MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
May 12, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:47 a.m. on Tuesday, May 12, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus Conklin, Assembly District No. 37
Assemblyman John Hambrick, Assembly District No. 2
Assemblyman Harvey J. Munford, Assembly District No. 6

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

OTHERS PRESENT:

Sam Bateman, Nevada District Attorneys Association
Kevin Wallace, President, Community Association Management Executive Officers, Inc.

Michael E. Buckley, Commissioner, Commission for Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry
Garrett Gordon, Olympia Group
John Leach, Nevada Chapter, Community Associations Institute
Donna Erwin, Nevada Chapter, Community Associations Institute
K. "Neena" Laxalt, Nevada Association Services
Jonathan Friedrich
Robert Robey
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
David W. Huston
Bill Uffelman, President, Nevada Bankers Association
George A. Ross, Bank of America
Andrew Pizor, National Consumer Law Center, Inc.
Dennis Flannigan, President, Great Basin Federal Credit Union; Chairman, Nevada Credit Union League Government Relations Committee
Ben Graham, Administrative Office of the Courts
Frank A. Ellis III, Chair, Article 6 Subcommittee on Judicial Discipline

CHAIR CARE:
We will open the meeting on Assembly Bill 380.

ASSEMBLY BILL 380 (1st Reprint): Makes various changes relating to the sexual exploitation of children. (BDR 15-727)

SAM BATEMAN (Nevada District Attorneys Association):
We support A.B. 380.

CHAIR CARE:
When is it lawful for assets to be seized? You can do so following judgment, but can you seize assets during the execution of a search warrant?

MR. BATEMAN:
Section 2 relates to the statutory scheme we already have with regard to forfeiture. Forfeiture is a civil action we can institute through our office regardless of whether or not we have secured a conviction. We must prove the proceeds or assets secured through an arrest and seizure are associated with and derived from a criminal scheme. We can then forfeit it through this process.

We do not have to wait until adjudication of the criminal case because it is a different standard and a civil action. In cases where we have not gone forward or are waiting for results in the criminal arena, we can freeze those assets pending further investigation. We can do this through the forfeiture provisions as opposed to any sort of criminal provisions.

CHAIR CARE:
Assemblyman Hambrick addressed the $500,000 fine which is peppered throughout the bill. At first reading, it would seem to be a lot of money. In actual cases, these funds are pigeonholed somewhere. This bill does not disturb the statutory scheme already in place for forfeiture. This becomes another circumstance under which that is allowable depending on the circumstances.

MR. BATEMAN:
It would add an actual explicit freezing mechanism in the forfeiture statute. It does not upset it. This bill originally involved civil penalties, and it was designed to allow civil penalties tied to the criminal action. In Nevada, there are Supreme Court opinions that suggest civil penalties tied directly to a criminal charge pose legal problems with double jeopardy. Because there is a fine allowable with a sentence of imprisonment in all of our criminal statutes, we changed from a civil penalty structure to a fine structure. Generally, judges do not impose fines. It is rare, especially in Clark County that judges impose fines along with a prison sentence that may be suspended or the offender may get probation. I suggested changing the civil penalty structure to a fine structure to make it consistent with the entirety of the criminal process. The fines are significant, but it would not do a judge any good to impose a $500,000 fine on somebody with zero assets. One is a forfeiture issue and one is a fine issue. They are not necessarily the same thing. They operate separately, but they address from different angles the issue that Assemblyman Hambrick addressed: getting the assets these offenders have derived from their criminal enterprise.

CHAIR CARE:
You may have the forfeiture in lieu of the fine.

MR. BATEMAN:
Exactly.

ASSEMBLYMAN JOHN HAMBRICK (Assembly District No. 2):
This is a scourge that affects primarily southern Nevada but also is found in other parts of the State. We have to address this problem. I hope this Committee will support this bill to send a message. I want to publicly thank Sam Bateman and the Office of the Attorney General for shepherding this bill through the process.

CHAIR CARE:
We will close the hearing on A.B. 380. Senator Wiener would like to make a motion.

SENATOR WIENER MOVED TO DO PASS A.B. 380.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We will open the hearing on A.B. 350.

ASSEMBLY BILL 350 (1st Reprint): Makes various changes relating to common-interest communities. (BDR 10-620)

ASSEMBLYMAN HARVEY J. MUNFORD (Assembly District No. 6):
There seems to be a great deal of concern on how things should be handled with homeowners' associations (HOA). In this Session, 17 bills have been introduced concerning common-interest communities. My constituents tell me about all the fighting and ill will created between boards and the owners living in these communities. My proposed bill would protect homeowners' rights, require transparency in the management, prevent secret board meetings, allow for the flow of information to all owners and bring a sense of openness to all who live in those communities. It would reduce interest charges on unpaid fines, require a vote on many special assessments and allow for more homeowner dialogue at board meetings.

Senate Bill (S.B.) 182, S.B. 183 and S.B. 351 are at the opposite end of the spectrum when it comes to A.B. 350.

SENATE BILL 182 (1st Reprint): Makes various changes relating to common-interest communities. (BDR 10-795)

SENATE BILL 183 (1st Reprint): Revises various provisions governing common-interest communities. (BDR 10-70)

SENATE BILL 351 (1st Reprint): Makes various changes relating to common interest communities. (BDR 10-1145)

These other bills disenfranchise and oppress Nevadans' rights which will ultimately be challenged in court at a great expense to the State. Assembly Bill 350, as originally written, with some minor modifications, can be a model for fairness and tolerance, eliminating much of the dissatisfaction and disputing between board members and residents. The greatest harm to A.B. 350 was the removal of the provision for term limits of board members by the Assembly Committee on Judiciary.

I am a former government teacher, and I believe in the principles, ideals and concepts laid down by our Founding Fathers in the Constitution of the United States, the Declaration of Independence and Lincoln's Gettysburg Address which make the people the sovereign power. Since association boards sometimes abuse their power, there should be checks and balances. No one has absolute power, and the boards tend to have too much power.

CHAIR CARE:
Do you want to explain the heightened provisions of the bill to the Committee?

ASSEMBLYMAN MUNFORD:
When residents are assessed charges, some of them do not pay their charges. Sometimes the interest is so excessive that the boards can attach a lien to the homes, possibly leading to a recommendation of foreclosure. Those types of powers show insensitivity and a lack of feeling for people by the board. Many people are experiencing hard economic times and are trying to make ends meet on a monthly basis. They are trying to maintain a decent livelihood. Feeling threatened and fearful is a result of the association's abuse of authority.

SENATOR MCGINNESS:
Section 3 states, " … officers and members of the executive board are fiduciaries and shall act on an informed basis, in good faith and in the honest

belief that their actions are in the best interest of the association." What you might think is in good faith, they may think is not. How are you going to police this?

ASSEMBLYMAN MUNFORD:
Anything the association speaks out on or presents should first be presented to the homeowners for their input. Sometimes a decision is rendered without hearing the voice of the homeowners themselves. The best policeman is the homeowners.

CHAIR CARE:
We have had prior bills this Session that go beyond what you address about good faith in section 3, but the intent is still there. We may look at those bills as having satisfied the same desire that you have in that section of the bill.

Let me ask you about community managers. You have the requirement about maintaining insurance. Concerning the issue of good faith or bad faith, do you have any thoughts on whether board members could be sued for punitive damages? This has come up in the context of several other HOA bills. The theory is it is becoming increasingly difficult to find people to serve on boards, especially if they are exposed to punitive damages. Maybe this needs to be changed.

ASSEMBLYMAN MUNFORD:
Do you mean a board member could be subject to punitive damages by a resident?

