

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
March 13, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:39 a.m. on Friday, March 13, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Suite 5100, Governor's Office, 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

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Kathleen Swain, Committee Secretary

**OTHERS PRESENT:**

Karen D. Dennison, Real Property Law Section, State Bar of Nevada  
Gail J. Anderson, Administrator, Real Estate Division, Department of Business  
and Industry  
Bill Bradley, Nevada Justice Association

**CHAIR CARE:**

The hearing is open on Senate Bill (S.B.) 172.

**SENATE BILL 172:** Revises provisions governing the sale of subdivided land.  
(BDR 10-867)

Senate Committee on Judiciary  
March 13, 2009  
Page 2

KAREN D. DENNISON (Real Property Law Section, State Bar of Nevada):

This bill is an amendment to chapter 119 of *Nevada Revised Statutes* (NRS), which is the Nevada Land Sales Act. This chapter regulates land that is subdivided into 35 or more lots under a common promotional plan. It is a consumer protection act. Chapter 119 of NRS regulates matters such as making sure consumer deposits are applied to the purchase price and that there are no blanket encumbrances. The Act also requires a disclosure if there are no paved roads or utilities to the property.

This amendment would exempt commercial and industrial properties from this Act. Nonresidential is the word used in the bill. The federal act, Interstate Land Sales Full Disclosure Act, does specifically exempt commercial and industrial properties. This bill would do the same thing for the Nevada Act as the federal Act does.

CHAIR CARE:

Senate Bill 121 falls under the same chapter as this bill but relates to the sale of undeveloped land located out of state. This is the second day the Committee has heard a bill that falls under NRS chapter 119, but they involve two different subjects.

[SENATE BILL 121](#): Makes various changes concerning the sale of subdivided land in certain circumstances. (BDR 10-250)

CHAIR CARE:

Federal legislation mirrors what you wish to do here. Please address the need to do this.

MS. DENNISON:

The need was brought up by one of the members of the Real Property Law Section. There are not many commercial subdivisions with 35 or more lots. This could be a problem with commercial office condominiums. Historically, the Real Estate Division has not regulated commercial subdivisions. It is not necessary in the public interest to protect a sophisticated purchaser of a commercial product. However, someone purchasing a home or residential product needs the protection, which is the policy behind the bill.

SENATOR WIENER:

Did something prompt this bill?

Senate Committee on Judiciary  
March 13, 2009  
Page 3

MS. DENNISON:

This is anecdotal, but a lawyer from Las Vegas submitted a property report application on a commercial subdivision, which would be issued for a full registration under this Act. The Division told the lawyer that commercial subdivisions should not be regulated under the Act.

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

I support S.B. 172. In practice, the Project Section has not registered commercial land under the Subdivision Act. This is a clarification to encode that. It is intended to mirror the Interstate Land Sales Full Disclosure Act.

CHAIR CARE:

We would be codifying what is already happening?

MS. ANDERSON:

That is correct.

SENATOR PARKS:

I would like to disclose that I am a real estate licensee. This bill will not affect me any differently than any other real estate licensee.

CHAIR CARE:

Hearing no opposition, I will entertain a motion.

SENATOR WIENER MOVED TO DO PASS S.B. 172.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR CARE:

The hearing is open on Assembly Bill (A.B.) 132.

**ASSEMBLY BILL 132**: Revises certain provisions relating to an award of damages in an action for forcible or unlawful entry or detention of real property. (BDR 3-791)

CHAIR CARE:

Did Assemblyman Marcus Conklin want to present this bill? He did not say to me one way or the other. We could probably do this without him. This is pretty straightforward. You have a Nevada Supreme Court decision. I am saying this on the record. Why don't you come on up?

BILL BRADLEY (Nevada Justice Association):

I support A.B. 132. Assembly Bill 132 addresses an ambiguity the Supreme Court recently pointed out in *Countrywide Home Loans v. Thitchener*, 124 Nev. \_\_\_, 192 P.3d 243 (2008). When there is a wrongful foreclosure, both real and personal property can be injured. The Nevada Supreme Court interpreted a statute in NRS chapter 40 which allows treble damages for a conversion or stealing of someone's property.

The trial judge in Las Vegas, after hearing the facts of *Countrywide Home Loans* ([Exhibit C](#), original is on file in the Research Library), pages 1-5, believed the Thitcheners had suffered damage to both personal and real property in the wrongful foreclosure. As a result, the judge applied the treble damages statute to both the real and personal property.

