympia Group, Las Vegas,
Nevada
Angela Rock, President, Olympia Management Services, Las Vegas,
Nevada
Michael Schulman, Las Vegas, Nevada, representing various homeowners
associations throughout Nevada
Randolph Watkins, Commissioner, Commission for Common-Interest
Communities and Condominium Hotels, Department of Business
and Industry
Michael Forman, Vice President, Green Valley Ranch Community
Association, Henderson, Nevada
Michael Dixon, Private Citizen, Henderson, Nevada
Carole MacDonald, Cottonwoods Homeowners Association, Pahrump,
Nevada
John Radocha, Private Citizen, Las Vegas, Nevada
Marilyn Brainard, Commissioner, Commission for Common-Interest
Communities and Condominium Hotels, Department of Business
and Industry
Frances Copeland, Private Citizen, Las Vegas, Nevada
Robert Allgeier, President, Westwood Park Homeowners Association,
Minden, Nevada
Wendell Vining, Vice President, Westwood Park Homeowners
Association, Minden, Nevada

Gary Lein, Accountant Representative, Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry

Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada

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

Erin McMullen, representing Bank of America, Las Vegas, Nevada

[Call to order, roll called.]

Chair Segerblom:

The first bill we are going to hear is Assembly Bill 350.

Assembly Bill 350: Makes various changes relating to common-interest communities. (BDR 10-620)

Assemblyman Harvey J. Munford, Clark County Assembly District No. 6:

I call this bill the Homeowners' Bill of Rights.

In many communities today, especially in southern Nevada, it is nearly impossible to purchase a relatively new home that is not in a homeowners' association (HOA). This Committee has heard plenty of testimony about homeowner boards. Many homeowner boards are run in a roughshod way. They sometimes keep the homeowners in the dark about important decisions. They also threaten homeowners' rights to live safely and at peace in their homes.

Section 1 of the bill would change the votes needed to change the declaration of an HOA from a simple majority to 85 percent of homeowners.

I will cover sections 2 and 9 together. These sections will require board members to perform their duties on an informed basis, in good faith, and in the honest belief that their actions are in the best interest of the HOA.

Section 4 would prohibit the HOA from charging interest on a past due fine.

Section 5 would limit consecutive terms for board members to two terms. The person would have to wait six years before serving on the board again. These term restrictions would only apply to HOAs with more than 50 units.

Sections 6, 7, and 8 require associations to give homeowners copies of the minutes at no charge. Under existing laws, homeowners in some HOAs have

the right to request and receive copies of the minutes without having to make prior arrangements, but an HOA may charge the homeowner for the cost of an extra copy. These sections of the bill would require the HOA to provide the copy free of charge in electronic or paper form.

Under existing law, agendas of meetings must include a period for homeowners to comment. Section 6, subsection 4, paragraph (c) expands homeowners' rights to speak at meetings. Homeowners will be able to speak for a minimum of five minutes on each agenda item. The HOA board has discretion over which materials, remarks, or information are included in the minutes. Under section 8, a homeowner's written comments will be required to be included in the minutes if he submitted his comments 24 hours before the meeting.

Section 9 deals mostly with interest rates. The existing law allows HOAs to charge interest of not more than 18 percent on past due assessments. This section would decrease the maximum rate of simple interest to 5 percent. It would only permit interest on assessments that are 60 or more days past due. It would only allow 3 percent interest on special assessments that are more than 90-days past due. Also the HOA would need the approval of two-thirds the homeowners before it can levy special assessments; for example, to repair, replace, or restore major components of common areas. Special assessments are also a way to fund reserves in an adequate way or anything dealing with capital improvements.

Section 9, subsection 11, on page 19 of the bill, would establish schedules for paying special assessments in installments if needed. It would require the HOA to notify homeowners of certain past-due special assessment payments.

Under section 10 homeowners cannot be charged for reviewing or obtaining copies of books, records, or contracts or other documents.

Sections 11 and 21 prohibit foreclosure for overdue assessments. These sections would prevent an HOA from foreclosing on any home; instead, the HOA can place a lien.

Sections 13 and 15 require that purchasers be given more information about life in an HOA. Under these sections, a person purchasing a home would be informed of the covenants, conditions and restrictions (CC&Rs).

The jurisdiction of the Commission for Common-Interest Communities and Condominium Hotels (Commission) would be expanded to include alleged violations of the HOA's governing documents. The Commission would be required to impose fines for violations according to specific limits. An owner or

tenant, under certain circumstances, could be fined up to \$100, for certain violations, but no more than \$400 in any two-year period. For the HOA, the community manager, any board manager, the declarant or its agent, and other employees or agents of the HOA could be fined up to \$2,000 for certain violations.

In certain matters brought before the Commission, attorneys' fees could be granted to the prevailing party, whether or not the HOA's governing documents so provided. A homeowner who brought a matter before the Commission would not be required to pay attorneys' fees to the other party unless the affidavit was filed in bad faith.

This completes my testimony. I would ask that you support this important homeowners' protection bill.

Assemblyman Hambrick:

I understand the intent of the bill, because occasionally some HOA groups may look at themselves with too much self-importance, and we have to level the playing field on these issues.

I have a problem with the minimum/maximum times for speaking. I have not been to a lot of HOA meetings, but I have been to a few. If we were to allow everyone to speak more than five minutes, you would be there all night. I think we could make it a maximum of five minutes. If someone cannot be articulate in five minutes, I am not sure he could be articulate in fifteen.

Regarding the term of office, while I like the idea of term limits, there are times when you ask for help and no one raises his hand. If there are no candidates available, could we come back and allow someone to run again after they have been off the board for a few years?

I have some questions about the cost of documents and also about the use of the word "any" in the prohibition of foreclosure in section 11, subsection 10. I was taught that you never use absolutes, like never, always, any.

These questions might be answered by the witnesses.

Assemblyman Kihuen:

Have homeowners' associations or common-interest communities charged for copies and if so, how much?

Assemblyman Munford:

There are so many homeowners' associations in Nevada, and it would vary with the various HOAs. Some do charge a fee, and some do not.

Assemblyman Kihuen:

Is there anything in the bill that states that there has to be some type of listing of the fees that the HOA will charge for late fees, lien fees, et cetera? Are you requiring any of that prior to signing the purchase agreement?

Assemblyman Munford:

If it is not covered in the bill, it should be. There should be some transparency as to what the fees are and where they go.

Assemblyman Kihuen:

While my district does not have very many homeowners' associations, I have heard of various situations from people, from southern Nevada in particular, where they are charged for every little thing and the interest rates on some of the fees are 20 or 30 percent.

Assemblyman Munford:

Yes, they are over the top.

Assemblyman Kihuen:

So does the bill mandate that the HOAs provide a copy to the homeowners so they know what they will be charged?

Assemblyman Munford:

Again, if it is not in the bill, it should be. I do not recall whether that is in the bill, but it will be noted, and we can add it in.

Chair Segerblom:

We could ask our staff if it is in the bill or in existing law.

Nick Anthony, Committee Counsel:

We will take a look.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada;

I live in a small homeowners' association known as Rancho Bel Air. [Read from prepared statement ([Exhibit C](#)).]

Chair Segerblom:

We do not have your amendments yet, so I will have others speak while we wait.

Monica Wise, Private Citizen, Las Vegas, Nevada:

I own rental property in Rancho Santa Fe. I am one abused homeowner. If any of you want a reason why this bill should pass, please call me. I would be more than happy to give you my horror story, from embezzlement, to misappropriation of funds, to abuse of any number of chapters of the *Nevada Revised Statutes* (NRS). I filed a complaint with the Federal Bureau of Investigation (FBI), because going to the board is just impossible. The books have not been balanced since the last audit.

Chair Segerblom:

You support the bill, correct?

Monica Wise:

Absolutely. Some of the language is a bit stringent, but the bill, in all, is supportive of homeowners, and that is what we need: transparency and support.

Robert Robey, Private Citizen, Las Vegas, Nevada:

I wish to acknowledge what the previous speaker said. This bill needs a lot of work, but I am in general support. It is called the homeowners' bill of rights. We need open meetings, and we need to have control of our own lives.

Chair Segerblom:

I will go back to the north, is there anyone else in support? In opposition?

Paula McDonough, President, Park Tower Homeowners Association, Reno, Nevada:

Park Tower is probably the original high-rise building in downtown Reno. It was built about 50 years ago. It was built as an apartment building, and about nine years ago it went condominium. [Read from a prepared statement ([Exhibit D](#)).]

Chair Segerblom:

So to summarize, you have two objections: the two-thirds vote and the ability to foreclose?

Paula McDonough:

Right.