CHAIR CARE:
Right.

ASSEMBLYMAN MUNFORD:
A resident could sue them because of abuse?

CHAIR CARE:
They could be sued for fraud or even breach of the fiduciary duty if there is intent. It is not in your bill; I am just asking for your thoughts.

ASSEMBLYMAN MUNFORD:
The manager has to dictate policy and make certain the bylaws are upheld.

CHAIR CARE:
I was asking about board members as opposed to managers. You have that provision in the bill about managers.

ASSEMBLYMAN MUNFORD:
I did not put it in the bill, but there should be some protection for the board members against any type of reaction by residents if they feel their rights have been affected in some way.

KEVIN WALLACE (President, Community Association Management Executive Officers, Inc.):
I am representing Community Association Management Executive Officers, Inc. (CAMEO). We represent management executives in this industry. We have submitted an amendment for A.B. 350 (Exhibit C). As written, there are some disturbing, unintended consequences in the bill. It will saddle associations and homeowners with the cost of collecting delinquent assessments from the few who are delinquent. Those costs should be borne by the delinquent homeowners alone. Consistent with the intent in Chapter 116.3115 of the *Nevada Revised Statutes* (NRS), collection costs are categorized as assessments. As a result, some have expressed concern that the associations can foreclose on a home for the cost of collecting a loan.

Our amendment attempts to strike a balance between these competing interests. We want to ensure the Commission has the flexibility they need to create regulations that are going to produce a reasonable cost of collecting. We suggest an amendment to A.B. 350, to have section 1.5, subsection 1 read "fees" plural rather than "fee" singular, Exhibit C. Much of the costs involved are reimbursable, such as postage, title insurance and those types of things. Those costs need to pass through; "fee" might be too restrictive in section 1.5.

We would reinstate the language eliminated in section 11 of A.B. 350 which allows collection costs to be included in the lien, Exhibit C. This is important to the association to ensure that collection costs will ultimately be collected.

We have amended NRS 116.31162 to state that the association may not foreclose a lien by sale based solely on collection costs. This protects homeowners from the unscrupulous collection companies and attorneys that may try to profit from that.

We also include a requirement for associations to provide a payment plan to delinquent homeowners by amending section 18.5, subsection 21 of A.B. 350. This would help those in need of assistance by stretching out the time frame for repayment. The length of time offered should be reasonable, probably six months or less. Since section 18.6, subsection 9 of A.B. 350 potentially conflicts with this proposal, our amendment would delete this section, Exhibit C. That section requires a manager to accept a payment when presented. Payments would be accepted under the payment plan.

Finally, in section 18.5, subsection 21, we would require any payment made in connection with the collection of past due amounts be applied on a prorated basis in the same ratio of collection costs to total amount owed. This will prevent the collection company from applying all of the payment to the costs of collection first. To be fair, payments should be applied to both the collection costs and other amounts due. All collection payments received will be applied in this fashion.

That is the substance of our amendment, Exhibit C. It will balance the competing interest. You will be hearing from Michael Buckley. We have been in conversations with him and we support the comments he will make. We have been working with the sponsor of the bill on the language of our amendment. We do not have full agreement yet, but we are close.

CHAIR CARE:
I have received numerous e-mails on A.B. 350, some of which have worked their way into proposed amendments. We will not act on this bill today, but we will need the obvious mock-up as the other witnesses come forward with their testimony.

MICHAEL E. BUCKLEY (Commissioner, Nevada Commission on Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry):
The Commission has a number of comments on A.B. 350. We support the bill but ask the Committee to consider our proposals (Exhibit D). I have not looked at Mr. Wallace's proposed amendment, but he makes a good point. One problem in all of these bills is balancing the rights of delinquent homeowners versus all the other homeowners who will have to pay since you cannot always get the money from the delinquent homeowner. There needs to be some balance.

We pointed out in section 1.5 that some of those fees the Commission is supposed to regulate are actually costs, such as postage and recording fees. Our Commission thought the regulation should say you can collect what you actually paid to the people. I am not sure it belongs there. Also, with regard to the comment Mr. Wallace made on section 11, if the Commission is regulating fees, then those should be part of the assessments collected against the delinquent homeowner. If they are not, the other owners will have to pay.

In reference to Senator McGinness's question, the language in section 3, to some extent, is already included in the last sentence of subsection 1 which says the members of the board must exercise the ordinary and reasonable care of directors of a corporation subject to the business-judgment rule. Part of the new language is actually a restatement of the business-judgment rule, and since there are lots of cases on business-judgment rule, it is something the Commission and Division can go to. We did have the discussion with our compliance people; the language in "good faith" and "honest belief" is a subjective test. As Senator McGinness mentioned, since you cannot prove someone does not honestly believe something, it would make it more difficult to prosecute directors who are not complying with their statutory duties.

Section 6 deals with providing copies in electronic format and paper copies at 10 cents per page. Existing provisions in NRS 116.31175, NRS 116.31177 and perhaps NRS 116.3118 are the general copying and records availability provisions. They provide for a fee of not more than 25 cents a copy. The bill says 10 cents a copy. We propose that all these provisions in this bill relating to copying and costs be included in the existing provisions and they be consistent. Whether the charge is 10 cents or 25 cents, we will leave that to the Legislature, but it would be helpful to have all of this in one place rather than sprinkled throughout NRS 116, which is complicated enough.

Section 7 deals with owners' rights to speak at board meetings. The Commission had spirited discussion on this, but we support the idea that the board should meet at least twice a year during nonbusiness hours for people who work so they could attend meetings. In subsection 5, this concept of having owners being able to speak for two minutes on every agenda item is unnecessary. The Commission supports the language in S.B. 182 or S.B. 183 of speaking at the beginning and at the end of the meeting. A board meeting needs to function efficiently and there must be a balancing point.

Section 9 deals with interest rates on assessments. The law allows interest to accrue up to 18 percent. This bill proposes to make that a floating rate. If 18 percent is too high, the Commission strongly encourages the bill to have language to put a lower cap on it. We do not support a floating rate because it will cause constant expense for associations to go back and reset things. It should be a flat rate. If 18 percent is too high, then the Legislature can lower that rate.

CHAIR CARE:
Is that the legal rate?

MR. BUCKLEY:
It is the legal rate. The managers and the accountant on our committee said the associations would have to check the rates on July 1 and January 1. There are software programs to figure this out, but it would be simpler to pick a flat maximum rather than have the associations go to the expense of picking out a rate.

CHAIR CARE:
My experience is you pick up the phone on July 1 and January 1 to get the legal rate, and if you have to make an adjustment, you do. There may be additional costs associated above and beyond the legal rate.

MR. BUCKLEY:
A lot of these associations have software programs, but if it is not set up to do a floating rate they will have to get new software. Assemblyman Munford mentioned that a number of bills like A.B. 204 recognize that associations are hurting financially.

ASSEMBLY BILL 204 (2nd Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

Associations are suffering from delinquencies and foreclosures. And yet, a number of bills—and there are some provisions in this bill—impose greater requirements on associations that are more expensive to associations. There is a duality in the policies we are seeing in the bills. The Commission recognizes that associations are going through tough times, and we encourage the bills not to impose statutory obligations on associations that would impose further financial hardships.

On page 17, lines 1 through 3 of A.B. 350 require the budget include an itemized list of expenses over $100. A condominium high-rise could have hundreds of checks over $100 every month. This is not necessary. Association budgets should be based on actual revenues and expenses. Making each association in the State list every expense for $100 is unnecessary and not helpful.

