MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE

Seventy-Sixth Session
May 10, 2011

The Committee on Judiciary Subcommittee was called to order by Chairman James Ohrenschall at 8:15 a.m. on Tuesday, May 10, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Richard Carrillo
Assemblyman Richard McArthur

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Allison Copening, Clark County Senatorial District No. 6
Assemblyman Tick Segerblom, Clark County Assembly District No. 9

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Karen D. Dennison, Vice Chair, Real Property Section, State Bar of Nevada
Michael Buckley, Private Citizen, Las Vegas, Nevada
Michael Randolph, Private Citizen, Las Vegas, Nevada
Gary Lein, Private Citizen, Las Vegas, Nevada
Trudi Lytle, Private Citizen, Las Vegas, Nevada
Yvonne Schuman, Private Citizen, Las Vegas, Nevada
John Griffin, Nevada Justice Association
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Bob Robey, Private Citizen, Las Vegas, Nevada

Chairman Ohrenschall:
[The roll was called.] Thank you for being here today. We will open today's hearing with Senate Bill 204 (1st Reprint). Senator Copening, please come forward and present your bill.

Senate Bill 204 (1st Reprint): Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

Senator Allison Copening, Clark County Senatorial District No. 6:
I am here today to introduce Senate Bill 204 (1st Reprint) for consideration. The bill addresses changes to the Uniform Common Interest Ownership Act. I am carrying this at the request of the Uniform Law Commission. The Legislature adopted the 1982 version of the Uniform Common Interest Ownership Act. [Continued reading from prepared testimony (Exhibit C).]

With me today is Karen Dennison. She can elaborate more on the changes being proposed, and why they are being proposed. With the Chair's permission, I will turn it over to Karen.

Chairman Ohrenschall:
Yes, thank you very much. Assemblyman Segerblom, Chairman Horne, and I are all members of the Uniform Law Commission.

Karen D. Dennison, Vice Chair, Real Property Section, State Bar of Nevada:
I would like to correct a statement that was made. I am not a member of the Uniform Law Commission. The State Bar members reviewed the Uniform Act changes made in 1994 and 2008 to the Uniform Common Interest Ownership Act, and we have brought forth certain amendments made in those years. As you may recall, *Nevada Revised Statutes* (NRS) Chapter 116 was patterned after the 1982 version of the Uniform Common Interest Ownership

Act. There have been some changes since then refining and adding to the Uniform Act. We have brought those changes forth, both last session and now. Senate Bill No. 261 of the 75th Session addressed commercial common interest communities. It also addressed the definition of common interest community (CIC), along with cost-sharing agreements.

In preparation of this session, the members of the Executive Committee of the Real Property Section went through all changes of the Uniform Act, to decide which ones to bring forth. I would like to point out that the members represent diverse interests ranging from homeowners associations and managers, to builders and developers. We have a mission statement, which is found in our bylaws, which I would like to read (Exhibit D). We are not here to advocate any policy changes but rather to bring forth those changes for your consideration, which were made by the Uniform Law Commission. Our legislative proposal section in our bylaws reads: "This Section may draft legislation for the Nevada State Legislature or support or oppose the adoption of legislation by the Nevada State Legislature, provided that: The Section's proposed legislation or position on legislation (1) relates closely and directly to the administration of justice; (2) involves matters which are not primarily political and as to which evaluation by lawyers would have particular relevance if not related closely and directly to the administration of justice; or (3) come within the Section's special expertise and jurisdiction."

Before I walk you through the bill, you may want to know why a uniform act is a valuable tool for lawyers. For me, it is valuable to be able to look at the Uniform Act comments for interpretation of the law, and to look at case law in other jurisdictions, which may have ruled on a particular section of the Uniform Act. That is the value of the Uniform Act. In Nevada, we have a lot of non-uniform provisions, but these are the ones we feel would be beneficial to the overall act itself. The length of S.B. 204 (R1) may appear to be daunting but many of its provisions are technical. Other provisions are being moved. The reason for moving provisions has to do with the fact that they are currently located in sections where the titles do not relate with the subject matter, making it difficult to find. Please bear with me, during some of these technical changes, and rearrangement of sections.