Bill Magrath, President, Caughlin Ranch Homeowners Association, Reno, Nevada:

I am a practicing lawyer in Reno, but I am not here as a lawyer but as a homeowner. For 20 years I have been elected to the homeowners' association board called the Caughlin Ranch Homeowners Association. We have been in

existence for 25 years and have 2,250 members. It has become my hobby, and I continue to volunteer.

I have taken some time to put together some materials ([Exhibit E](#)).

I would like to make several general comments. The entire system of homeowners' associations depends on volunteers. If neighbors do not step up to donate their time to be on a board, the entire system will fail. Whatever bills you pass and whatever changes you make in the law, if the members will not step up and volunteer their time, the entire system will crumble. You cannot pass a law that mandates that I serve on the board. You cannot mandate that once every five years we must serve on boards.

We have a good board in Caughlin Ranch. Be very cautious about how you tinker with these laws, because right now the bills that are in front of the Legislature are going to subject me to punitive damage claims and subject me to huge fines. I do not make a nickel as a board member. I spend hours and hours reading materials; I get six-inch binders for each meeting. I have six and eight hour meetings. I am not an elected public official, I am a volunteer. Be careful that you do not kill the golden geese, who are the volunteers.

This bill proposes term limits for homeowners' boards. My association has a budget of \$2 million. Because of our 2,000 members, we are a big business. We have a volunteer board of good members. It would be detrimental if you were to make everyone get off the board after four years because it takes years to get the experience needed to run the business. If you were to run everyone off after four years, this big business would be run by beginners.

Chair Segerblom:

We have a \$5 billion budget, and we are term-limited.

Bill Magrath:

I would hope that you would agree with me that maybe it is not a good idea to have term limits. My point is, among our 2,250 members, we had seven people volunteer in the last election. If the bill were to get rid of the five experienced members, this large business would be run by two people who have been on the board for one year and the rest of the qualified people are ineligible. It is terrible to discourage volunteers, especially people who are elected by the members.

There are nearly 3,000 homeowners' associations in Nevada, and probably 2,900 work fine and are doing a great job for their members. There are clearly some rogue boards and improper board members, but I want to caution again

against passing bills that will make it so destructive that a potential board member will not sign up.

Also, if Assembly Bill 350 passes, I would probably decide it is not worth it. If you lose the volunteers, you lose the entire system, and then two years from now there is no bill you could pass that would put it all back together.

Chair Segerblom:

Is there anything about the bill you do like?

Bill Magrath:

I like the comment that Assemblyman Munford made about boards working in good faith because I think they should and do.

So let me give you some examples. There is a proposal in this bill that says if you do not pay your assessments, the maximum that can be charged is 5 percent interest. It sounds like a good idea to cap the interest rate. But if I have a couple of members who are paying their bills at the end of the month and they have the choice between paying their homeowners' association dues at 5 percent interest or their credit card at 22 percent interest, they will pay their credit card.

Now, the association does not get the payment of the assessment; it cannot fund its reserves, mow the lawns, fix the parking lot, or do whatever needs to be done. Five percent is an artificial cap on the interest rate, and the net result is that you are turning the HOA into a bank. Suddenly all of the members are going to pay other, higher-interest bills first.

There is a provision in the bill, where, if there is a special assessment, the interest rate is capped at 3 percent. You are turning us into a lending institution, when we are not in the business of lending money. We are in the business of performing services. We will collapse if members are suddenly able to borrow money from us at 5 or 3 percent and pay their other bills instead.

There are bad people out there on HOA boards; Senator Schneider and I talked yesterday about bribery, and Senate Bill 182 will take care of it.

There is a cost to having a copy machine. It frustrates me when people say that HOAs should not charge for copies and the law currently states they can at a maximum, of 25 cents per page. If there is no charge, then any new member could walk in and say he wants copies of every set of minutes the association has had since inception. If the copies are free, there is no reasonable restriction on requests, and it encourages harassment of associations.

There is also a provision in this bill that says that any member can demand copies of any document, including legal opinions. That means a person suing the association can request confidential legal opinions to find out what the association's lawyer is doing to defend against the lawsuit.

The bill also states that there shall be no right to foreclose on liens. Right now the statute says a lien is good for three years. Every homeowners' association divides its budget by the number of units, and that is the assessment. When someone does not pay the assessment, the association has to pay the expense without having received that portion of the money.

The statistics are there, the representatives from the Commission will tell you that last year there were 19 total foreclosures. Those 19 homes were the total sold out of 3,000 homeowners' associations in the entire state. It is not something where people are being thrown out of their homes; foreclosures are done after plenty of notice and due process. One of the Senate bills now provides for a right of redemption, which gives owners one more chance to get their house back. Here is the advantage for the ability to foreclose: people realize they are going to have to pay their bills, and it avoids the need for associations to have to sue members who are past due in assessments. If the Committee were to pass the no foreclosure part of the bill, it is true that there will be a lien, but a lien is just a secured right to be paid sometime in the future. If the homeowner sells in the future, the HOA would probably be paid as part of the process to clear the title to the property. If the homeowner does not pay and does not sell the property, the only way the HOA can be paid is to foreclose on the lien. The issue is that the current statute now says that liens are valid for three years. If I cannot foreclose and they have not paid, it is like that member has lived in the association and benefited from services that the association provides without paying for them. This would crush homeowners' associations. They would not be able to fund mandatory reserves.

If, as a board member, I realize that people are not paying their dues, but I can no longer encourage or force them to pay through the foreclosure process, the association would need to hire a lawyer. In my association there are currently about 60 delinquencies, so if the law changed it would be 60 more lawsuits.

Regarding Assemblyman Kihuen's issue, the associations would be more than happy to post our costs so that people are forewarned. I agree with opening up the whole process.

Chair Segerblom:

Why would someone sue you if we take away the right to foreclosure?

Bill Magrath:

I would have to sue that member to collect. Right now, because we have the power to foreclose, everyone in a homeowners' association in Nevada paid their assessments, except 18 people. Foreclosure is a heavy hammer, but without it there will be many more lawsuits, and then everyone will be unhappy because, not only would they have to pay the costs of the foreclosure process, the statute states they would have to pay the attorneys' fees.

There is also a provision in the bill that says if any member submits a written document to the homeowners' association more than 24 hours in advance, that document must be attached to the minutes and someone at the board meeting has to read the entire document into the record before the board can take action or vote. I am not sure which one of you wants to read my handout from start to finish, as a legislator or a volunteer. It is just too much.

My next comment is about the five minute rule. Right now my association allows anyone who wants to speak, to speak. I added up that there are about 30 people in this room, so if 30 people were to speak for five minutes it would take two and a half hours per agenda item. My agendas often have 25-30 items on each one. I think there should be an opportunity to speak; mandating five minutes is difficult.

The final sections of the bill add fines. I would be subject to fines up to \$5,000 and unlimited fines, as a board member, if someone were to find that I did not follow every detailed rule, regulation, or governing document. As a lawyer, I think I do a good job of understanding and following the rules, but some of the other volunteers might not want to face those fines.

The bill also says the most the Commission can fine any member is \$100 per violation, four times in a two-year period. With those caps, someone might say that they would rather pay the \$400 than have to landscape and maintain their property. We do not want to fine anyone. All we want is for our members to comply with the rules, which they agreed to and knew of when they moved in.

If this bill passes, it will be the beginning of the crumbling of the entire system.

Chair Segerblom:

I did not realize that this was the beginning of the domino theory.

Assemblyman Kihuen:

Are you completely against term limits, or would you be okay with increasing the number of terms allowed by the bill?

Bill Magrath:

I am not a supporter of term limits because every election is a term limit. If the homeowners want to support somebody, they should be able to elect me. Even if the terms were increased, there are not a lot of volunteers. If you artificially cut off good, qualified, experienced people who have a history and working knowledge, you would be harming the people who want to elect that person.

Assemblyman Kihuen:

You said that the HOA could charge up to 25 cents per copy. That goes towards the expense of the copy machine?

Bill Magrath:

The copy machine, the paper, and the time of the employee who has to make the copies.

Assemblyman Kihuen:

The bill also says that you can provide an electronic copy. Why would you charge for an electronic copy?

Bill Magrath:

Many homeowners' associations like mine put all of the minutes up on their website, so you can print them out at your own expense. There is an expense and time involved in making an electronic copy as well.

My biggest fear of the copy rule is that, if you give anybody a right to demand copies of anything and everything, it would become the method by which he can harass the association. It seems more reasonable to place the burden on the person who wants the copy rather than making everyone else pay for it.

Assemblyman Kihuen:

Do the dues not cover the copy machine?

Bill Magrath:

Our budget includes business office expenses; we have an in-house member who is a community manager, as an employee. We count into our budget that we will be reimbursed for copying. If you make it free, that is a cost that will be absorbed by the 2,250 members, but it becomes an entitlement to anything, and it could be abused.

Assemblyman Kihuen:

I would not say anything; it would have to relate to the homeowners' association.