CHAIR CARE:
Section 12.3 creates a cause of action for the unit owner who has been denied his request—he believes in good faith—to review the books. Given the number of associations and unit owners we have, I do not want to flood the courts with cases like this. You have the Ombudsman for owners in common-interest communities, but I have heard complaints about that Office.

MR. BUCKLEY:
If you hear complaints about the Ombudsman, it is because the Ombudsman has to deal with a board person who has to go back to the board and cannot really work one-on-one.

CHAIR CARE:
Just so there is no misunderstanding, I am talking about the system of the Ombudsman and not the Ombudsman personally. The office is inundated.

MR. BUCKLEY:
That is right. As a lawyer, I find this does not make any sense. How can you say a director took a retaliatory action when a director does not have any power other than as a member of the board? Nevada Revised Statute 116.4117 is a general remedy for any violation of the chapter. Subsection 2 of section 12.3 is unnecessary.

Section 17 would make every violation of the governing documents come to the Commission. What is in statute is a prosecution, and it deals with a violation of the law. If somebody believes a person has violated NRS 116, they file a complaint with the Real Estate Division of the Department of Business and Industry and the Division investigates. They turn it over to the Office of the Attorney General who represents the State of Nevada against this person who violated the law. That process in the statute does not fit a dispute among people involving governing documents. The Commission supports a quick resolution to disputes involving governing documents.

Last year, we set up a system where administrative law judges decided disputes between governing documents. The Office of the Attorney General told us we had exceeded our authority because the arbitration or determination of disputes through our statutory process was beyond what the statutes provided. If the *Nevada Revised Statutes* is to provide for the Commission to deal with disputes between homeowners, board members or governing documents, there would need to be a new set of statutes that had a different process than the State of Nevada versus so and so. That is the problem. We support whatever we can do legislatively to make these things get resolved faster, but it cannot work under the existing process.

All the section 18 points are part of a regulation that came from the Commission. I have a proposed amendment to sections 18.2 through 18.6 (Exhibit E). The way it is written right now, section 18.1 says the "client" is the board of directors. If you go through all the different duties and obligations under all these section 18s, in most cases it should say the "association" rather than the "board of directors." I deleted the unnecessary word "client" and stated in its place either "board" or "association," Exhibit E. It does not change anything, it is just being more precise. For the record, it was pointed out this morning that there are references in section 18 that say "this chapter." These need to be looked at, because when it went from a regulation into the statute, the references are not correct.

CHAIR CARE:
Why would it be necessary to take a regulation and codify it?

MR. BUCKLEY:
As was explained, we really mean it. That was our question, but the response was we think this is important and we want to put it in the statute.

CHAIR CARE:
We will put your suggestions in the mock-up.

GARRETT GORDON (Olympia Group):
The Olympia Group agrees with all the comments made by Mr. Buckley. You have a copy of the amendment by the Olympia Group (Exhibit F) regarding section 12 of A.B. 350. Participating in the subcommittee on the Assembly side, we worked through many issues and there were many compromises. This language is one sticking point to Olympia. I have spoken to

Assemblyman Munford about our amendment, and he can live with it. I have spoken to Assemblyman John Oceguera, whose A.B. 108 was amended into this bill, and he can also live with this amendment.

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

My amendment is to section 12, subsection 5 found on page 20 of the bill that says, "The executive board shall not require a unit's owner to pay an amount in excess of $10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section." The language the Olympia Group proposes to delete is the second sentence, "Upon written request of a unit's owner, copies … ," Again, reading that word in conjunction with the first sentence which should be copies of any papers of the association, " … must be provided to the unit's owner, in electronic format at no charge or, if the association is unable to provide the copy or summary in electronic format, in paper format at a cost not to exceed 10 cents per page."

What are the reasons for Olympia Group's proposal to delete this sentence? This is a user-based fee. Every homeowner is provided a packet when they purchase the home which includes the covenants, conditions and restrictions (CCRs) and everything dealing with the home. After each HOA meeting, every homeowner is provided with a copy of the minutes and any amendments made to the bylaws, CCRs or anything affecting that community. If an individual lost, misplaced or needs additional copies, Olympia believes, unlike the Office of the County Recorder, that there should be a fee. There is staff time involved in addition to monthly lease payments for the copiers. When you have thousands of homeowners, this additional staff time can add up quickly.

There are other limitations in NRS 116 which prevent abuse by a management company dealing with copies and providing information. There is a $10-per-hour limitation to review the association's records, contracts or papers and a 25-cent-per-copy cap. There is a $160 limitation in the regulations for the resale certificate which would include the resale package.

In conclusion, this is a user-based fee. If the floodgates are opened where paper copies must be provided at 10 cents or electronically free, there are some folks who would take advantage of this, especially in these large communities that

Olympia manages and governs. Based on the cost of doing business, Olympia Group would like to see this language removed.

SENATOR PARKS:
There seems to be a change between the original bill and the revised bill. Are you aware of that particular change and why it was seemingly more stringent?

MR. GORDON:
Are you referring to section 12?

SENATOR PARKS:
Yes.

MR. GORDON:
As Assemblyman Munford addressed, some boards, associations and management companies have some bad apples. We cannot legislate to only the bad apples. When you look at the breadth of communities in the State of Nevada, these associations are having financial difficulties. This section limits the revenue they can bring in when the revenue is down and inhibits their ability to conduct and manage their associations appropriately.

JOHN LEACH (Nevada Chapter, Community Associations Institute):
Section 3 addresses the business-judgment rule. The amendment actually complicates this standard. There are so many cases regarding the business-judgment rule that when you start trying to determine what honest belief is, it is going to be specific. We already have case law; it further complicates the problem.

There are numerous provisions in this bill that shift the responsibility from the delinquent owner back to the owners who are making payments. Almost all associations begin with a zero budget. We do not try to have money at the end of the year. Associations try to pass budgets where the expenses match the revenues. Prior to the drop in the economy, it was rare for an association to have a line item for bad debt. Now associations have to incorporate a function of a bad debt into their budgets because the percentage of delinquencies has gone up so high. If we continue to say we cannot collect these hard costs of collection and if those are not the responsibility of the person causing the expense, then you are shifting the responsibility back to 75 percent of the homeowners who are paying 100 percent of the expenses. We request the

Committee to consider that many of the provisions that shift responsibility make it difficult for associations to function.

The rate of 25 cents per copy page was low. Try getting a copy of a document from a courthouse for that cost.

We are concerned about the effective date. It has been my experience that most bills will go into effect October 1. Most of these associations are based on an annual budget which have been adopted by the boards and ratified by the membership in advance of January 1. If this bill is passed, we request the effective date be pushed to January 1, 2010, to be in line with the budgeting practices of the associations. It would allow them to absorb some of the changes so they can deal with the monetary effect on their association.

CHAIR CARE:
We will take that as a proposed amendment when we get to work session. Ms. Eissmann, please include that in our binder.

MR. LEACH:
Mr. Buckley alluded to the section 7 provision that talked about the two-minute comment on each agenda item. Senate Bill 182 has the before-and-after comment. Focusing on the beginning of the meeting on the existing agenda items is not only reasonable but practical. It allows the board to conduct their business, and if homeowners have other issues, they can address those at the end of the meeting. If we have two minutes, per member, per agenda item, we could be extending meetings for an extra three to four hours. We request you reconsider that idea.