The Nevada Supreme Court decided in *Countrywide Home Loans* this statute was ambiguous in [Exhibit C](#), pages 10 through 43. Because of the ambiguity, the Nevada Supreme Court said you cannot treble damages regarding personal property, [Exhibit C](#), page 18. Assembly Bill 132 is intended to address that ambiguity and make sure foreclosures are done conscientiously and responsibly. If they are not done in that fashion, there is accountability through treble damages for personal and real property.

CHAIR CARE:

There are provisions elsewhere in the NRS where treble damages are permitted. Egregious conduct is the reason for that. Do you know what the statutes say in other states? Is personal property included in other jurisdictions?

MR. BRADLEY:

I do not know. The Nevada Supreme Court did go into the analysis regarding punitive damages. This is an excellent discussion on punitive damages in Nevada and helpful in clarifying the laws. The Nevada Supreme Court concluded that treble damages in this case were different from punitive damages.

Damages are trebled in some cases as a deterrent because the conduct is so horrendous, elder abuse for example. Many times, the actual damages are small.

This bill was brought because of the lender's conduct in foreclosing on Thitcheners' property. They threw out the family's personal belongings, including wedding rings, photos and sentimental personal property. The Thitcheners had no recourse because it is difficult to place a value on sentimental items without treble damages. It is important for treble damages to apply to both real and personal property. In foreclosures, real property is not damaged much. The real damage occurs when personal belongings are thrown away.

SENATOR WIENER:

In the Thitchener case, damage was inflicted on the wrong house. With real property, we can see evidence of damage. With personal property, there would have to be some evidence of personal property damaged or lost. As part of their case, would they have to present evidence proving they even had the personal property?

MR. BRADLEY:

That is correct. The court talked about how this family was able to provide a complete list of the personal property that had been trashed.

SENATOR WIENER:

The digest says, "Existing law provides that, in an action for forcible or unlawful entry ... ." A foreclosure brought this bill to us. I have done a lot of work in juvenile justice and written some published material on youth gangs. Initiation into a youth gang usually involves illegal behavior. It could involve harm to person or property, generally to prove they are worthy of entry into the gang. Even though the initiation is a criminal act, would there be civil remedies against those gang members who damaged real or personal property?

MR. BRADLEY:

There would be. The statute as amended is very clear. Anyone who recovers damages from forcible or unlawful entry is subject to treble damages to both the real and personal property.

Senate Committee on Judiciary  
March 13, 2009  
Page 6

SENATOR WIENER:

In the Thitchener case, the foreclosure was legal but inflicted on the wrong home. In the case of criminal activity we just discussed, there is already a criminal remedy. Could a civil action be brought against the parties or against the parents if the perpetrators are juveniles?

MR. BRADLEY:

Yes, for treble damages. The statute does not differentiate between an unlawful foreclosure and a burglary. It is an unlawful entry.

CHAIR CARE:

Punitive damages were awarded in this case. The statute will include personal property. Treble damages would apply to personal property, and punitive damages are still available.

MR. BRADLEY:

That is the discussion I was talking about earlier where the Court followed the facts of this case closely and was angry.

CHAIR CARE:

The discussion under NRS chapter 42 is clear in this case. There is no dissent in this case; it was the full court.

Ms. Eissmann, will you check to see what the vote was in the Assembly?

LINDA J. EISSMANN (Committee Policy Analyst):  
The vote was 42 to 0.

CHAIR CARE:

Hearing no opposition, I will entertain a motion.

SENATOR AMODEI MOVED TO DO PASS A.B. 132.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\*\*\*\*\*

Senate Committee on Judiciary  
March 13, 2009  
Page 7

CHAIR CARE:

The hearing is open on S.B. 169.

**SENATE BILL 169**: Enacts the Revised Uniform Unincorporated Nonprofit Association Act of 2008. (BDR 7-674)

SENATOR TERRY CARE (Clark County Senatorial District No. 7):

I will not go into what the Uniform Law Commission is because we have had a hearing on a uniform act. Senate Bill 169 is a revised uniform act—the Revised Uniform Unincorporated Nonprofit Association Act of 2008.