Bill Magrath:

Yes, but the association has existed for 24 years, we have rooms full of documents, and if someone were to ask us for copies of all of it, we would have to provide them under the bill, because it is not just the minutes. If the cost is borne by the person requesting the documents, they may be a little more conservative in what they are asking for.

Assemblyman Hambrick:

Is it your interpretation, if this bill is passed, if I were a member of your association, I could walk into your office with the federal tax code and ask you to copy it, and you would be required to read it at your next meeting?

Bill Magrath:

No. If you were to send me the tax code to be read at the next HOA meeting, then yes, I would be so required. Any written materials a member submits must be read into the record and attached in its entirety to the minutes.

Chair Segerblom:

Has anyone tried to harass you in the 20 years you have been on the board?

Bill Magrath:

I would say out of the 2,250 members, there is always someone who is not pleased no matter what you do.

**Neena Laxalt, Elko, Nevada, representing Nevada Association Services, Inc.,
Las Vegas, Nevada:**

I agree with what Mr. Magrath said.

My client sent a letter ([Exhibit F](#)) about how, if the foreclosure process were taken away, the courts would be clogged up and how few of those foreclosures proceed into actual foreclosures.

Garrett Gordon, representing Olympia Group, Reno, Nevada:

We also have major concerns with the bill; we sat down with the sponsor of the bill and expressed those concerns. We agree with what Mr. Magrath said.

Angela Rock, President, Olympia Management Services, Las Vegas, Nevada:

I like the concept, but I do not think the language achieves the concept. I want to address a few points that I do not think Mr. Magrath addressed.

In section 1, increasing the necessary vote to amend the CC&Rs to 85 percent would make it virtually impossible to amend a set of documents unless you had a very small association. The largest association we represent has

6,700 homes. At their last election, we had three people put their name in for an open seat. Getting participation is almost impossible. There are certain provisions in documents that do need to be updated and amended; therefore there needs to be a mechanism for the majority of people to control the community in which they live.

The next issue is the ability of the board of directors to levy an assessment to fund the reserve. I think it is necessary that people participate in establishing their budget, but there are statutory requirements that an association must fund a reserve in order to take care of the amenities in the future. If the association would have to get the vote of the membership to fund road repairs 20 to 25 years from now, it stands to reason that you would not be able to get people to vote for it. It is a necessary expense, and is vital to the community. Boards need the ability to levy an assessment to have a fully-funded reserve to take care of the common elements, which are often a safety issue if they are not maintained.

There is a requirement in section 12 that a developer make a multimedia presentation of the documents. In another section, the association must have a multimedia presentation available to potential purchasers. I will allow Mr. Schulman to address the part pertaining to associations, but on behalf of the developer, if you require a multimedia presentation, aside from the cost, which may be minimal, the true effect is that you will have someone reading the CC&Rs and the governing documents so as to not be later claimed as liable for not fully disclosing something.

At the end of the bill is section 21 which repeals certain existing law. This includes current law that allows associations or homeowners, whoever the prevailing party is in a non-binding arbitration, to seek confirmation of the award. With Senator Schneider and other working groups there has been a great deal of discussion about what prompted this language and the attempt to repeal the section. My understanding is that some individuals who participated in the non-binding arbitration process felt that they were not fully informed that the process could become binding. We have worked through some language and some potential steps that the Commission and the Division of Real Estate (Division) are willing to take to make sure those individuals are informed including the timelines for matters to become binding, as opposed to taking away the right of both parties to turn an arbitration award into a binding award, which does decrease some of the load on the courts and is necessary.

Michael Schulman, Las Vegas, Nevada, representing various homeowners' associations throughout Nevada:

I sent a letter to you ([Exhibit G](#)). I think Mr. Magrath and Ms. Rock have covered most of my points. I represent 700-800 homeowners' associations.

I think it is important to understand the differences between board meetings and homeowners' meetings. Some of the language in the bill allowing owners to speak applies to owners meetings and board meetings. Generally there is an annual owners' meeting, and generally there is no quorum, so whatever you write regarding it will be irrelevant. Regarding the board meetings, issues have been hit on in the prior testimony that needs to be highlighted.

First, if the association is required to attach anything to the minutes—you have touched on the copying costs, but more importantly, because this has happened to us—people can send in things that are defamatory. If we were required to republish them, we are also committing acts of libel. Right now, most associations have a rule that a member can submit something that is one to two pages, signed, not defamatory, and on one of the issues relevant to homeowners, and it will be included in the minutes.

Regarding section 15, which would require an association to make a presentation available to purchasers, we do not have contractual privity with purchasers. In the law now, NRS Chapter 116 provides that we have a duty to disclose things to our members who are then going to sell to someone. If section 15 became law, we would read the entire document so as not to be involved in killing a sale or being liable if a sale walks away.

From my experience, the 85 percent requirement to amend a document is an impossibility. Legislators have already recognized the inability of associations to reach a quorum in elections, and in Senator Schneider's bill there is a reduction to a 35 percent quorum to recall people.

I could not agree more with what Mr. Magrath said about the foreclosure issue. There will be a number of lawsuits.

While I think this bill was brought with good intent, I am completely against it. I believe there are some very bad boards. In Las Vegas the FBI is investigating one group. The investigation has to do with outsiders bringing in bad boards, but I do not think you can legislate bad behavior out of existence. No matter what you write, it will not stop the really bad actors.

Assemblyman Kihuen:

Is there any part of the bill you could support?

Michael Schulman:

No, I think that I am with Mr. Magrath. I believe in the concept of good faith and community, but one of the things missing is that people look at HOAs as governments, and the law does not treat them that way. They are private corporations, and until such time as a case is decided that says that big associations are governments, I do not agree with any part of this bill. I think at some point there will be an association so big, that it should and will be treated as a government. But if an association is going to be treated like a government, the board members should have immunity, just like Assembly members do, to a certain extent. Throughout every jurisdiction in the country and including the leading case in New Jersey, called *Twin Rivers—Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association*, 929 A.2d 1060 (N.J. 2007)—no associations have been held to be governments or state actors. I am for good faith and community, but I cannot support any part of this bill.

Randolph Watkins, Commissioner, Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry:

Chairman Michael Buckley asked me to make a presentation. In effect, the Commission only supports one section of the bill and opposes all others.

Section 17 proposes to expand the jurisdiction of the Commission by making any violation of the governing documents subject to our jurisdiction. The Commission supports alternative dispute resolution and mediation among the homeowners and associations in regard to governing documents disputes. Under present procedures, the focus of the Commission's jurisdiction is violations of law which are important enough to demand the services of the Attorney General to bring a case before the Commission. The Commission believes these resources should not be devoted to resolve disputes regarding governing documents. Accordingly, we strongly oppose section 17.

Speaking as an individual, I am a licensed community manager in the State of Nevada, live in a large HOA, and work for a developer who develops HOAs, and I am strongly opposed to every aspect of this bill.

Michael Forman, Vice President, Green Valley Ranch Community Association, Henderson, Nevada:

I have submitted a proposed amendment ([Exhibit H](#)). I agree with everything that has been said, but I wanted to cover some other items.

One is in section 3 about providing copies: if copies are provided electronically, the association would have to be absolved from any guarantee that the documents are in fact correct and true copies, because if they are not printed,

there is no way to verify right now that what the homeowner received is what was provided.

Section 10, subsection 1, calls for the provision of financial documents over and above the budget, including the end-of-year financial statement and the audit. The audit is usually not completed until three to six months later, so there is no way to provide that with the budget.

Section 10, subsection 3, calls for discussion of the budget after it is sent out for ratification. Again, this makes no sense. Discussion should have occurred before the budget was approved and sent out for ratification.

Section 12, subsection 1, calls for distributing things like draft documents. Draft documents may include confidential information, which is only included so the association board can evaluate if the document should proceed. Draft documents should not be in the public domain and offered to homeowners.

Those are the main points I have; I did not find anything in this bill which got me excited about wanting to pass it.

Michael Dixon, Private Citizen, Henderson, Nevada:

I am speaking as an individual. I am on the board of Sun City Anthem and am a former president. I will not run for reelection.

I would like to echo what Mr. Magrath said. He made some excellent comments. I would like to expand on a couple of things.

First of all, HOA boards are made up of homeowners; they have the same interests as any other homeowner. This is not really a homeowners' bill of rights. This is a homeowner-who-chooses-not-to-volunteer-for-the-board bill of rights. The common elements of HOAs are all owned by the units. The last legislature passed a law saying that the value of all of the common interest of an HOA would be taxed by the units. If the Committee were to pass this bill, you would allow some members of an HOA to get away with not maintaining their property.

In section 3, if one has an honest belief that the association is better off by having the board members in charge of everything, then they would be protected under this law. It is a law that I would describe as a full employment act for court appointed receivers, because once an association no longer has a quorum it goes into receivership. This is not something that will support good governance.