I agree with Mr. Buckley on section 17. There are two processes in the statute. If there is a problem in a common-interest community that involves the statute, we go through the Ombudsman's office. If it cannot be resolved there, it goes to investigation through the Real Estate Division and ultimately to the Commission who would render a decision on that subject because it has to do with the statute or the Nevada Administrative Code. There is a separate process for governing documents. That process, under the umbrella of the Real Estate Division, is run by Gordon Milden. Mr. Milden will assign a mandatory arbitration or mediation program. They are separate and distinct entities or processes and should not be lumped under the jurisdiction of the Ombudsman program.

DONNA ERWIN (Nevada Chapter, Community Association Institute):
We concur completely with Mr. Leach and Mr. Buckley. I have a cost analysis which projects that the potential cost to the community association industry on a yearly basis would be over $200 million if this bill were enacted. The cost of an audit for the management company, collecting fees and providing copies are all passed down to the homeowner in increased assessments.

CHAIR CARE:
That figure got my attention. Please provide the Committee with the cost analysis.

SENATOR WIENER:
Is that itemization of costs with the first reprint?

MS. ERWIN:
Yes, it is.

K. "NEENA" LAXALT (Nevada Association Services):
At this point, most of our concerns have been addressed through Mr. Leach's comments about the effective date of this piece of legislation, if amended. We want to support CAMEO's amendment presented by Kevin Wallace, but if this payment plan requested by CAMEO gets put into place, we request that the payment plan request and the payment plan itself be put in writing (Exhibit G). That is a proposed amendment.

CHAIR CARE:
Please provide something in writing. An e-mail would be sufficient.

MS. LAXALT:
Okay.

JONATHAN FRIEDRICH:
I have worked closely with Assemblyman Munford on this bill. I have been the recipient of numerous issues with my board which is what precipitated my involvement. The original bill—which was gutted when introduced in the Assembly—would have offered a lot of protection to homeowners that they do not get at this point. The revised bill somewhat helps homeowners. I have prepared an analysis indicating what the original bill contained, section by section, compared to the amended version (Exhibit H).

I agree with Mr. Leach's suggestion that this bill take effect on January 1, 2010.

Section 3 talks about good faith and honest belief. This puts boards in a situation where they are on notice. They cannot be abusive; they cannot ignore or break the law. You cannot legislate good behavior. I heard a softer tone toward homeowners from Assemblywoman Barbara E. Buckley. The message is getting out that homeowners have rights too. Nevada is getting a reputation as having tough homeowner association laws. It is not a homeowner-friendly state. Why would anyone, except for investors who rent out their properties, want to buy here? If we keep making laws more stringent and keep tightening the noose, it will come back to hurt us.

Section 5 was put in the original bill to have term limits for a period of two two-year terms for a total of four years. That would only be on complexes with more than 50 units. The President of the United States has a term limit and you Senators have term limits. The argument has been made that it is hard to get people to run for HOA boards. When the incumbents' friends vote for them, it becomes impossible to run against them and get elected.

Most people have apathy and do not show up at HOA meetings. I live in a 116-unit community, and last year at the owners' annual meeting, we had five owners besides the board show up. With all the issues I brought to the surface and the litigation I precipitated in my association, there are now seven people running for five seats on our board. That has never happened before. I do not buy the excuse that it is difficult to get people to run for office on HOA boards.

In section 6, there would be no charge for electronic copies and a 10-cent charge per page for paper copies. If you are running off 10 to 15 copies, 10 cents per page is not excessive. I am talking about copies of minutes of meetings and of financial reports, not CCRs.

To address the two-minute rule on speaking on agenda items, there needs to be input from the homeowners when the board is considering an agenda item. The board is talking about a common-interest community and homeowners should have a say because they contribute towards the upkeep of that community. When an item for discussion comes up, why should anyone be denied their opinion or input when that item is being considered? If a homeowner waits until the end of the meeting to speak, people forget about the topic. In my association, homeowners are only allowed to speak up to a maximum of three minutes at the beginning of a meeting. Thereafter, you sit with your arms folded and your lips tight which is one of the reasons people do not attend. Section 7 of the original bill would have allowed five minutes for a homeowner to speak on any agenda item. This would cause meetings to last for hours. Based upon what I have seen and heard from other communities, most people do not show up unless it is a hot issue.

Section 9 addresses the interest rate. The original bill required a cap of 5 percent. It was amended with a floating rate of whatever the legal rate is plus 2 percent. I have no problem with that as long as the interest rates remain low.

Section 9, subsection 10 talks about an amendment to increase fees without a vote for a special assessment. It required a two-thirds vote of the owners and it was removed from the bill. You are changing the rules of the game in the middle of the game and disenfranchising people from the right to vote on a financial matter that affects them. Some boards love to spend money. My board cries that their reserves are low. We have a tiny gatehouse with a 100-square-foot floor for which they spent over $2,000. They also purchased a custom-made cabinet in the bathroom for $2,000. This is not adhering to the good business-judgment rule.

Section 10 states that any item over $100 has to be itemized, which creates a lot of extra work. This was not in the original bill.

Section 12 removes the ability to have draft documents, legal opinions and correspondence distributed to owners at their request. I requested a copy of the reserve study of my association before it was approved by the board, but my request was denied. The chief investigator for the Ombudsman's office said that I was entitled to the study, but I did not get the reserve study until after approval by the board. There were numerous errors but the board treated it as gospel. They based their reserve funding on an inaccurate document. I have a great deal of expertise in this area, but I was denied any input. Therefore, the board is penalizing all the homeowners to fund a defective and inflated reserve. I ask that the original section 12, subsection 1 be put back into this bill.

The entirety of section 16 was deleted and should be reinstated. The same holds true for section 18 which deals with fines against homeowners and tenants. Homeowners should not be fighting with each other, but we are. Why must boards be so punitive?

ROBERT ROBEY:

I am a board member of a homeowner association, but I am speaking as a concerned owner of a unit rather than a board member. My concerns are about the rights of the people to participate in their community. I am tired of hearing that corporation law applies to homeowners' association(s). Yes, homeowners' association(s) are corporations. The City of Las Vegas ends its name with incorporated, although it is established under a totally different section of law. Why can people not speak for two minutes? We hear people will not run for the board, therefore we cannot have any limits on their terms because people do not care. We are told people will show up at a meeting to speak, but no business can be done because we are going to allow them to speak two minutes on an item on the agenda. Owners have to have the right to vote if an assessment is above and beyond what is allowed by their governing documents.

I appreciate Assemblyman Munford bringing this bill forward. It is time for the people to be considered when they are being asked to live in an HOA. The choices for not living in an HOA, particularly in Las Vegas, are limited.

CHAIR CARE:

Thank you for participating in the process, Mr. Robey.

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

I want to clarify one thing. When Mr. Leach testified about section 17, he made a comment about governing documents. I want to put on the record that the Ombudsman does accept complaints regarding governing documents. The Ombudsman offers to conference in an attempt to resolve disputes regarding governing documents. According to the Attorney General's advisement to the Real Estate Division, the Commission currently does not have jurisdiction to move forward to the Commission for an answer or a resolution. We deal with governing documents in the program. If issues are not resolved, constituents are referred to the Alternative Dispute Resolution Program.

CHAIR CARE:

We will close the hearing on A.B. 350.

SENATOR PARKS:
I noticed one document proposed by Mr. Buckley amending NRS 116.31177 (Exhibit I). Is this to be included?

MR. BUCKLEY:
Yes. There are provisions that deal with copying and availability of records in NRS 116. Rather than enact new provisions in this bill, whatever changes we make to what associations are doing, let us make them in these two sections and keep them all in one place.

CHAIR CARE:
We will open the hearing on A.B. 471.