I will begin with section 2 of the bill. This section adopts new Uniform Act language covering how an association must notify its unit owners. These notice provisions expressly exclude homeowners association (HOA) lien foreclosures. The HOA lien foreclosure notice provisions are still in effect. If there are other specific notice provisions in NRS Chapter 116, this will not override them. Section 2 allows notice to be given to the physical mailing address or the email address of the unit's owner, if designated by the unit owner. If no designation

has been made, there is a default provision, which is one of four methods: hand delivery to the owner; hand delivery mailing, or commercially reasonable delivery service to the address of the unit; by email; or by any other method reasonably calculated to provide notice. These four methods are a default notice provision if the owner has not designated an email address or a physical mailing address.

Chairman Ohrenschall:
Pardon me, Ms. Dennison, right now is it all done by U.S. mail?

Karen D. Dennison:
Many provisions do not provide the notice provision, although the first three methods of the default provision are found in NRS 116.3108 regarding notices of unit owner meetings. This is simply a new section providing for notice. It may introduce the concept of email, although I do not know for sure whether email is included anywhere in the statutes. I do not want to speculate on that.

Chairman Ohrenschall:
Thank you. To the best of your knowledge, this would be a new frontier, correct?

Karen D. Dennison:
Yes, a new frontier with the first three methods already being in law. "Any other method reasonably calculated to provide notice" is the new Uniform Act change, which we are introducing.

Section 3 overrides conflicting provisions of federal law regarding electronic signatures. The same language is found in NRS Chapter 107A, which is the Uniform Act dealing with the assignment of rents. It simply overrides any conflicting provisions that we may have in this bill to the extent that they may conflict with federal law.

Section 4 is a new section and has to do with destruction of substantially all of the CIC. It allows a court action to be brought. This is intended to cover catastrophic events because there are two things that must happen. The first is that substantially all units must be destroyed or become uninhabitable. The second is the unit owners are not likely to receive notice under available methods for giving notice. If the unit owners cannot receive notice, one would have to believe that it would be catastrophic, and that they have been dispossessed from their homes and possibly from the area. Section 4 allows either the executive board or any interested person to bring a court action to terminate the CIC or reduce the size of the CIC. It gives the court the power to appoint a receiver and issue any other order it considers to be in the best interest of the CIC.

Section 5 is not a change in the law. It moves existing law found in NRS Chapter 116.3103 . . .

Chairman Ohrenschall:
Pardon me, Ms. Dennison, Assemblyman McArthur has a question.

Assemblyman McArthur:
Section 4 says "substantially all." I wonder whether it was left broad intentionally. Should it say "all?" Or should it actually be "substantially all?" What does substantially mean?

Karen D. Dennison:
"Substantially all" is a term which will have to be determined by the court in its action. Current law allows for termination by 80 percent, without all the other requirements attached. "Substantially all" was not defined in the Uniform Act, and I think it may have been left purposely broad to give the court the discretion to determine if there was such an event that meets the full criteria previously described.

Assemblyman McArthur:
The section also references "any other interested person." That term also seems broad. They do not have to have any connection to the HOA at all?

Karen D. Dennison:
I am assuming that it means an interest in the property in the CIC. That is not spelled out and we would certainly welcome that clarification.

Assemblyman McArthur:
I would assume that was the intent, but the wording is not apparent.

Chairman Ohrenschall:
Are there any other questions? Please continue with your testimony.