Carole MacDonald, Cottonwoods Homeowners Association, Pahrump, Nevada:

We have 255 units, and we have a budget of about \$36,000. I object to all of the provisions in A.B. 350. Board members are volunteers, and we find it difficult to get members to run because they are afraid of all of these laws. I object to the mandate of five minutes to speak on each agenda item because we would have to bring sleeping bags to board meetings.

In addition to the resale package, another expense this bill would place on the association is to provide the purchaser with a presentation of our documents. Can the purchaser not read? The purchaser can take his concerns to a lawyer. This idea sounds like someone's son graduated from film school and needs a job in multimedia technology. I can see an association like The Lakes in Las Vegas having this type of presentation because it is a selling point for developers and a great marketing tool for high-end merchandise. But what about the rest of us? Since when did associations become selling agents for contractors? This idea should be up to the individual associations who can afford it.

All I see in this bill is more restrictions and more costs. If all of these laws pass, it will cause a mass termination of associations. Please kill this bill. Since we are a small association, most unit owners know me and know I am here. In the 11 years I have been here, I try to keep all my members informed about what is going on at the legislature, and they are well apprised of what is happening.

John Radocha, Private Citizen, Las Vegas, Nevada:

I would like to review the letters I submitted ([Exhibit I](#)). I wish the Committee would define "capital improvement." I am having a big problem with my homeowners' association. I went to a meeting and they said that capital improvements are used for common elements in a gated community. The dictionary says that when you use dues it is for permanent additions. They want to use maintenance fees for speed bumps.

In section 9, line 42, I would like to see a definition of "capital improvement." I would like to specify that speed bumps are capital improvements in gated communities. If things are not defined, then associations do whatever they want.

This bill does not include anything about retaliation and selective enforcement. If you fight the board, go to meetings and ask questions, the next thing you know they are citing you for everything.

In section 11, subsection 5, I would like it to say "a lien for unpaid assessments or any other assessments is extinguished unless proceedings to enforce the lien

are instituted within 3 years after the full amount of the assessments becomes due."

Chair Segerblom:

I think that is a good point about retaliation.

Jonathan Friedrich:

I have several proposed amendments to Assembly Bill 350. Nowhere in existing statute does it state how an owner or tenant can cure an alleged violation. [Read from page 3 of prepared statement, ([Exhibit C](#)).]

The last item is with regard to weight limitations on dogs. I have heard all kinds of horror stories about people who are told that they have to get rid of their pet because the dog is over a certain weight. When you buy a puppy, you do not know what the puppy will weigh when he is mature.

Chair Segerblom:

Otherwise you support the bill?

Jonathan Friedrich:

Yes, I do.

Chair Segerblom:

Is there anyone else in support of the bill? [There were none.] Is there anyone else in opposition? [There were none.] Neutral on the bill?

Marilyn Brainard, Commissioner, Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry:

Chairman Michael Buckley had several responses regarding this bill in his letter ([Exhibit J](#)). In addition to the points that the previous speakers made, we are also in opposition and support the points they made.

We are concerned about the burden that would be inappropriately placed on the Commission, for example, to look at every foreclosure or other particular duties that would be placed on the Commission. We obviously could not do that. We meet several times a year, but some of the requirements would necessitate that we meet very frequently and that would not be appropriate. It would be a burden with our state budget as it is, and it would be a burden having to frequently convene because we must convene as a group in order to make decisions.

Chair Segerblom:

What do you think about the section that states that the HOA cannot foreclose to recover deficiencies?

Marilyn Brainard:

We think it places an unfair burden on associations; they would be a creditor down the line and would be the last to be paid. Assessments do, in fact, fund all of the expenses of the association so if they were not able to foreclose it would be a terrible burden. It would be a business for receiverships because some associations' finances are that bad today. And out of 543 notices of sale that were posted, only 18 were consummated in this fiscal year. It is a very low percentage.

Frances Copeland, Private Citizen, Las Vegas, Nevada:

I would like to speak against certain portions of the bill.

Certain portions of this bill favor HOAs, such as the portion regarding emergency repairs. It seems that every time there is an emergency repair, the onus is put on the owner to take care of it, even if it is between the walls and in common areas. I see nothing in this bill about holding HOAs accountable when they fail to perform emergency repairs promptly. There is culpability on the part of the HOA to perform emergency repairs.

There is also a portion of the bill about arbitrators. The arbitrator is good for arbitrating differences between neighbors, wild parties, illegal cars, et cetera, but when it comes to a construction defect in common areas and financial loss to the owner of the condo, I do not think the arbitrator is in a position to mediate that. These cases belong in the civil courts and not with the arbitrator. I think that every legal situation, whether involving the owner or the HOA, should have compulsory documentation by recording it on tape, otherwise without a record, there is no way to refer back to it.

There are other areas in the bill where the onus is put on the homeowner instead of the HOA for caring for things like mold remediation and construction defects. Homeowners' associations have received millions of dollars from lawsuits, but the money has not been passed on to the homeowners, who have suffered great financial losses.

I notice that there are a number of people here associated with the management, but I think more emphasis should be put on the responsibility of the HOA to homeowners. I would also like to see language dealing with the situation where the owner does not live on the property, but his dependents do.

The bill covers lessees and residents, but it does not differentiate between an owner and a dependent living on the property.

Assemblyman Munford:

Through some of the testimony, I felt like how Custer must have felt at the Little Bighorn. This bill should take into account that this is a time of an economic downturn. Some people are running into difficulties, and having a hard time paying their assessments and dues. I think that boards should be giving them special consideration and understanding. Having sat in on some of these meetings, with some boards, you do get the feeling that this is not a place for the little guy. Sometimes I am grateful that I do not live in a gated community.

In summation, the State of Nevada must assure that all association board members honor the state and federal constitutions, which guarantee equal protection and due process to their citizens. The State of Nevada has a duty to ensure that each common-interest community adheres to the law and protects the rights of its members.

Chair Segerblom:

I will bring A.B. 350 back to the Committee. I will open the hearing on Assembly Bill 311.

Assembly Bill 311: Revises provisions governing the financial statements of common-interest communities. (BDR 10-389)

Assemblyman James A. Settelmeyer, Assembly District No. 39:

The background as to why I brought this bill forward is there are 2,952 associations in Nevada representing about 470,000 units. The other reality is that four homeowners' associations (HOAs) disappear for every one added, so they are decreasing in numbers.

The size ranges from four units with budgets of about \$1,300 to 8,000 units in Summerlin with a budget of nearly \$54 million. There is a proposed project in Coyote Springs with over 160,000 units.

The current law requires associations with annual budgets of \$75,000 or less to have a full-blown audit every four years. This bill seeks to lower the standard to a review, rather than an audit. For HOAs whose annual budgets range from \$75,000 to \$150,000 there would be an annual review, rather than an audit every four years. The reason for this is cost. For the smaller HOAs with budgets of \$1,300 a year, a full audit costs \$5,000 to \$8,000 and is too costly. The protection will remain within the *Nevada Revised Statutes* (NRS),

which currently states that if 15 percent of the people in an HOA come together, they can order an audit at any time.

What is the difference between a review and an audit? An audit includes an examination on a test basis, using evidence supporting the amounts in disclosures in the financial statement. An audit also includes assessing accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. Everything has to be backed up.

A review, on the other hand, consists principally of inquiries of management and analytical procedures applied to financial data. It is substantially less in scope than an audit, but it is in accordance with generally accepted auditing standards. The objective of a review is the expression of an opinion regarding a financial statement taken as a whole and that the reviewers are not aware of any material modifications that should be made to the accompanying financial statement in order for it to be in conformity with generally accepted accounting principles. It would still be done by a Certified Public Accountant (CPA).

Assemblyman Kihuen:

What is the cost of an audit?

Assemblyman Settlemeyer:

A full-blown audit by a CPA can range from \$5,000 to \$8,000, depending on the scope. The smaller HOAs with \$1,300 budgets are at the lower end of that spectrum. For the larger HOAs that are not touched by this bill, for example Summerlin and its \$54 million budget, I have no idea what their audit would cost. I would have to assume that it would be in the tens of thousands of dollars. I have been told by a CPA friend of mine that for a review you can basically remove a zero, so it would be \$500 to \$800.

Chair Segerblom:

So this bill only applies to homeowners' associations with budgets of \$150,000 or less?

Assemblyman Settlemeyer:

Correct.

Chair Segerblom:

So the large ones would not be impacted at all by this?

Assemblyman Settlemeyer:

The breakdown for your information: there are 1,260 HOAs with an annual budget ranging from \$0 to \$75,000, 563 HOAs with annual budgets from \$75,000 to \$150,000, and then about 1,200 HOAs are in the \$150,000 and above bracket.