The original Act had been adopted by 12 states. There are thousands of unincorporated nonprofit associations, and they could include neighborhood associations. They can be comprised of individuals, corporations or other entities or a combination of those. It is a group of people or members who have chosen not to form a nonprofit corporation. There is no filing with the Secretary of State. It is not recognized under statute as a particular business entity. If you are a nonprofit organization and have not incorporated, you are an unincorporated nonprofit association, which is the subject of this bill.

Unincorporated nonprofit organizations are regulated by existing case law. Statutes do not apply. There may be statutes peculiar to your particular type of organization but not relating to everything you would find with a corporation.

Definitions are contained in sections 4 through 10 of the bill. The bill also addresses the relation of this Act to other existing laws. It addresses the recognition of an unincorporated nonprofit association as a legal entity and the legal implications following from that status. It addresses contract and tort liability of an association as well as its members and managers. The Act discusses internal governance, fiduciary duties and agency authority. The bill addresses dissolution and merger.

Unincorporated nonprofit association is defined in section 10 of the bill. This can be a loose arrangement. It can be an oral agreement or implied through conduct. The five subsections under section 10 describe what is not included in an unincorporated nonprofit association.

Section 11 begins the discussion of relation to other aspects of the law. For example, subsection 1 says, “Unless displaced by particular provisions of

sections 2 to 40 ... the principles of law and equity supplement the provisions of sections 2 to 40, inclusive, of this act." Law such as contract law, fraud law or agency law will not change with this statute.

Section 11, subsection 2 says, "A statute governing a specific type of unincorporated nonprofit association prevails ... ." For example, if an existing statute governs a church, this bill would not control. The existing statute would control.

The provisions in section 11, subsection 3 relate, for example, to any laws dealing with permits for fund-raising or anything an unincorporated nonprofit association wishes to do. This would not change any laws.

The subsequent sections deal with the relationship to other law and the discussion of the unincorporated nonprofit association as a separate legal entity.

VICE CHAIR WIENER:

Would you explain section 13, subsection 4?

SENATOR CARE:

The tax-exempt status of an unincorporated nonprofit association is between it and the Internal Revenue Service (IRS). Nonprofit organizations sometimes engage in profit-making activities, but they will ultimately not be for profit. They will use that money for charitable purposes or for the business of the organization.

VICE CHAIR WIENER:

The term "profit making" means the entity cleared more than they invested in the cost of an event. That is considered a profitable event, but the profit must go back into the nonprofit organization.

SENATOR CARE:

Yes, that is correct.

SENATOR WASHINGTON:

Are you referring to a classification under the United States Internal Revenue Code, 26 USC section 501(c)(3) regarding profits made by an incorporated nonprofit organization?



SENATOR CARE:

It would be up to the entity to do that. There are probably many organizations that file and conduct themselves as tax-exempt. If they do not continue to conduct themselves as tax-exempt, they risk losing that status. An association under this Act must conduct itself in the manner of a nonprofit entity whether or not it is a corporation.

VICE CHAIR WIENER:

Is the unincorporated nonprofit association a recognized status or category with the IRS? Do they have to apply to get this recognition?

SENATOR CARE:

I am not an expert in tax law. Some organizations make the letter of determination from the IRS. They will file and conduct themselves as a nonprofit. This statute says if you are going to remain nonprofit, you must use the profits you make from an event for something for the mission. I cannot say this statute requires you to do something with the IRS. That will be up to the association.

SENATOR WASHINGTON:

If an entity is classified as an unincorporated nonprofit association and profits are achieved from fund-raising activities, who does the accounting? Who provides the oversight?

SENATOR CARE:

A section in this bill addresses the right of members to inspect the books. The comments to the Uniform Act say there is no requirement to have books. These are loose groups, and they conduct themselves like a club. They may or may not have books.

VICE CHAIR WIENER:

I know someone who belongs to a quilting club. They regularly make quilts and raffle them off. They use the money they make for children's groups. They are together because they have a common interest with no intention of profitability. Is that a good example of a loose association?

SENATOR CARE:

Yes.

SENATOR COPENING:

Another example is St. Jude's for children. They produce Christmas cards or holiday cards from donated or old cards and resell them for profit. The money then goes back to them.

VICE CHAIR WIENER:

They would probably be an IRS entity. St. Jude's is more structured.