Karen D. Dennison:
We are now on section 5. This is not a change, but it moves existing law found in NRS 116.31036 subsection 3. It relates to indemnification of executive board members. Section 6 is not a new section either, although there have been some amendments which were not proposed by the Real Property Section members. It deals with equal space in an official publication where there may be candidates running for office or ballot questions. Equal space must be provided to the candidates or opposing sides of a ballot question. There are some amendments that were proposed relating to when a CIC has a closed-circuit television station, which is found in subsection 3. It provides that

the equal time must be given to a candidate or a ballot question under the same terms and conditions as the first candidate. The other changes delete the provisions without charge, which were in the existing law for the official publication. It will provide that the candidates or ballot questions all be given the same terms and conditions for utilizing their material in the publication.

Section 7 is important because it recognizes that terms used in the statute cannot be modified by the declaration. For example, if the law says one thing, a defined term saying differently in the declaration cannot make the law different. Sections 8 and 9 are grammatical changes.

Section 10 is important because it expands the definition of "common elements." Common elements may include easements and other real property interests which are outside the platted subdivision of the CIC, provided that those real property interests both benefit the owners and are subject to the declaration. Section 11 is a grammatical correction recognizing that the "declarant" can be a group of persons, which is in the lead-in language to that section.

Section 12 recognizes that the executive board may be, and in many cases is, designated in the bylaws. Sections 13 through 16 are all grammatical or stylistic changes. Section 17 was a Legislative Counsel Bureau (LCB) change to conform to existing law found in NRS 116.12075, which deals with proxies in favor of the declarant.

Regarding section 18, existing law in NRS 116.1108 recognizes that NRS Chapter 116 is not an island but is to be interpreted with respect to other bodies of law which are enumerated in that section. This change simply adds to laws governing organizations other than corporations, such as limited liability companies.

Chairman Ohrenschall:
Is section 18 part of the Uniform Act, or is that something that the State Bar Committee determined?

Karen D. Dennison:
This is part of the Uniform Act. It simply modernizes the fact that there is more than just corporate law out there. There is LLC law, limited partnership law, et cetera. Section 19 is not a substantive change. The language being removed is already found in NRS 116.4117, subsection 1. It is merely removing a redundancy in the law. Section 20 clarifies the provisions regarding public offering statements, which must be delivered to a purchaser. It clarifies

the provisions which apply to out-of-state subdivisions. Sections 21 through 27 are either technical changes in the Uniform Act or LCB conforming changes.

We are now on page 16, section 28. This section deals with the further subdivision of existing units in a CIC. It provides for the reallocation of allocated interests after the further subdivision takes place. It adds that there can be any basis for allocation, which is provided in the declaration. This is consistent with NRS 116.3115, subsection 2, which refers to allocations set forth in the declaration. Section 29 recognizes that the right to use the common area should not be limited to planned communities but also applies to all forms of common interest communities, such as condominiums and co-ops, as Senator Copening described. This act covers all types of common interest communities, and extends the easement rights. It does regulate the use of the limited common elements, which are limited to the use of a particular owner.

Assemblyman McArthur:
I am a little bit confused on the last section. Were there no rules and regulations for any other type of community besides the homeowner associations? We did not have anything of the sort for condominiums before? Is that why subsection 3 was included?

Karen D. Dennison:
Pardon me, Mr. McArthur, your question was on subsection 3. Can you repeat the question?

Assemblyman McArthur:
I guess my question is why do we need this part included? Is there already a section for HOA common interest? Is this section including condominium common interest? I did not quite understand why we need it.

Karen D. Dennison:
The inclusion of condominiums and co-ops is in subsection 2. It once read, "In a planned community, subject to the provisions of." The units' owners have easements in the common elements for purposes of access to their units. Planned community has been crossed out so that now it applies to all unit owners. They all have easements in the common elements for the purpose of access to their units.

Assemblyman McArthur:
Can you also explain subsection 3?

Karen D. Dennison:
Subsection 3 simply states more broadly that the unit owners have the rights to use the common elements, subject to any rules or restrictions in the declaration on the use of the common elements that are not limited common elements. It is broader than simple access to their units, which is addressed in subsection 2.

Assemblyman McArthur:
Okay, that answers my questions. When I initially looked at this section, I wondered why it was needed. It just broadens the scope.