Robert Allgeier, President, Westwood Park Homeowners Association, Minden, Nevada:

We represent 84 homeowners in the north end of Minden. The 84 homes are approximately 20 years old. Associated with the homes we have 13.2 acres of common area, which we are required to maintain and service, including the utilities.

Because of the size of the common area we are required to maintain, our annual budget this year is \$116,000, so we fall within the \$75,000 to \$150,000 range. I can tell you, because we get competitive bids on all services that we utilize, the best bid for a review by a CPA would be \$2,000 and a full audit would be 200 to 300 percent more.

An annual review is very specifically designed to pinpoint difficulties and things that are out of alignment within the accounting system. The management service we employ prepares monthly financial statements. We require two signatures on every check, and only the officers can sign the checks.

Following is a breakdown of our budget. About 45 percent of our \$116,000 is spent for the maintenance and care of the common area. A little over 20 percent is spent for utilities, and the water for the grass, shrubs, and trees. Then 11 to 12 percent is for homeowner sewer services. The management fee is a little over 10 percent, and the office expenses, including the \$2,000 for the review, runs about 6 percent. Then, by state law, we have to set aside reserves, and that is another 5 to 6 percent a year.

The things we pay are relatively simple. We have a five-member board and meet every month, so I can assure you that if a review disclosed anything out of financial order, it would not need to be the homeowners who would ask for a full audit. The board would ask for the audit.

We are fighting budget issues the same way you are, and many of the people who live in our homeowners' association have lived there for 20 years and are retired. So every dollar we have to impose upon them is an added burden on them. We have very serious restrictions about dues and assessments, and we try to hone our budget as you all do. We just cannot see the benefit of an audit

unless something is revealed by the review, and then it may not be a full audit, but only a section for example, of the operations or reserves financing.

Chair Segerblom:

Do you have insurance for theft or misappropriation by the board?

Robert Allgeier:

We have insurance to cover the board members and the association. I do not know the answer to your question.

Wendell Vining, Vice President, Westwood Park Homeowners Association, Minden, Nevada:

I fully agree with everything Mr. Allgeier said, and I fully support this bill.

Marilyn Brainard, Commissioner, Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry:

The Commission did discuss this bill, and we fully support it. We think it is very fair. We would like to submit the letter from Chairman Buckley ([Exhibit K](#)). The expense for the smaller associations to pay for a full-blown audit is an unreasonable burden. I understand that the Nevada State Board of Accountancy also supports this bill.

Robert Robey, Private Citizen, Las Vegas, Nevada:

I am speaking as a private owner. I have been contacted by several members of our sub-associations in Sun City Anthem, Las Vegas and they support this bill.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

My only concern is that it calls for a four-year period between audits, and if you have some unscrupulous board members, a lot of money can be embezzled in a four-year period. A possible alternative could be an annual or biennial review.

Chair Segerblom:

The bill as I read it requires a review every four years for the \$75,000 and under and annually for the \$75,000 to \$150,000.

Jonathan Friedrich:

I was talking about the budgets that are less than \$75,000.

Chair Segerblom:

So you would like to see that every year versus every four years.

Jonathan Friedrich:

For a review.

Chair Segerblom:

Is there anyone else in favor? [There were none.] Is there anyone opposed? [There were none.] Is there anyone who is neutral?

Gary Lein, Accountant Representative, Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry:

I am a shareholder with Hilbert and Lein CPAs in Las Vegas. We do audit and review work for a number of associations in southern Nevada.

As a CPA, I do not like the loss of business, but I also understand that for some small associations the audit requirement is a real burden; specifically, for the communities in outlying areas. Few firms do audits because as auditors we are subject to peer review every three years, so many firms elect out of the audit process. I see the benefit of the review, which would free up firms and lower the costs of reviews for many associations. I feel strongly about the audit process, but again, if it is a review, so be it.

One of the concerns I have is in section 1, subsection 1, paragraph (a) where it talks about a review once every four years. That seems to be an arbitrary number. *Nevada Revised Statutes* 116.31152 require reserve studies for homeowners' associations once every five years. What would make sense to me would be to delete "once every 4 fiscal years" and replace it with "for the year preceding the preparation of the reserve study that is required by NRS 116.31152." That way there is a real purpose behind the review of the financial statements. Then the person preparing the reserve study has a solid basis and a confirmation of the true operating and reserve fund balances of the association. I would like to see it tied to the preparation of the reserve study.

Chair Segerblom:

Would that cost any additional money for the homeowners' association?

Gary Lein:

It would not because the reserve study is required every five years. If the reviewed financial statement was done the year prior to the preparation of the reserve study, it would be asking for the reviewed statement every five years versus every four.

Chair Segerblom:

It could still be done with a review? And what other point did you want to make?

Gary Lein:

Yes, absolutely. The other point is on section 1, subsection 1, paragraph (b). The audit requirement was always troublesome. We would do a review for three years and on the fourth year do an audit. The problem was having to go back into the prior year and audit the beginning balances, and it created a lot of additional work and expense to the association. I like paragraph (b) which has us consistently preparing reviewed financial statements. Where I have a problem trying to figure out is where the numbers \$75,000 versus \$150,000 came from. I do not know how that was developed. I do like the idea of consistently budgeting for a certain service, because there are significant differences between a review and an audit.

Assemblyman Settelmeyer:

I appreciate his disclosure on pecuniary interest, and I think his suggestion might have some merit. I chose four years because it is in existing law. I think this bill will provide some economic relief to people.

Chair Segerblom:

If you would think about the five-year versus four-year, and if it sounds good to you, it sounds good to me.

Assemblyman Settelmeyer:

I would be agreeable to that. It makes sense. If you want to have it go from four years to the year prior to the reserve study, as he indicated, I think it is a very favorable amendment, and I think it would benefit everyone.

Chair Segerblom:

I will call this bill back to the Committee, and I will open Assembly Bill 361.

Assembly Bill 361: Makes changes relating to the destruction or deterioration of foreclosed or vacant units in common-interest communities. (BDR 10-940)

Assemblyman Richard McArthur, Clark County Assembly District No. 4:

The intent of this bill is to do two things: one, to get the lending institutions and the homeowners' associations together early on in the foreclosure and vacancy process, so that the lending institutions can provide some contact information to the homeowners' associations, with their address, phone number, and the department that handles residential mortgages; and two, to make sure the homeowners' associations can maintain the exterior of the foreclosed properties and go on to the property without any liability for trespass.

I will review the bill. Section 1, subsection 1, states that a lending institution must provide the association with contact information. Paragraphs (a), (b), and (c) are the trigger points to make sure the lending institutions have to provide that information to the homeowners' associations (HOAs).

Subsection 2, about halfway through states "the association may enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions...."

Subsection 3 basically says that if a unit is vacant "the association may enter the grounds of the unit to maintain the exterior of the unit." That is the real basis for this bill. That is what people have been worried about because of the foreclosure process. The HOAs did not have any contact information with the lending institutions and there was no guarantee that there would not be liability problems when the HOA tried to keep up the exterior of these homes on their own.

Chair Segerblom:

It sounds from the first section that some of these lending institutions are trying to hide so they cannot be assessed or called on the carpet for not maintaining the property.

Assemblyman McArthur:

They basically do not have any real reason to hurry up and start the foreclosure process. The homeowners' associations have not been able to find out who the lending institutions are.

Garrett Gordon, representing Olympia Group, Reno, Nevada:

To my right is Angela Rock with Olympia Group. To be brief, we support the bill. I have been working with the sponsor on some clarifying language, so we will continue to work with him to come up with a resolution.

Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:

I worked with the sponsor early on and suggested to him that this kind of bill is a solution to some of the problems we have in the communities where properties are falling into disrepair. My members assure me that once they have the legal authority to do maintenance, they do it, but until there is a foreclosure, they do not own the property and have no right of entry. If the association can do the things the Assemblyman has suggested to at least minimally keep properties in compliance, then we are all better off. So we support this bill.

Michael Schulman, representing various homeowners' associations, Las Vegas, Nevada:

This is one of the best bills we have seen this year. Our clients have a number of issues with houses that are not taken care of, and they are an incredible liability to our associations.

Carole MacDonald, Cottonwoods Homeowners Association, Pahrump, Nevada:
I support this bill and give Assemblyman McArthur an "attaboy."

Chair Segerblom:

Is there anyone else in favor the bill? [There were none.] Is there anyone in opposition? [There were none.] Is there anyone neutral? [There were none.]

Assemblyman McArthur:

I will have a couple of wording changes, but it will not change the intent of this bill. I have already talked to Legal and the people who were testifying today, we have one section to clear up, and I will get it to you as soon as I can. The purpose of this bill is to get the homeowners' associations and the lending institutions together so they can work together on it. I think everyone will be happy with it.