SENATOR CARE:

Section 15 deals with the ownership and transfer of properties by a nonprofit unincorporated association. One of the reasons this bill has a two-thirds requirement is contained in section 15, subsection 4, where it says, "A county recorder may collect a fee for recording ... ." It is not a tax, but that is the reason for the two-thirds.

Section 16 discusses liability regarding an unincorporated nonprofit association, which is the same for a nonprofit corporation. The bill makes a distinction between the liability of the member or manager as opposed to the liability of the association. The association may have a debt, but the debt is not personally that of a member or manager.

Section 17 says the unincorporated nonprofit association may sue or be sued in its name. Section 19 refers to the registered agent, which is another reason for the two-thirds requirement. If you have a registered agent, there is a fee but no tax.

Section 22 discusses agency and says a member is not an agent solely by being a member. Section 23 describes the internal governance of these associations and includes a list of actions requiring the approval of its members.

VICE CHAIR WIENER:

Does section 23 mirror traditional nonprofits?

SENATOR CARE:

You will find these provisions in statutes pertaining to nonprofit corporations. This language is similar to other business entities.

Section 25 says a member does not have a fiduciary duty to an unincorporated nonprofit association or to another member solely by being a member. A

subsequent provision says the manager does have a fiduciary duty, which is the same as you would find in a limited liability company.

Section 26 relates to the admission, expulsion, suspension or dismissal of a member. Section 29, subsection 1 says only the members may select a manager. Section 30 says the manager owes fiduciary duties of loyalty and care to the unincorporated nonprofit association and its members.

Section 31 includes the notice and quorum requirements. Section 32 says a member or manager may inspect the books. There is no requirement that books be kept for these nonprofit unincorporated associations.

Section 33 precludes the association from paying dividends to a member or manager. Section 34 relates to reimbursement.

Section 35 and the subsequent sections discuss dissolution. Beginning in section 37, there are measures relating to mergers, which are the same as found in other parts of Nevada law.

Twelve states adopted the earlier Act. The Uniform Law Commission felt it was time to revise that. Some states have a lot of case law, and others do not. This bill sets forth the rules for nonprofit unincorporated associations rather than having to look at common law.

SENATOR PARKS:

How many of these associations are there? For example, my homeowners' association operated for many years as an unincorporated nonprofit association. Is this a significant problem?

SENATOR CARE:

I am not going to say it is a problem. The Commission's attitude is these associations exist, and in many states, there are no rules to govern them other than common law.

The material I distributed, ([Exhibit D](#)), says there are thousands of nonprofit associations. I do not know how you could keep track of their numbers. I do not have any statistics on Nevada, and I do not know where you could get those.

SENATOR PARKS:

I did see they are equivalent to a general partnership, an informal type of general partnership.

SENATOR CARE:

The difference is that if you are a for-profit organization and you have not organized as a limited liability company or a corporation, by default, you are a general partnership. The parallel here is if you are a nonprofit and have not incorporated, this is a default as well. You will become an unincorporated nonprofit association. It would fall under the statutes created if this bill passes.

SENATOR PARKS:

This is seen as a solution rather than creating a greater problem.

SENATOR CARE:

These are legitimate associations. They are nonprofit associations that have chosen not to incorporate. A chapter in NRS governs nonprofits that have incorporated. There is no NRS chapter setting forth rules for the treatment of unincorporated nonprofit associations.

VICE CHAIR WIENER:

By doing this, there will be some structure and remedies if things go awry for an unincorporated nonprofit association. There would be some accountability for those clubs or associations that are already in play. There are probably thousands of these associations in Nevada.

SENATOR CARE:

That is the idea. Otherwise, we only have case law. With this bill, we could go to a statute.

VICE CHAIR WIENER:

There being no further witnesses, we will close the hearing on Senate Bill 169.

CHAIR CARE:

Senate Bill 182 and Senate Bill 183 extensively deal with homeowners' associations. You will want to read those bills.

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

Senate Committee on Judiciary  
March 13, 2009  
Page 13

[SENATE BILL 183](#): Revises various provisions governing common-interest communities. (BDR 10-70)

CHAIR CARE:

There being nothing further to come before the Committee, the hearing is adjourned at 9:21 a.m.

RESPECTFULLY SUBMITTED:

---

Kathleen Swain,  
Committee Secretary

APPROVED BY:

---

Senator Terry Care, Chair

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