ASSEMBLY BILL 471 (1st Reprint): Revises provisions relating to the sale of real property. (BDR 3-1138)

ASSEMBLYMAN MARCUS CONKLIN (Assembly District No. 37):
We may have a teleconference on this bill from Washington, D.C., from an expert witness. Assembly Bill 471 is designed to give borrowers on a residential mortgage some additional protection in certain limited circumstances. Consider this scenario as an example. The first-time home buyer, prudent and conservative, takes out a loan to buy a house he can afford. He lives in the house and makes his payments. Through no fault of his own, he loses his job or has medical expenses and goes into default. With dropping home prices, his loan-to-value ratio is greater than 100 percent. He is unable to refinance. He tries unsuccessfully for a loan modification but the lender will not agree to a short sale. The lender forecloses and takes back the house. Now, with an appraised value less than the amount of the loan, the lender sues the borrower for deficiency. This bill is designed to prevent the lender from getting a deficiency judgment against a borrower in limited circumstances. The borrower took out the loan to buy his principal residence, lived in the home continuously and did not refinance the loan in any way, thereby taking on no additional risk.

There is substantial historical precedent for such legislation. During and after the Great Depression, several states put limits on deficiency judgments. Today, many states do not allow them. The California Code of Civil Procedure does not allow deficiency judgments on owner-occupied residential properties of four units or fewer. One potential benefit of this bill is that it may reduce the lender's incentives to foreclose and therefore result in more workouts for owner occupants who meet the criteria.

The substance of the bill is on page 2, lines 15 to 32. The court may not award a deficiency judgment to a creditor if the real property is an owner-occupied, single-family dwelling; the borrower used the loan to purchase the home alone; the borrower continuously occupied the home as his principal residence and the borrower did not refinance the loan after securing it.

To put the bill into perspective, there are a lot of mortgage lending bills this Session. This bill addresses how we want to deal with our mortgage lending market going forward. It does nothing for anybody who is already in a loan. This is only for loans secured after October 1. Your loan must be secured under the provisions of this bill. Any loan secured prior to October 1 will not fall under these provisions, regardless of how long you keep the house or have the loan. The reason is, although I have not seen any data to suggest this, one could surmise that people may change their lending practices. They may seek to figure out a new way. Many states have provisions like these and have not changed the ways they lend, but it has appeared to dampen the cycles that take place in the housing markets.

Although there is not much anybody can do about it, the concept of jingle mail is one area of concern. This is when people who make plenty of money have been given loans, the market changes, the value of their house goes down and they send the keys in the mail to the bank. They are not interested anymore because their monthly payment is not worth the decline in value of the house which is not coming back anytime soon.

It is not a perfect piece of legislation, but there is plenty of precedence out there to attack these problems to balance out our market. Other states have provisions that are far more conservative than these. Texas has a no cash-out policy on primary residences. If I borrow for a house, there is no point in a deficiency as the value goes up. If I buy a house in Texas for $100,000 and the value goes up $20,000, I am not allowed to take out that $20,000. Once I make my primary residence purchase, I can never take out more than 80 percent of the loaned value of my home in any case. That is why Texas has one of the most stable housing markets. I have a rental property in Texas, and in spite of the recent economy, the value of my house has continued to rise over the last three years. People are not overextending themselves against their primary residence. The Texas provision may go overboard for a growth-driven state like Nevada, but this goes a long way in insulating our market against foreclosures of primary residences.

SENATOR WIENER:
Is there a statutory definition of primary residence that says you have to occupy it for half the year plus one day? I am thinking of those people who live in two primary residences for six months of the year. Does primary residence have a definition in statute?

ASSEMBLYMAN CONKLIN:
In this bill, for a house to be considered a primary residence, you must have lived continuously in the house since its purchase. You purchase the home, you move into the home and you live in the home. Anything other than that is not subject to deficiency. It would be considered a riskier investment if it is a summer or winter house. This is a tightly written bill. In Texas, you cannot take out the equity in your house. It will not be allowed unless you have so much equity that taking out equity still leaves you with 20 percent vested in your house. In our case, we are not limiting that, but when you take out equity in your home your rights under deficiency judgment are terminated. You would owe whatever the market bears on the house, should somebody choose to come after you in a foreclosure. This is only for people who buy their home strictly to live in it and not to use it as an investment property or to take money out and buy other things. This is only for purchased money mortgage.

DAVID W. HUSTON:
I do have a prepared statement (Exhibit J). I have been working closely with the Legal Aid Center of Southern Nevada discussing loan modifications with persons facing foreclosure. Assembly Bill 149, if passed and signed, will become effective July 1, requiring mediation for all persons who are the subject of a foreclosure action to take place.

ASSEMBLY BILL 149 (2nd Reprint): Revises provisions governing foreclosures on property. (BDR 9-824)

MR. HUSTON:
This has been an essential problem I have encountered in trying to work with lenders on a voluntary basis. Identifying who to work with and getting them to respond has been a massive problem in the two and a half months I have been

doing this work. In large measure, A.B. 471 tracks California law. Unfortunately, it does not have the benefits that California law does now because this will not be effective until October 1 of this year. That means all the underwater homes and all those foreclosed upon and subject to a deficiency action would be underwater. They will be successfully litigated against or have that possibility of being litigated against if the lender so chooses. In California, this has been the law with regard to Purchase Money Security Interests (PMSI) of the homeowner living in the home the entire time. It has been the law, so they are not going to have the same kind of deficiency problem that Nevada faces now with respect to this type of litigation as it goes forward.

The only remedy for the calamity we now face is bankruptcy, and even that is made more difficult by the amendments made in 2005. Not everyone will be eligible to participate in a bankruptcy because there is an eight-year time period after which you can file bankruptcy again. Many of the people who tried to take advantage of the bankruptcy laws before 2005 will not be eligible to file bankruptcy as a remedy. This bill will prevent another calamity like this from happening again, at least for PMSI holders. It is a welcome modification to the deficiency laws which have been on the books for 40 years but have never been used or never were the subject of litigation because we have never faced this kind of economic downdraft.

CHAIR CARE:
These are the mutual benefits for which the parties bargained. If one party of the contract cannot perform, there are consequences to that. What is your opinion?

MR. HUSTON:
We are not talking about automobiles here. You drive a car off the lot and the value goes down $10,000. It is part of the contract and the expectation of the parties that if you default on your car loan, you are going to be responsible for any deficiency in that loan. In my experience, houses have always appreciated in value. They are a long-term investment. It is a 30-year note in deed of trust. These are obligations and a personal residence. A person foreclosed out of their home has already suffered a major calamity. Even Congress has changed the tax laws such that if people are foreclosed upon they do not have to take the amount they have been forgiven on the debt as income. Congress has recognized that houses are different and special. We were supposed to be the ownership society a few years ago; we were encouraged to buy houses on a

regular basis. It is a different kettle of fish than a contract dealing with a car or some perishable consumer item.

CHAIR CARE:
Am I correct in saying that despite all the talk in Congress of chapter 7 and chapter 13 of the Bankruptcy Code, the courts still do not have the authority to modify the terms of a mortgage? They cannot lower the principal amount, they cannot lower the interest rate and they cannot cap Adjustable Rate Mortgages. Has this happened yet?

MR. HUSTON:
Concerning the primary residences, not only has it not happened, but the U.S. Senate defeated a bill that would have prevented, under limited circumstances, modification of the primary residence. What you say is exactly right. I can cram down the value of my vacation home in Laguna Beach, but I have no ability to cram down a loan for the residence I live in that is worth 50-percent less than it was. Even worse, there has been a recent estimate that 70 percent of the homes in Nevada are underwater. I do not know how much validity that estimate has, but I know from everyday observation that we are talking about a 50-percent market loss in southern Nevada.