Assemblyman Hambrick:

It seems like a common sense bill. It keeps the value of the property up, and it will have a good ripple affect.

Chair Segerblom:

We will bring A.B. 361 back to the Committee. That ends the three bills that had not been heard before. Now we are going to go back to some of the bills that have been heard by the full Judiciary Committee to discuss them further. I will open the hearing on Assembly Bill 108.

Assembly Bill 108: Revises provisions governing community managers of common-interest communities. (BDR 10-178)

Bill Magrath, President, Caughlin Ranch Homeowners Association, Reno, Nevada:

I have some comments on A.B. 108. I submitted some comments (Exhibit L). I propose one amendment. There are three kinds of homeowners' associations: self-managed, managed with internal employees who are community managers, and others which have outside community managers. This bill is a good bill because it increases the standards for community managers. We will all benefit from that.

Unfortunately, section 7, subsection 1, paragraph (k), subparagraph (1) states that a community manager must have his own insurance policy. Many of the associations which have employees already have insurance on their employees. This bill requires that homeowners' associations (HOAs) get a separate insurance policy on their managers, which means we would have to pay for two policies from two separate insurance companies.

I am hoping you will allow an amendment which would say that the community manager would have to get his own insurance "unless that community manager is a full-time employee of the association and is covered for errors and omissions and professional liability by the association's existing insurance coverage." There is no reason to have an employee covered by two separate policies.

Michael Dixon, Private Citizen, Henderson, Nevada:

Section 1, subsection 1, paragraph (a), subparagraph (3) states the budget for the daily operation of the association must include "for each month in which expenses are estimated to be incurred, an itemized list of the expenses expected to be incurred during that month." At Sun City Anthem, Las Vegas, we run a budget of about \$8 million a year. We write 250 to 300 checks a month, and were we to have to itemize all of those checks every month, it would cost an inordinate amount of money to no benefit.

We review our books every month and all of our departments' operating expenses on a quarterly basis. We do all of these things to make sure we are well managed. This would be a terrible burden.

Chair Segerblom:

Do you subcategorize things like utilities, et cetera? Is there a way that you could itemize without being specific for each check?

Michael Dixon:

We group things. We have different operating departments like administrative, maintenance, fitness, and activities, and each of them has subcategories and a budget for various things they do.

Chair Segerblom:

Is it possible that this could be focused on categories, versus specifics?

Michael Dixon:

Of course, it is what we do now.

We are a large association, and there are a lot of large associations. The impacts of *Nevada Revised Statutes* (NRS) Chapter 116 on large associations differ markedly from those with 100 or 200 homeowners. I would like to strongly urge the Legislature to establish an ad hoc commission to look at the effects of NRS Chapter 116 on large associations over the next two years to try to streamline the enforcement and application of these laws without negatively impacting the interests of the members of an association.

Gary Lein, Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry:

Mr. Buckley submitted a letter ([Exhibit M](#)), which has more detail on what I am going to cover. Section 8, subsection 9 of Assembly Bill 108 states "cause to be prepared annually a financial audit performed by an independent certified public accountant of the records of the community manager pertaining to the common-interest community, which must be made available to the Division and the executive board." Going back to Assembly Bill 311, we just talked about circumstances where some of the associations will qualify for the reviewed financial statement. This section of A.B. 108 is now requiring a financial audit. I want to make sure we are clear that we are talking about an audit of the association and not of the manager or the management company. It is clear that the two—the association and the manager—cannot comingle funds. If there is a reference to an audit, it would be an audit of the association's books and records.

Michael Schulman, Las Vegas, Nevada, representing various homeowners' associations throughout Nevada:

I am in support of this bill, but I have a couple of specific comments that are included in the letter I wrote to you ([Exhibit G](#)).

In section 4, "client" is defined as the executive board. An executive board is not a legal entity, so that definition needs to be changed. I would suggest "association."

In sections 7 and 8, the drafters of the bill have incorporated a number of provisions that are in the regulations which the Commission adopts. I would rather the language be in the regulations, but if it is not going to be, I have some more comments.

I think Mr. Magrath's comments are correct, but we need to go further. He made a comment about protecting individual employees of associations. I would suggest that the law has to recognize the management contract relationship is generally between an association and a management company rather than an individual. So Mr. Magrath's comments should also apply to

management companies: if the management company has insurance, the employee of the management company should not also have to have insurance. It does not make sense.

Section 8, subsection 13, is something the Commission has been dealing with for a number of years: what associations may do with their funds. I will provide the language that the Commission has recently adopted, which makes a little more sense than the language in the bill. Subsection 15 puts responsibilities on the community managers that they cannot fulfill. This subsection states that the community manager must "ensure that the executive board is aware of all legal requirements pursuant to the applicable laws and regulations." They are not lawyers, they cannot be doing that. They already have a duty to tell the board when something is outside of their expertise and to advise the board to get advice in areas of particular expertise. So I suggest that subsection be deleted.

Similarly, subsection 17 deals with the investment funds and states that the manager shall "develop written investment policies and procedures that are approved by the executive board." That, again, is beyond the scope of what any of these managers are capable of or have the background to do. I have suggested language that parallels other language that says, "advise the executive board to engage qualified individuals to draft written investment policies." We have to remember that these managers are not supposed to take actions outside of their expertise.

Chair Segerblom:

I thought we were just codifying the regulations in this bill.

Michael Schulman:

You are codifying, but you also added some. The one regarding investment policies is new, and the one relating to deposit has already been revised by the Commission.

Nick Anthony, Committee Counsel:

The Commission has adopted those regulations, but they have not formally gone through the Legislative Commission yet. Is that correct?

Michael Schulman:

I do not think the one regarding investment has ever appeared. It is a temporary regulation that will expire in November, according to Mr. Lein.

Chair Segerblom:

Unless we make it into law.

Marilyn Brainard, Commissioner, Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry:

We discussed this at length in our last Commission meeting in Las Vegas and it is being considered as a temporary regulation, which I understand expires November 1 of this year.

Robert Robey, Private Citizen, Las Vegas, Nevada:

I am in favor of A.B. 108, and I would like to endorse everything Mr. Schulman said.

I have one issue with section 1, subsection 1, paragraph (a), subparagraph (4). Really small associations, such as 18 units, have three-member boards. If more than one member leaves town on vacation, there may not be two people around to sign checks.

I also have a comment about separate insurance for community managers and the board. If someone should be in litigation, I feel the community manager should have his own attorney, as well as the board.

Chair Segerblom:

Just so you know, if an insurance company sells a policy like that, they have to provide separate lawyers for each party, even if it is one policy.

Robert Robey:

If that is the law, then great.

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

I wanted to follow up on the comments made by Mr. Magrath and Mr. Lein. Section 8, subsection 9, states, "cause to be prepared annually a financial audit performed by an independent certified public accountant of the records of the community manager." I am an employee of the Caughlin Ranch Homeowners Association, so the same language that Mr. Magrath had indicated before should also be used in this section.

Chair Segerblom:

So you are saying that a community manager is an employee and does not need to be audited?

Michael Trudell:

In my case, I am an employee of the homeowners' association and not an employee of a management company.

Chair Segerblom:

I understand that. You are saying that you do not need to be audited because you are just an employee and the language, as it reads now, would require you to be audited?

Michael Trudell:

True, and the homeowners' association is already being audited.

Chair Segerblom:

We will close the hearing on A.B. 108 and 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 B. Spiegel, Clark County Assembly District No. 21:

I wanted to give you a brief update on the surveys I was doing, speaking with community groups to find out about the impact this bill would have on them. I have received responses that cover over 78,000 doors statewide, and I have not received a response from anyone who said this bill would not be beneficial to them.

I am also here to present an amendment on behalf of Assembly Speaker Buckley ([Exhibit N](#)). This amendment is designed to offer consumers and homeowners some additional protection by limiting the cost of collection associated with the fines. The amendment adds a new section to Chapter 116 of *Nevada Revised Statutes* (NRS), designed to limit the collection fees for fines, penalties, or any past due obligation. It starts at \$50, if the outstanding balance is less than \$200, and then there is a sliding scale based on the amount of the obligation, which maxes-out at \$500.

Chair Segerblom:

Mr. Anthony, does this mirror Assemblyman Munford's bill?

Nick Anthony, Committee Counsel:

No, his impacts an existing section, this adds a new section to NRS Chapter 116.

Chair Segerblom:

His placed limitations on fines or penalties...

Nick Anthony, Committee Counsel:

His bill limited the fees and the amount of interest that could be collected. This bill limits the extra costs that may be incurred in collecting a past-due obligation.

Assemblywoman Spiegel:

For example, if a common-interest community association charges a fine, it is not paid, and there is a collection effort to go after the fine, in addition to seeking to collect the penalty for the violation, there would be interest and a collection fee. This amendment would limit the collection fee. My understanding is that Assemblyman Munford's bill limited what the penalty itself could be and the interest rate.