Karen D. Dennison:
Yes, that is correct.

Chairman Ohrenschall:
Thank you, please proceed with your testimony.

Karen D. Dennison:
We are now on section 30, which begins on page 17 of the bill. This section amends NRS 116.2117, which deals with amendments to declarations. This section includes some, but not all, of the Uniform Act revisions. Our Committee omitted those which we considered to be controversial. One of the sections we brought forth was subsection 1, which states that the Conditions, Covenants, and Restrictions (CC&R) may be amended by another percentage, other than majority vote, if provided by the declaration. It makes clear that if there is a class of persons, or another person who must approve an amendment, the amendment is not valid without that class or person. An example would be a certain class of lenders, first deed of trust holders, or a specific class with a specific interest in the subject matter.

Chairman Ohrenschall:
Was this part of the code promulgated by the Commission, or is this something that has been added by the State Bar Committee?

Karen D. Dennison:
These are all Uniform Act changes in section 30, although all of the changes have not been included.

Chairman Ohrenschall:
Is section 30, subsection 1, part of the Uniform Act?

Karen D. Dennison:
Yes.

Chairman Ohrenschall:
I want to make sure I understand it. When a development is created, the declaration can provide that a certain group, such as a minority, may make these decisions in lieu of a majority vote. Is this right?

Karen D. Dennison:
I think it specifies that a different percentage, other than a majority of votes, is required. In addition to that majority or other percentage of votes required for the amendment, the other person or class of persons would have to approve the amendment. This would make it a two-track approval of the amendment.

Chairman Ohrenschall:
The first track may not necessarily require a majority, correct?

Karen D. Dennison:
That is correct. The way I read this, a different percentage, other than a majority, may be specified.

Chairman Ohrenschall:
Perhaps, the second track would be approved by the homebuilder, or the homebuilder's designee?

Karen D. Dennison:
It simply says, "requires approval of another person." I would like to point out, with respect to the declarant, there is another provision in NRS Chapter 116 which states that you cannot have a provision that specifically favors the declarant. There may be a provision related to a certain group of homes. In order to change provisions relating to that amenity, that class of person would have to vote for the amendment.

Chairman Ohrenschall:
Would you happen to know that other section number?

Karen D. Dennison:
I can find it for you.

Assemblyman McArthur:
Line 30 refers to "person." I assume that is not a natural person, and would include builders, limited liability companies, et cetera.

Karen D. Dennison:
As I understand it, "another person" includes both entities and natural persons.

The change to subsection 4 is simply grammatical. The next substantive revision is found in section 30, subsection 6, which deals with amendments that restrict permitted uses, or behavior in a unit, or other qualifications of persons who may occupy the unit. This particular revision protects unit owners who purchase prior to the effective date of the amendment. For example, if you had an age-restricted community by amendment, those not falling within the age of the restriction would not be subject to the amendment until they sell their units. You cannot have a retroactive effect with respect to those types of restrictions. Section 30, subsection 7 provides that if there is a provision in a declaration, providing for special declarant rights, the special declarant rights may not be amended without the declarant's consent. Section 30, subsection 8, paragraph (a) is consistent with the concept of eligible mortgage holder, which was a concept instituted by Fannie Mae. This subsection indicates that in order to be eligible to vote on an amendment, the lender, guarantor, or insurer of a loan must give notice to the association that it desires to receive notice of any proposed amendment. Section 30, subsection 8, paragraph (b) recognizes that an amendment should not be delayed if the lender fails to respond. It provides that the lender's consent is not required if the refusal to consent is not received within 60 days after delivery of the notice to the lender. I believe that this provision is mirrored in many declarations that I have seen, because it tightens the concept of the eligible mortgage holder.

Chairman Ohrenschall:
Excuse me, Ms. Dennison, I have a question on subsection 7. Is this part of the Uniform Act, or has this come from the State Bar Committee?

Karen D. Dennison:
Yes, this provision came from the Uniform Act.