CHAIR CARE:
I saw a newspaper article that stated Las Vegas was No. 1 in that category and Reno was No. 4. Try and imagine the circumstances under which the lender would actually elect to go ahead and pursue foreclosure and seek a deficiency judgment. There may be some cases where the homeowner refuses to work with the lender, in which case, the lender may have no choice. Once the lender has the house, what do you do with it? You compound problems because it leads to increasing numbers of vacant homes on the market.

MR. HUSTON:
One of the reasons A.B. 149 makes sense is because it permits the bank to continue to have someone living in that residence after a successful mediation. It has to be successful mediation not imposed on the lender. If there is a successful agreement between the homeowner and the bank to forebear or reduce for the moment, to modify the loan under any imaginable modification, the end result is the lender still has someone living in the home. This protects the home from vandalism and has the owner in the house paying taxes, being a useful member of the community. Home has a special meaning to those of us

lucky enough to have one. Assembly Bill 149 puts the lender and borrower together to have a salutary effect on keeping more people in homes so we do not reach deficiency judgments after a foreclosure takes place.

ASSEMBLYMAN CONKLIN:
I am sure the Committee sees the wisdom of the date. For the record, people have underwritten loans already, given guidelines that are in statute. The date is a change in that guideline. For that reason, it is difficult to change and then go back to use it to solve our current problems. It is meant to look forward. How do we balance out our market in the future to make sure we do not get too hot without putting on too many limitations like the Texas provision? The date is there so that A.B. 149 clears up everything in the hopper now and prevents the future hopper from being overheated.

Let me refer to the concept of jingle mail. The bank is likely to use something like this when they approve a $500,000 loan for a house worth that amount at the time but now worth $250,000. The owner can afford the $500,000 loan but chooses to walk away from the home because it is now a bad investment. The bank is left with a deficiency of $250,000. This is not an issue of a lost job or not being able to afford a balloon payment. It simply is the case of a person who no longer likes their investment and they walk away from their obligation. In that case, this is when you would see a deficiency judgment or an attempt of a deficiency judgment.

CHAIR CARE:
We have not even talked about where you can cure five days before the date of sale.

ASSEMBLYMAN CONKLIN:
I will let Bill Uffelman speak to that. This mirrors language that also appeared and was agreed to in A.B. 149 to keep the statute consistent.

BILL UFFELMAN (President, Nevada Bankers Association):
Section 1, subsection 3 is the notion added to this bill and in other bills before you which is a right to cure prior to sale. This sets it at five business days prior to the date of the sale. It was always presumed that the current borrower could show up and cure the default. We are putting in statute that they can do that under the circumstances set out on page 2 of the bill.

My single largest member has told me they generally do not pursue deficiency judgments except in the circumstances spelled out by Assemblyman Conklin. There are people who have a primary residence that is now totally underwater. In the meantime, they anticipate buying their neighbor's house down the street at a better price because it went through foreclosure. They got out of their former primary residence and took advantage of the down price in the market. They got a new mortgage on the second house while they still had a good credit rating. This bill says you cannot pursue that deficiency. We are willing to accept that with the October 1 effective date so you price future actions accordingly.

SENATOR WIENER:
You mentioned a scenario where a homeowner is underwater and there is a great bargain down the street. The owners walk away from one house while their credit rating is good and get a loan on the second house. They had a good credit rating but have walked away from a substantial obligation. What happens to their credit rating, and how long does it take to repair that kind of credit damage?

MR. UFFELMAN:
Whatever you do to close out of that mortgage, the deficiency or foreclosure gets reported. Your credit report will carry that for seven years, but the effectiveness of it starts to taper off after two years. If you decide you need a new credit card or you want to buy a car, your credit report will suffer and you will pay higher interest rates on future purchases. In Nevada, we have a split roll on property taxes. A 3-percent increase applies to principal residence and rental property goes to 8 percent. Where you file your tax return and what you claim as your residence on your tax return plays a role in deciding your principal residence.

SENATOR MCGINNESS:
I am sure there is a myriad of bills coming through Congress on bankruptcies and foreclosures. Do you envision us getting sideways on federal issues?

ASSEMBLYMAN CONKLIN:
I do not suspect this bill will cause that to happen. We considered that in the interim. There are the federal Housing and Economic Recovery Act enacted late last year and Regulation Z, which was enacted midsummer of last year and went into effect early fall. Many things are taking effect now, and people are uncertain how these will shape the future. In this case, this is an area that has

traditionally been left to the states because it is a legal action in the State itself. I do not anticipate that this bill will affect us getting sideways on federal issues. There are other bills that deal with licensure and the practice of mortgage lending that are a cross where we traditionally control that, but in order to get money from the Federal Reserve Bank, you have to comply with their standards. We have tried to be careful in how we crafted those bills. We have done a good job, but there is always concern. Because it has to do with legal proceedings, liability and statute, I do not know that this bill is one of those that will have an impact, at least an interrelated impact of all the federal action.

GEORGE A. ROSS (Bank of America):
We support A.B. 471. I want to echo the testimony of Assemblyman Conklin and Mr. Uffelman.

CHAIR CARE:
Let us now go to the conference call.

ANDREW PIZOR (National Consumer Law Center, Inc.):
I am testifying on behalf of Geoffry Walsh, who had a prior commitment. Our main office is in Boston, but I work in the Washington, D.C., office. Assembly Bill 471 extends the time during which a homeowner can cure default and bars deficiencies after certain residential foreclosures. The National Consumer Law Center, Inc. (NCLC) considers both these changes to be reasonable protections for homeowners and to be consistent with laws in many other states and model statutes.

My testimony will focus on the proposal to restrict deficiency actions (Exhibit K). States that now bar deficiency actions after most home foreclosures currently include Alaska, Arizona, California, Hawaii, Montana, North Dakota, Oklahoma, Oregon and Washington. Minnesota bars deficiency actions when a mortgage holder wishes to shorten the postsale redemption period to six months. That commonly happens. I have spoken to attorneys in many of those states and even though it was an informal survey, nobody believes the laws restricting deficiencies have had a negative impact on mortgage lending in those states.

Earlier this year, the NCLC issued a report revealing foreclosure laws in all 50 states. We noted in the report that Nevada’s foreclosure laws, at the time, included a number of significant provisions considered favorable to lenders. For example, not allowing any postsale redemption by a borrower, a nonjudicial foreclosure system moves relatively quickly compared to other states. The 35-day cure period was among the shortest in the Country, but A.B. 471 will change that.

I would like to give you a brief historical background on antideficiency laws. Limitations on deficiency judgments became common during the Great Depression when the country saw declining property values and foreclosure sales that brought rock-bottom prices. As a result, states sought to protect residents from the harshness of the deficiency judgments by enacting statutes to restrict or eliminate the ability to get a deficiency. Alaska and Hawaii have enacted some of the most recent laws to bar deficiency actions. There are also two uniform law projects that studied antideficiency laws in great detail. Those were long-term projects that took input from the banking industry, scholars and consumer groups. Both model foreclosure laws bar deficiency actions after home foreclosures with some slight exceptions.

There are many reasons for barring deficiencies, but a major reason is the homeowner does not know about the potential for deficiency judgment until it is too late. A common rationale urged in support of deficiency claims is that the fear of a large deficiency judgment will lead to reliable payments by homeowners. In reality, we found, and most legal practitioners will agree, that deficiency claims are almost always a complete surprise to homeowners. Losing a home to foreclosure is almost always a once-in-a-lifetime tragic event for an individual. The vast majority of homeowners end up in foreclosure because they cannot afford the payments rather than a voluntary decision to stop making the payments. Nonpayment can be due to job loss, illness, family problems or misconduct by the mortgage lender or broker that resulted in someone getting a mortgage that was unaffordable from the beginning. The deficiency cannot act as a deterrent to default where the borrower is defaulting for reasons beyond his control or where the borrower does not know the mortgage holder has a right to claim a deficiency.