This bill also encompasses regular assessments, what are called HOA dues. They are the general assessments that are due periodically to maintain the operating accounts and balances of the associations and to fund their reserve accounts.

Chair Segerblom:

After the last hearing on this bill, there were questions about whether your extension of the look-back for homeowners' association (HOA) liens to two years would violate Federal Housing Administration (FHA) or Fannie Mae or Freddie Mac regulations. Did you look into that?

Assemblywoman Spiegel:

I believe the bill said to the extent it was not an issue with federal law. If that is not the case, I will put in another amendment if necessary.

Chair Segerblom:

Mr. Uffelman is here, so he will probably give us some language on that.

Assemblywoman Spiegel:

This is something that will help preserve communities.

Chair Segerblom:

I think the intent is fantastic.

Assemblyman Kihuen:

I want to commend you for bringing this bill. Some of these issues came up on the first bill, so I am glad to see this bill.

Chair Segerblom:

Is there anyone here in support?

Neena Laxalt, Elko, Nevada, representing Nevada Association Services, Inc., Las Vegas, Nevada:

David Stone, the president of Nevada Association Services, and I have worked with Assemblywoman Spiegel, and we came up with a friendly amendment that we proposed in the original hearing ([Exhibit O](#)). It puts in place a policy for collections for homeowners' associations. We believe that if homeowners' associations actually have policies in place, then perhaps these collections would not take beyond six months.

Chair Segerblom:

So you are adding a subsection (c)? Would that impact the amendment submitted by Speaker Buckley? It seems like it is a different issue.

Assemblywoman Spiegel:

Ms. Laxalt's amendment requires common-interest communities to develop a collections policy and to provide that disclosure to the homeowners. By doing that, it makes it more fair and transparent for everyone and offers additional consumer protection because the homeowners know what their obligations are and they understand the ramifications of their actions. Conversely, it also helps the associations by clearly delineating in the policy the time frames of what would happen and when, which could accelerate the collection process and not have as large of a fiscal impact on the homeowners or the associations.

Neena Laxalt:

We just had a quick look at Speaker Buckley's amendment, and I am sure that my client would have some concerns. We would be happy to speak with the Speaker about our concerns.

Chair Segerblom:

We will not be taking any action today on this bill.

Michael Schulman, Las Vegas, Nevada, representing various homeowners' associations throughout Nevada:

I support this bill because I think it is a good bill. Also the Assemblywoman sits on one of my boards in Henderson, and this will be very beneficial. I have two comments. The amendment that has been offered by Speaker Buckley may conflict or may need to be resolved with NRS 116.31031, which already limits the collection cost in regard to fines.

Chair Segerblom:

The amendment deletes that section and replaces it.

Michael Schulman:
Okay.

I think Michael Buckley, the Chairman of the Commission, wrote to you to state that the FHA does not have rules against this particular type of statute. They have concerns about it because it will affect them, but I do not think their loans are precluded because of it.

Bill Magrath, President, Caughlin Ranch Homeowners Association, Reno, Nevada:

One of the things that is good about extending the time frame from six months to two years would be that it would allow an association to slow the collections process down. If a homeowner gets behind in his assessments and the association knows it has a two-year comfort level, it will allow the association to not race out and hire a lawyer and start the collection process.

Assemblywoman Spiegel:

I just needed to disclose that I am on the board of the Green Valley Ranch Community Association in Henderson, Nevada. This bill will not affect my association any more or less than any other.

Chair Segerblom:

Is there anyone who would like to speak against the bill?

Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:

When the bill was first heard in Committee, I submitted a document from the Summerlin North Homeowner Association ([Exhibit P](#)), which was amended to change the forbearance time from six months to three months. I think that an aggressive collections policy by an association is the answer to the problem the Assemblywoman is trying to solve.

The policy provides that the association can pursue on a contract theory as well as the normal course of foreclosure. The policy also provides that the association can work out with the homeowner their failure to pay in a timely fashion. It is the collections policy that makes these things work.

I am supportive of the amendment offered by Ms. Laxalt. I would point out that while Assemblywoman Buckley's amendment strikes existing law and moves it to a new section, it increases the lowest level of cost to \$50 and the second level to \$75, whereas existing law provides for \$20 and \$50 in those two categories. I am not sure where the reduction is, unless it is an overall reduction in cost.

The letter submitted ([Exhibit Q](#)) provided the policy of Fannie Mae, which will not buy a mortgage on a condominium with more than six months of past due assessments. We took a small survey. Other lenders, while they do not have established policies, said the bill if passed will have a negative impact on lending in Nevada. Again, on behalf of the bankers, the answer to the problem the Assemblywoman is trying to address is an aggressive collection policy by the homeowners' association.

Chair Segerblom:

Will Assemblywoman Spiegel's two-year provision prevent some federal mortgages or not?

Bill Uffelman:

It would certainly run afoul of Fannie Mae with regard to condominiums or attached dwellings. They have specifically said they will not buy those kinds of mortgages for the secondary market.

Chair Segerblom:

Do you have any proposed language which would carve out Fannie Mae?

Bill Uffelman:

My proposed amendment would be to eliminate that section of the bill and change the two years back to six months. I had understood that the Assemblywoman was going to exclude condominiums and attached dwellings from these provisions, which would be the kind of amendment you would want to include.

Chair Segerblom:

What percentage of mortgages are Fannie Mae? Pretty high? Would it also include Veterans Administration (VA) loans?

Bill Uffelman:

Yes, it is pretty high. I did not ask a VA lender. So you understand, the latter pages of the letter ([Exhibit P](#)) are the guidelines that that lender is publishing for the benefit of mortgage brokers and anyone who is making loans.

Chair Segerblom:

What percentage of homeowners' associations are condominiums?

Bill Uffelman:

In Nevada, I do not know.

Assemblyman Hambrick:

Not only do condominiums have their own HOAs, I also live in Summerlin North and there are condominiums within an HOA. They can be members of other groups.

Bill Uffelman:

A condominium by its very nature would have to have a homeowners' association because of the common areas within it. So yes, there are a lot of condominium associations that are sub-associations of Summerlin, for example. There are a lot of properties in Summerlin that would be affected by this provision.

Assemblywoman Spiegel:

Condominiums represent about 20 percent of associations. I am willing to go through any language or any proposed amendment from Mr. Uffelman.

Chair Segerblom:

It sounds like it would be worth it. Would you be willing to do that Mr. Uffelman?

Bill Uffelman:

I would be happy to give her language on that, but we would still be opposed to the bill.

Erin McMullen, representing Bank of America, Las Vegas, Nevada:

We just want to go on record in opposition to this bill because we believe that it penalizes banks for trying to work with individuals and not foreclosing sooner.

Assemblywoman Spiegel:

I think this would be an important bill in terms of what it means for our values and our state's real estate values and what it means to our homeowners and our communities. I would like to see our communities being kept strong. I am willing to work with everyone because I think this bill is important.

Chair Segerblom:

I will close the hearing on A.B. 204. We will take a short recess.

I will 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:

This bill would basically take agricultural...

Chair Segerblom:

As I recall this, there are something like 7,000 lots in Spring Creek and a \$1 a lot assessment?

Assemblyman Carpenter:

There are about 5,500 lots at a \$3 assessment.

Chair Segerblom:

So we are talking about \$15,000 a year? I move that we recommend your bill.

There is an amendment which states something like 20 units or fewer in a county that is 45,000 or less.

Assemblyman Carpenter:

There was an amendment ([Exhibit R](#)) which applies to some really small associations.

Chair Segerblom:

These are the agricultural ones where they have the pond for watering livestock and horses?

Assemblyman Carpenter:

The amendment would exempt those really small associations, which may only have a road and a few culverts, from having to hire a reserve specialist. They could hire another professional like an engineer or building inspector, because reserve specialists cost a lot of money.

Chair Segerblom:

Is there anyone here to speak in favor? [One person indicated they were in favor.] Is there anyone opposed to the bill? [There were none.] Are we agreed that we are going to recommend this bill as amended?

ASSEMBLYMAN KIHUEN MOVED TO RECOMMEND
ASSEMBLY BILL 207 AS AMENDED TO THE FULL COMMITTEE.

ASSEMBLYMAN HAMBRICK SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Gary Lein, Accountant Representative, Commission for Common-Interest Communities and Condominium Hotels, Las Vegas, Nevada:

We would like a point of clarification here in Las Vegas about A.B. 207. There will be an amendment to exempt associations of 20 units or less from *Nevada Revised Statutes* (NRS) Chapter 116?

Nick Anthony, Committee Counsel:

The motion was to refer A.B. 207 back to the full committee as an Amend and Do Pass with an amendment to NRS 116.31152 which would exempt associations that contain 20 units or less.