Chairman Ohrenschall:
How does it work currently in existing law, with regard to the declarant's rights?

Karen D. Dennison:
Currently, I believe the statute is silent with respect to amending a provision that includes special declarant's rights. Most CC&R documents will provide specific provisions for the fact that you cannot amend declarant's rights away without the declarant's consent.

To continue with section 31 on page 18, this section simply incorporates the new termination provisions, whether it be catastrophic termination or downsizing provisions found in section 4 of S.B. 204 (R1). Section 32 represents Uniform Act clarification changes.

Section 33 has to do with the powers of the association. It distinguishes between mandatory powers and permissive powers, which may be exercised by the association. The two mandatory powers are the adoption of the bylaws and the adoption of budgets. All other powers are considered to be permissive. Regarding the amendment to the bylaws, our committee added language, "except as otherwise provided in the bylaws," with respect to amending the bylaws. We have recognized that not all associations allow the board to amend the bylaws. Some association governing documents require that the owners amend the bylaws.

Assemblyman McArthur:
Regarding Section 32, subsection 3, we are adding the language, "The association must have an executive board." Why was that added? Some HOAs consist of only a few people, and in that case, an executive board seems unnecessary.

Karen D. Dennison:
This is a Uniform Act change. Your point is well-taken. I believe there are exemptions in the law for very small associations. They would not be required to comply with this section. I would have to do some research to determine which specific sections the smaller associations are exempt from. In my opinion, a corporation acts through its board, and if there is an incorporated association, there must be a board to act on behalf of that entity.

Assemblyman McArthur:
In the case of small associations, I believe there are a minimum number of units required before the rules of HOA even apply. If there is an exception to it, perhaps you can provide that for us.

Karen D. Dennison:
Yes, I will check for the numerical cut-off for being required to comply with this section.

I believe we were discussing section 33 regarding the powers of the association. Subsection 3 contains an important clarification. It clarifies when the board must take action to enforce the governing documents. Many CC&Rs provide that the association board has discretion whether or not to take action. This simply codifies that particular provision and provides some guidelines as to when the association is required to enforce CC&Rs. In other words, what triggers that duty of enforcement? Page 23, lines 4 through 15 basically lay that out in clear language. [Read passage from section 33, subsection 3 of S.B. 204 (1st Reprint).] I believe paragraph (c) is the key to many of these situations. There may be a violation, which is not harming the entire

community. The association may not have the money to pursue an enforcement action, which may be quite costly. This section gives the board some guidelines on when and when not to pursue. It also provides that if the board does not pursue a particular violation, the failure to enforce is not a waiver, and enforcement action may be taken under the same provision in the future, provided the board is not acting in an arbitrary or capricious manner.

Section 34 extends the provisions already in existing law for performance of duties, which is currently only applicable to directors. It extends that provision now to officers. It adds a provision from the Uniform Act that states that both officers and directors are subject to the conflict of interest rules which govern Nevada nonprofit corporations. Subsection 2 provides for limitations on the powers of the executive board. These limitations follow the Uniform Act. The powers which a board may not exercise are clarified in this section. [Read passage from section 34, subsection 2.] The language in paragraph (b), to elect members of the executive board, has always been in there but the new part will indicate that the exception is to fill a vacancy. It clarifies that the board may fill a vacancy. Subsection 3 is consistent with NRS 116.3102, subsection 1, paragraph (b) which requires the board to adopt budgets.

Section 35 is not new language. It was moved from NRS116.3108, subsection 5. Section 36 is not a new concept either. It has to do with the voluntary surrender of declarant control. A declarant can surrender control before certain criteria are met. The most notable occurrence of this situation is due to a sale of at least 75 percent of the units. This simply moves the sections relating to relinquishment of voluntary declarant control.

Chairman Ohrenschall:
I have a question regarding section 35, subsection 3. Does that conflict with section 2 providing for electronic mail? It says, “shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address . . . .“ Is that a desired exception to the electronic mail method?