Another reason for barring deficiencies is that homeowners do not have any control over declining home values. Everyone who buys a home expects the value to go up, but when home values in entire communities drop, as we are seeing across the Country, the amounts due for deficiency claims skyrocket. This is completely beyond the homeowner’s control, but laws that allow deficiency actions put the burden of that declining housing market on the individual homeowners who are least able to afford it and least able to predict a wide-scale decline in values. The mortgage industry is hurt by the declining market. They have economists, sophisticated models and access to a great deal of data that enable them to somewhat predict problems like this and try to protect themselves. The homeowners cannot do that.

Deficiency judgments hurt the homeowner's ability to recover from a foreclosure. The homeowner, maybe an entire family, risks becoming homeless because the foreclosure and deficiency go on the borrower's credit report. Not only do they lose their house, but there are many landlords who will not rent to a person who has recently been through a foreclosure. The need to move suddenly can disrupt the child's education, and it can affect employment if they need to move out of the area.

Statutory interests can double the size of a deficiency in less than ten years depending on the interest rates at the time. Wage garnishments can also lead families to public assistance which puts the burden on the state. Foreclosure causes serious harm to everyone involved. It is in the best interest, not only of a homeowner but the community in general, for a displaced family to get back on its feet as soon as possible. A huge deficiency judgment can be an insurmountable barrier. The number of people now in foreclosure can hurt the entire economy in a community or state. This is especially true with regions like Nevada with high foreclosure rates.

When faced with the burden of such tremendous debt, the borrower may never be able to repay it. It is very likely that former homeowners would turn to bankruptcy. Even though they cannot use bankruptcy to save the home, if they have an overwhelming amount of debt, bankruptcy becomes a likely option. When someone files for bankruptcy, it is important to remember that the discharge is not limited to that deficiency judgment. A person in bankruptcy has to report all their debts; they can be discharging all kinds of debts to creditors in a local community. If a homeowner does not file for bankruptcy and is able to make some kind of payment plan on the deficiency through a wage garnishment or voluntary arrangement with the creditor, all the people in the community who are paying those deficiency judgments results in a net outflow of capital out of that community. All the money goes somewhere else to pay deficiency judgments. That money could have gone to local businesses and other local creditors but it ends up elsewhere in the country, primarily the major investors on Wall Street.

Keep in mind that disparities in state foreclosure deficiency laws are unfair and unreasonable when you look at it across the country. It does not make sense that a former homeowner in Nevada has a choice between a lifetime of crushing debt or bankruptcy, while the same homeowner would never face that problem living in Arizona or Oregon. For residential homeowners, the threat of losing your home and failing at the most important investment of your life is enough to make the majority of homeowners do everything they can to make the monthly payments to keep their home. There are people who make a business decision to walk away. Those cases are rare, and they even happen in states where there are deficiency laws. This suggests the person making this decision does not know about the deficiency law, meaning it has no effect, or their finances are such it will not bother them. That is a rare decision, and the risk of jingle mail should not be a significant impediment to passage of this bill.

Barring deficiency judgments is a fair thing to do. When there is a residential foreclosure, the mortgage holder either takes title to the property or they sell it to someone else. In either case, the mortgage company is going to recover the value of the collateral. The mortgage company, whether it is the original lender or someone who purchased it from them, had the benefit of the decision to appraise the property in the first place and to make an underwriting decision that it was reasonable to make a loan based on that value of the collateral and in light of the market in general. Lenders determine whether credit will be extended and the terms under which it will be extended. Given the superior resources and expertise the lending industry has, it is fair and reasonable to expect the lender should also bear the risk of loss if it turns out the value of the collateral is less than the amount of credit extended.

Barring deficiency judgments will encourage loan modifications which will reduce the number of foreclosures in a community. The federal government and the lending industry have publicly agreed that large scale loan modifications are an essential tool for minimizing the harm caused by the current crisis. In many cases, research has shown that mortgage holders actually lose more money from a foreclosure than from entering into a well-designed loan modification. A deficiency judgment is an unreliable way for mortgage holders to recoup the loss they sustain in a foreclosure. A better way is to maximize the income they can receive from the modified loan, which is long-term and can be significantly more than it would be by foreclosing. Barring deficiency judgments will work well in conjunction with the modification provisions of A.B. 149. Mortgage holders should be encouraged to make decisions based on a realistic assessment of the current market value of the property. A movement toward affordable loan modifications will further eliminate any prospect for recovery of inflated debt obligations to deficiency judgments that are probably uncollectable given the financial condition of most homeowners in foreclosure and more likely to harm the prospect of economic recovery.

CHAIR CARE:
We do have your conclusion, Exhibit K. I hope you understand, but I need to provide some time to the opposition. Thank you for working with the proponents of the bill.

DENNIS FLANNIGAN (President, Great Basin Federal Credit Union; Chairman, Nevada Credit Union League Government Relations Committee):
The League is in opposition to A.B. 471 because it is removes a tool we need and use every time there is a deficiency on a mortgage loan. It has been told that we are the only ones who use this tool and the reason why is because of our size. My credit union is not-for-profit, meaning that every time we make a loan, it is at the lowest possible rate. Every time we make a share or certificate, it is at the highest possible rate. We try to moderate our fees. We have an entirely different structure. We are there to moderate our income. Our capital is based on our accumulated retained earnings. I have seen 40 percent of our retained earnings dissipate in the last year and a quarter.

I must compliment Assemblyman Conklin on going through every component of the bill and cutting it down. The core issue is if a person makes a loan and it is at 80-percent value, they would get a normal benefit of appreciation. This bill is saying when a loan goes bad, they should transfer that, in this case, to the credit union. I can only get capital from my retained earnings. I cannot go out and raise or sell stock. I do not get the benefit of subsidization from large government programs. When a loan loss is recognized at a credit union, it comes directly off my capital. If I recognize a $30,000 loss, it is a $30,000 loss out of my capital. If that $30,000 loss was at an $800 billion institution, it would not impact them.

This bill will impact the safety and soundness of Nevada credit unions. Yesterday, I approved a loan to an individual who had his first mortgage at another financial institution. His interest rate rose to 9 percent. Over the last four years we saw a 40-percent increase in values, so I had a $60,000 second mortgage on his house. In the last year and a half, we have seen a reduction of that 40 percent, so loans are made. Even if that loan was at 80 percent, I lose. This person came to me, and I modified the loan. I took his first and second mortgage and made a 95-percent loan because I cannot take the loss. If you tried to get a first mortgage now, you would not get a 95-percent loan. The only provider that will give anything over 80 percent is the Federal Housing Administration. There is no primary mortgage insurance lending in the State of Nevada.

The goal of federal legislation through the Senate and Congress is to prevent this from happening again. They need to stabilize the environment of speculation that took place. The laws they craft are going to affect us. This law is specifically about Nevada issues; this is not about California issues. We are dealing with Nevada credit unions. There was a massive increase in values and then a dramatic drop. How do we deal with this? This law will say that under these specific circumstances, it is okay to walk away. We are saying it will cause damage to your local credit union, not national and international financial institutions. The largest bank in the United States is larger than the entire industry of credit unions. When you want to make that first mortgage and be able to make a modification, come to a credit union. I will make them. I have made hundreds of them in the last year.