Chair Segerblom:

My understanding is that those are small agricultural cooperatives.

I will open the hearing on Assembly Bill 251.

[Assembly Bill 251](#): Revises provisions relating to common-interest communities. (BDR 10-555)

Assemblyman Mark A. Manendo, Clark County Assembly District No. 18:

We originally heard Assembly Bill 251 on March 18, 2009. At that time one of my constituents was going to testify, and I would like to submit her testimony into the record ([Exhibit S](#)). It applies to the second portion of the bill.

We do not have any opposition on this bill. What I hear from many homeowners' associations (HOAs), including the one I live in, is that if there are elections of officers for the board that are unopposed, the HOAs would not have to send out ballots to save on printing, postage, and labor. Regarding the requirements in statute about notice for vacancies on the board and/or that current board members are up for reelection, so people can run if they choose: none of these requirements are deleted.

This only applies if one is running for a position and is the only candidate; then the HOA does not have to go through the expense of sending out ballots.

There is a letter in support from Michael Buckley, Chairman of the Commission for Common-Interest Communities and Condominium Hotels ([Exhibit T](#)) and there is a proposed amendment from the Olympia Group ([Exhibit U](#)) which helps clarify.

Chair Segerblom:

It clarifies this election issue?

Assemblyman Manendo:

Basically section 1, subsection 8, says, "incumbent member," but say that no incumbent is running.

Chair Segerblom:

So it is just if the seat is unopposed?

Assemblyman Manendo:

The amendment says, "Notwithstanding any provision in this section, no election is required if a candidate is running unopposed." I am okay with the amendment because that was the original intent.

Legal will need to review it and work it into the bill, but at least you know the intent.

The second issue came from my constituent, Marion Ainsworth, who on the day of the original hearing was in the wrong HOA hearing in Las Vegas. The Senate was hearing similar bills that same day. She is an onsite manager where she lives. She was hospitalized and out of work for a while, during which time her license expired. She has no problem with renewing her license and taking the test again, but current statute says that she needs two years of supervision, which is kind of unfair for someone who already has been licensed, passed courses, and done what is necessary for her training.

As an attorney, Assemblyman Segerblom, if your license lapsed, I do not think you would have to have two years of supervision to be reinstated. The fee and the continuing education requirements would remain.

Garrett Gordon, representing Olympia Group, Reno, Nevada:

Assemblyman Manendo did a good job of explaining our amendment. It is just to clarify that any candidate who is running unopposed would not need an election.

Chair Segerblom:

Do you have any issue with the second part of the bill?

Garrett Gordon:

No.

Marilyn Brainard, Commissioner, Commission for Common-Interest Communities and Condominium Hotels, Department of Business and Industry:

I will speak only for myself since the Commission has not discussed removing the word "incumbent." I am totally in favor of the bill and I have tried to do

what this bill is doing ever since I was appointed to the Commission in 2006. It will save associations a lot of money in these very tight times.

We will defer to the Real Estate Division licensing personnel about the second part of the bill. If you have not received anything, I would assume—realizing that it is dangerous to assume—they are not opposed.

Michael Schulman, Las Vegas, Nevada, representing various homeowners' associations throughout Nevada:

I support both sections of this bill, wholeheartedly. I have not had a chance to see the amendment from the Olympia Group. I have suggested in my letter ([Exhibit G](#)) that the language needs to be tied to the number of open positions. If the number of candidates does not exceed the number of positions, the board, by acclamation, may state that it is the board as of the date the election would have occurred. But it can only take that action once the nomination process is closed.

On the second issue, I teach classes for managers in Las Vegas, and I think there is a shortage of good managers, so anything you can do to make it easier for someone to return, who is already qualified, would be terrific.

Chair Segerblom:

I was not clear on the first issue how you differ from what Assemblyman Manendo wants to do?

Michael Schulman:

I caught the same issue that Olympia Group did on the use of the word "incumbent," but I do not think it should be written in the singular or about incumbents. The language should be written to state "if at the end of the nomination process, the number of candidates equals or is less than the number of seats open, it should be done by acclamation." There has to be an actual process, and it needs to be spelled out.

Nick Anthony, Committee Counsel:

I had the same concerns when I was looking at it. We just need to spell out some kind of process, if candidates are unopposed, how they would take the seats.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

I support both parts of the bill. There is no language that addresses a write-in candidate.

Maybe it should be allowed.

Chair Segerblom:

It would defeat the purpose because the HOA would have to mail out a blank ballot asking if anyone wanted to write-in a candidate.

Michael Schulman:

There is already a requirement in the law that candidates fill out a nomination disclosure, to say if they are in good standing and whether they have any conflicts of interest. It would be impossible for write-in candidates to disclose that to anyone, which is why at the end of the nomination process it is generally assumed that no one else can be nominated, write-in or otherwise.

Jonathan Freidrich:

I withdraw my comment.

Carole MacDonald, Cottonwoods Homeowners Association, Pahrump, Nevada:

We put on the nomination ballot that there are no write-in candidates. Thank you for saving the associations money.

John Radocha, Private Citizen, Las Vegas, Nevada:

My concern is if you are in a dispute with the board after a fine has been applied, and they allow you to fill out the candidate paperwork but then decide they are going to take your vote away from you. I would like it more defined about disputed fines, selective enforcement, and retaliation.

Chair Segerblom:

We are going to discuss retaliation in regard to Assembly Bill 350.

John Radocha:

What about signs? If you are going to run for the board, or there is an item on the agenda, can you put a sign in your front yard or in the common area? That is what the boards do, they want you to dot every I and cross every T.

Assemblyman Manendo:

Under *Nevada Revised Statutes* (NRS) Chapter 116, signs are permitted in HOAs for political purposes, but I do not know if it is limited to just candidates for public office or ballot questions.

Bill Magrath, President, Caughlin Ranch Homeowners Association, Reno, Nevada:

Current law allows any member of an association to post a sign, not to exceed 24 inches by 36 inches, for any candidate or any position or any issue. So, in theory, you could post one for an initiative petition, running for a homeowners'

association, or anything else. It can only be posted on a piece of property you exclusively control, so it cannot be posted in a common area.

John Radocha:

The board has the advantage because they can use the United States Postal Service to put out their message, so how does the homeowner get their message out if they are so restricted?

Chair Segerblom:

You walk door to door. We will look into that. Is there anyone else to speak on A.B. 251? [There were none.]

CHAIR SEGERBLOM MOVED TO RECOMMEND ASSEMBLY BILL 251 TO THE FULL COMMITTEE WITH THE CHANGES MADE BY NICK ANTHONY, COMMITTEE COUNSEL.

ASSEMBLYMAN HAMBRICK SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will have a short second meeting next week to bring a couple of these issues back that we have asked people to work on. Then it will go to full Committee the following week.

We are adjourned [at 4:47 p.m.]

RESPECTFULLY SUBMITTED:

Emilie Reafs
Committee Secretary

APPROVED BY:

Assemblyman Tick Segerblom, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 25, 2009

Time of Meeting: 1:39 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 350	C	Jonathan Friedrich	Prepared Statement and proposed amendments.
A.B. 350	D	Paula McDonough	Prepared Statement.
A.B. 350	E	Bill Magrath	Handout.
A.B. 350	F	Neena Laxalt	Letter from David Stone.
A.B. 108, 204, 207, 251, 311, 350, and 361	G	Michael T. Schulman	Letter addressing concerns in several bills.
A.B. 350	H	Michael Forman	Proposed Amendment.
A.B. 350	I	John Radocha	Letters in support of S.B. 281/ A.B. 350.
A.B. 350	J	Marilyn Brainard	Letter from Michael Buckley, Chairman, Commission for Common-Interest Communities and Condominium Hotels .
A.B. 311	K	Marilyn Brainard	Letter from Michael Buckley, Chairman, Commission for Common-Interest Communities and Condominium Hotels.

A.B. 108	L	Bill Magrath	Handout.
A.B. 108	M	Marilyn Brainard	Letter from Michael Buckley, Chairman, Commission for Common-Interest Communities and Condominium Hotels.
A.B. 204	N	Assemblywoman Spiegel	Mock-up of Amendment 3542.
A.B. 204	O	Neena Laxalt	Proposed Amendment.
A.B. 204	P	Bill Uffelman	Handout.
A.B. 204	Q	Alison Combs	Letter submitted during original hearing, from Holland & Hart re: Fannie Mae regulations.
A.B. 207	R	Assemblyman John Carpenter	Proposed Amendment.
A.B. 251	S	Assemblyman Mark Manendo	Letter from Marion Ainsworth.
A.B. 251	T	Marilyn Brainard	Letter from Michael Buckley, Chairman, Commission for Common-Interest Communities and Condominium Hotels.
A.B. 251	U	Garrett Gordon	Proposed Amendment.