Karen D. Dennison:
After a quick read and my recall of our notification provision, I would say that if any other provision of NRS Chapter 116 requires a specific way of providing notice, the “new notice” provision in section 2 does not apply. This would override any conflicting section.

Section 37 is not a new section. It was moved from NRS 116.3108, but there were some changes made in the amendment to the initial bill passed by the Senate, which were not proposed by our group of committee members. The changes have to do with removal of board members, and the time period

involved. There is also a time extension from 60 to 90 days for a removal election. In the case where a timeshare association is part of a master umbrella association and is voting through delegates, the date for that removal election has been extended to 90 days.

Section 38 is an important change, which was taken from the 2008 amendments to the Uniform Act. Under current law, there is no time limit for termination of a contract after the turnover of the board to the owners from the declarant. Under current law, the association can terminate any management or employment contract, or any lease of a recreational or parking facility, or any contractor lease entered into with a declarant or an affiliate of the declarant. This can be done at any time; there is no limit. Subsection 1 establishes a two-year time limit for termination of such contracts or leases upon not less than 90 days notice. This is a Uniform Act change. A board that takes over for a declarant has two years to discover any problems, and should bring an action within that period of time. Also in this section, management contracts have been expanded to include maintenance and operations contracts. Those are not necessarily provided by a management company. There may be separate maintenance contracts, which would fall into the category of contracts which may be terminated within the two-year time limit. The time limit does not apply to termination of contracts or leases that were not entered into in good faith or are unconscionable. If there is a bad-faith argument, the time limit does not apply.

Section 39 deals with requirements for association bylaws. Subsection 1 adds cleanup language consistent with the Uniform Act. These new subsections provide that the bylaws must contain provisions concerning meetings, voting, quorums, and other activities of the association, which are necessary to satisfy NRS Chapter 116. Subsection 2 provides that the bylaws may contain any other necessary or appropriate matters, including matters that could be adopted as rules, unless NRS Chapter 116 or the declaration does not allow these provisions to be in the bylaws. The declaration may have certain provisions that only can be implemented by rules and regulations.

Section 40 simply states the annual meeting of owners is to be held at a time and place stated or fixed in accordance with the bylaws. Regarding subsection 2, the substantive provisions which have been crossed out have been moved to NRS 116.31036.

Chairman Ohrenschall:
Did you just say that section 40 was not a change?

Karen D. Dennison:
Section 40, subsection 2 has been moved to NRS 116.31036. I will have to get back to you on that, because I do not have NRS 116.31036 here to verify that.

Chairman Ohrenschall:
Our legal counsel just stated that section 37 amends NRS 116.31036.

Karen D. Dennison:
Referring to section 40, subsection 3, the notice provisions for noticing owners meetings are replaced by the new notice provisions found in section 2 of S.B. 204 (1st Reprint), which we discussed earlier. Those sections now apply to the noticing of owners meetings. Subsection 4 makes clear that owners' comments are limited to matters concerning the CIC or the association. Subsection 5 language was moved to NRS 116.31031. Section 41 governs meetings of the executive board. It provides the new notice section also applies to executive board meeting notices.

Section 42 deals with quorums, and it expands the concept. Currently, a quorum is members present in person or by proxy. It expands to those who have cast absentee ballots. This is a new concept in the Uniform Act, which provides that voting may be by absentee ballot. Subsection 3 provides that a quorum is counted at the time a vote is taken and not at the beginning of the meeting. Subsection 4 incorporates *Robert's Rules of Order Newly Revised* for the conduct of meetings of the association. There were some issues with associations, when this was first presented; therefore, we have added language which indicates this is applicable unless *Robert's Rules of Order Newly Revised* conflict with a resolution adopted by the executive board, or the bylaws. The bylaws or resolution from the board may override *Robert's Rules of Order Newly Revised*.

Section 43 adds the provision that voting may be by absentee ballot. It also provides that a majority of the votes cast determines the outcome of the vote, unless a greater number is required by statute or the declaration. Subsection 9 deals with the requirements for conducting a vote through the ballot process.