I noted in testimony that protective circumstances where an individual comes to us, and if they have the means, we will work with them. That is not in this document. That might be something that can be worked into A.B. 149 which deals with the need to do compulsory negotiations. Credit unions do that automatically. This bill will damage Nevada credit unions. It is one of the few things that we can do. It will not be immediate and not in all circumstances, but in five or ten years we will get back some portion of those dollars. Every dollar of capital is important to us because we have no alternative.

CHAIR CARE:
Earlier testimony mentioned similar legislation or laws on the books in California, Arizona and even Minnesota. Do you have any feel for the practice of credit unions in those jurisdictions?

MR. FLANNIGAN:
No, I do not. This has to do with moving forward. It does not address those issues. We would like to consider this in the future to see if there have been some changes on the federal level that will stabilize what took place. That is the

damage. There are going to be increases, but if there are going to be subsequent decreases, everybody who buys a house buys it based on it being an investment. It is indoctrinated in everything we do as we grow up that your best investment is your house. We encourage that ideal, but this bill says you get the upside benefits of buying a house, but you do not have to worry about the downside. This will damage credit unions.

CHAIR CARE:
Regardless of who the lender is, I am guessing the odds are you will never collect on the deficiency judgment. Is it still a loss?

MR. FLANNIGAN:
In the State of Nevada, we will eventually get 30 percent to 50 percent of that back over a ten-year period. This is fair and appropriate, and we would like to have that option retained.

SENATOR AMODEI:
Walk me through this marketing scenario if A.B. 471 passes but does not apply to credit unions. I am looking for a mortgage, and I am talking to your credit union and Bank of America. My mortgage goes south. I can walk away from Bank of America and they cannot come after me, but I would not be able to walk away from your credit union. How would that play out?

MR. FLANNIGAN:
We are not asking for exclusion. It would be difficult to say this bill will apply to one financial institution but not to credit unions. That is not what we are asking. In that scenario, it would be bizarre for a consumer not to make a common sense decision to go with Bank of America. That is one reason I do not want the bill to read that credit unions are excluded.

SENATOR AMODEI:
The few times I have shopped for a mortgage, I have not shopped for it on the basis that the economy is going to tank or real estate lenders are going to go down and I cannot pay my mortgage. I look for the best rate.

MR. FLANNIGAN:
Yes, that is true.

SENATOR AMODEI:
Credit unions are a vital part of the financial fabric of the State. Hearing that A.B. 471 will damage credit unions presents a problem for me. Credit unions are a fraction of the size of other financial institutions that are getting federal monies. Having heard testimony that this bill will damage credit unions is something I cannot ignore. Clearly that is not my choice. Is your testimony to kill the bill or help credit unions? Do you have any alternatives or suggestions on how to fix this for credit unions? If you could do whatever you wanted to the bill, what would you do?

MR. FLANNIGAN:
I would include a termination date. Apply the bill for the next three to five years to see how it works.

SENATOR AMODEI:
Make it a pilot program for mortgages written over the next 60 months?

MR. FLANNIGAN:
That might be something. That is the only thing I can think of at this time.

MR. HUSTON:
The language in section 1, subsection 3 reads, "At any time not later than 5 business days before the date of sale directed by the court … ." Directed by the court is not applicable to most of our foreclosures. Most foreclosures are done by private right of sale and there is no direction from the court. I would suggest "permitted by law" instead of "directed by the court." I just read this and have not had a chance to share this with anyone else. That would be more appropriate to the laws that now exist.

CHAIR CARE:
I am trying to think of notice provisions. There will be a date certain that the homeowner is going to have, so that is what we are working off?

MR. HUSTON:
Yes. This would be a sale date that normally is provided by a notice of sale that is recorded with the county recorder's office. This would be five days before the date of sale permitted by law. This would be a way to change that and make it effective.

CHAIR CARE:
Is that okay with you, Assemblyman Conklin?

ASSEMBLYMAN CONKLIN:
That sounds reasonable to me. Speaker of the Assembly Buckley has the exact same provision in a bill. If it is done that way in one bill, it should be done the same way in another. As a practical matter, it might be good to check with the Speaker to make sure it is acceptable in the back end of the process.

CHAIR CARE:
What is the bill number?

ASSEMBLYMAN CONKLIN:
Assembly Bill 149.

CHAIR CARE:
We will close the hearing on A.B. 471 and open the hearing on A.B. 496.

ASSEMBLY BILL 496 (1st Reprint): Revises provisions governing judicial discipline. (BDR 1-1110)

BEN GRAHAM (Administrative Office of the Courts):
I am appearing on behalf of the Administrative Office of the Courts and the Nevada Supreme Court as a neutral advocate. I have with me Frank Ellis, an attorney from Las Vegas, who has been practicing for 25 years, and Chuck Short, former administrator of the Eighth Judicial District. In November 2006, a Blue Ribbon Panel was formed to work on judicial discipline issues. Out of that panel, Mr. Ellis, Mr. Short and others worked on amendments to the judicial discipline process resulting in A.B. 496.

This bill came up toward the end of the Assembly deadline to get bills out, so there was minimal opportunity for amendments. There is an amendment with three items addressing section 13 (Exhibit L). The first two parts of the amendment call for some reporting, and the third item says all rules of confidentiality of the law and rules established under certain statutory provisions would be recognized. Prior to even suggesting these, they were reviewed with the Chair of the Assembly Committee on Judiciary to make sure that if we are successful in getting this bill through and having these amendments attached, it would be acceptable to them. The effort is to have judicial discipline progress in an open and timely manner.

CHAIR CARE:
Talk about how the bill got here and walk us through the pertinent provisions of the bill.

FRANK A. ELLIS III (Chair, Article 6 Subcommittee on Judicial Discipline):
The Article 6 Commission was formed in 2007 at the request of former Chief Justice Robert Rose, Nevada Supreme Court. The issue that brings us here today is judicial discipline. The members of the Article 6 Commission and members of the subcommittee, which is made up of members of the Article 6 Commission, met with members of the Commission on Judicial Discipline and other interested parties to determine what changes need to be made. We retained and hired Cynthia Gray, the nation's foremost authority on judicial discipline, who presented data on what other states did, what worked and what did not.

After the parties met, our Subcommittee on Judicial Discipline discussed changes that should be made to the current regulatory scheme and rules that govern that process. We had four goals: transparency, timeliness, improving the effectiveness of the Commission and ensuring fair treatment of the judges.

Mr. Short and I testified in front of the Assembly Committee on Judiciary on April 3. Because we were in a rush to get this legislation through, last-minute amendments were made by members of the Commission, judges and David Sarnowski**,** Executive Director of the Commission on Judicial Discipline who has firsthand knowledge of how the Commission works. Those amendments were acceptable to the Article 6 Commission and were adopted on April 20. You have in front of you the legislation with all those amendments that have been agreed to by all of us.

You also have an outline (Exhibit M, original is on file in the research library). The language to section 13 modifies certain reporting requirements. It was a compromise reached among the parties so the public would know how long it takes for matters to be taken care of for the time of disposition. You have in front of you all the areas that were changed. You have a clean bill. We do have consensus with the one provision of section 13.

CHAIR CARE:
The sign-up sheet would indicate this is consensus. We will close the meeting on A.B. 496 and continue the hearing tomorrow. We are adjourned at 11:04 am.

RESPECTFULLY SUBMITTED:

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Janet Sherwood,
Committee Secretary

APPROVED BY:

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Senator Terry Care, Chair

DATE:____________________________________