Section 44 provides that unit owners are not personally liable for tort claims arising out of condition or use of the common elements simply because they own the unit. Obviously if they were involved with the commission of the tort, it would be different. Subsection 2 provides that such an action arising out of the condition or use of the common elements may only be maintained against the association. Subsection 3 provides that the statute of limitations relating to the claims of an association against a declarant are tolled until the period of the

declarant's control terminates. It makes sense that the declarant is not going to bring an action against himself if he is controlling the board. This section also allows the association to authorize an independent committee of the board to enforce and compromise warranty claims involving the common elements. Subsection 3 provides that a judgment lien against the association is governed by NRS 116.3117, which states that a judgment lien is not a lien on the common elements but is a lien on all other property of the association and units. Current law says a judgment lien is a lien on units. The change is that it is also a lien on any other property the association may own.

Section 45 modifies NRS 116.113, which provides for insurance an association must maintain. The addition here is to include crime insurance, which I believe is consistent with S.B. 174.

Assemblyman McArthur:
I am not sure that I completely understand section 45, subsection 1, paragraph (c). Line 10 says, "Such insurance may not contain a conviction requirement." What does that mean?

Karen D. Dennison:
This addition was as an amendment to the bill. It was not our subcommittee's amendment. I believe this language was added to be consistent with Senate Bill 174. I apologize because I am not an insurance expert, and I do not know why such insurance may not contain a conviction requirement. I suppose an example would be if someone were charged with a crime, there would be coverage, even if the person was not convicted. That is my understanding, but I am not sure why that was included. I believe that Senator Copening can address that issue.

Senator Copening:
I am not certain about that particular aspect. What I can tell you is that we had conversations with insurance brokers that are recommending that associations carry crime insurance, rather than the manager or management company carrying their own forms of liability insurance. If there was an alleged crime that took place, such as embezzlement, the association may not be protected. The recommendation is that the associations should carry crime insurance, which would further protect them from crimes by their employees. Based on testimony that I have heard, it is no more expensive than the regular liability. It can be carried as an additional rider. That is the reason why we included it in S.B. 174. It would protect the association should a crime be committed by a community association manager, or some other employee. I am not certain about the conviction requirement included.

Assemblyman McArthur:
I am not sure if my question was completely answered, but we will check further on it. Thank you.

Karen D. Dennison:
I believe we were just completing the coverage of section 45. Subsection 2 clarifies that in the case of a building that must maintain insurance, the building may be divided by horizontal boundaries as well as vertical boundaries. Sections 46 and 47 are simply stylistic changes.

Section 48 deals with a situation where an association provides services that benefit fewer than all of the owners. One example would be an assisted living community, where the common interest community may provide janitorial service, meal service, nursing, or other services. It clarifies that the cost of those services may be assessed only to the units benefitted by the services. Many CC&Rs already include this provision but this codifies it as a permissible manner of assessment. Subsection 6 clarifies that if there is damage to the unit caused by willful misconduct or gross negligence of any owner, tenant, or invitee, the association may assess that unit owner, even if the association maintains insurance to cover the incident. This allows the association not to have to make a claim against its insurance. There is an exception, which has been known in past sessions as the "pizza delivery person exception." If someone is delivering goods or services to a unit, and commits some sort of damage, the owner of the unit is not liable for the actions of the delivery person Section 49 adds the provision that the costs and fees of the association in the collection of assessments are part of an HOA lien. This should not be confused with the section dealing with whether costs and fees are part of the super-priority liens. Our section believes that is a policy decision, and it is debated on both sides. We have expressed no opinion on the super-priority aspect. This simply says that the costs and fees are part of the lien.

Chairman Ohrenschall:
Currently, are the attorney's fees part of the lien on a construction penalty?

Karen D. Dennison:
This is new language, which indicates that right now reasonable attorney's fees and costs are not currently included in the construction penalty lien.

Chairman Ohrenschall:
Currently, the association does not recover the attorney's fees and costs, and they only acquire the penalties for failing to build. Is that correct?

Karen D. Dennison:
The fees may be recoverable as a personal action against the violator, but not recoverable as a lien against the unit. This section makes the construction penalty enforcement costs and fees part of the actual lien. Subsections 2, 3, and 7 are clarification revisions. Subsection 11 is a new concept, which allows an association to seek a court-appointed receiver to collect rents or other income from the unit, and to apply those rents and other income to past due regular assessments which are overdue. This comes from the Uniform Act.

Chairman Ohrenschall:
Does this come from the Uniform Law Commission or is it from the State Bar Committee?

Karen D. Dennison:
This is language from the Uniform Common Interest Ownership Act.

Chairman Ohrenschall:
Can you provide the Committee with an example of this?

Karen D. Dennison:
Frankly, I believe it would have to be a situation where there was a substantial amount of money owed to justify appointing a receiver to collect rents. The period of foreclosure is not that long. We are bringing this forth as a Uniform Act change. It is up to the Committee and the Subcommittee to decide whether it is a wise addition to our law.

Section 50 is parallel to section 44, which is a conforming change. It states that a judgment against the association is a lien on other real property of the association, as well as the units. Most of section 51 has been moved from NRS 116.31177, which has been repealed, and is found in the repeal text on the back of the bill. This is simply moving these requirements, with respect to the financial information of the association, into this section. The new part, which was added as part of the amendment, has to do with the costs that the association may charge a unit owner. Basically, the fee may not exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter. The crossed-out sections in section 51 have been moved to section 6. This has to do with the official publications, as discussed earlier.

Chairman Ohrenschall:
I would just like to clarify that you are talking about section 51, beginning at subsection 6.

Karen D. Dennison:
Yes, it includes subsections 6, 7, 8, and 9 which have all moved into section 6, with the exception of lines 5 through 8, which was totally removed. That was not an amendment which we proposed but was an amendment that was adopted by the Senate. I am not sure what the rationale for removing that language was. Everything before line 5 on page 53 has been moved to section 6.

Section 52, subsection 3 is crossed out because it is covered in the applicability section of NRS 116.1203. Paragraph (h) has been added to provide that public offering statements are not required. The purpose of public offering statements is primarily for residential unit disclosure. This basically states that in the disposition of a unit restricted to nonresidential purposes, a public offering statement is not required.

Regarding section 53, financial information section, which is crossed out, is moved to section 6.

Chairman Ohrenschall:
Backing up to section 52, how will that change the way business is done?

Karen D. Dennison:
Are you talking about the change referenced in subsection 3, paragraph (h)?

Chairman Ohrenschall:
Yes, there is the new language in subsection 3, paragraph (h), and you are deleting language in subsection 3, paragraph (g).

Karen D. Dennison:
Right, the deletion is actually of subsection 3. Subsection 3 has been deleted, and is covered in the applicability section of NRS 116.1203. I can get back to you on exactly where that is covered in this bill.

Chairman Ohrenschall:
Yes, thank you.

Karen D. Dennison:
I will go back to section 53 regarding the financial information required in a public offering statement. This language has been moved to subsection 2 of section 53. It is very confusing with all these sections being moved. Subsection 1, paragraph (f) expands the concept of disclosure of declarant subsidies, which may become a common expense, by requiring disclosure of the projected amount of the assessment. In other words, once the declarant stops

subsidizing an association, what is the increase going to be in the assessment? That must be disclosed. Subsection 1, paragraph (g) says that any special fees, including transfer fees, must be disclosed. Paragraph (m) requires disclosure in the public offering statement of restraints on alienation, any restrictions on leasing, any restrictions on the amount in which a unit may be sold, and any limitation on the amount an owner may receive from either a condemnation casualty loss or termination of the CIC. These simply add disclosure requirements to the public offering statement. Subsection 1, paragraph (n) requires a description of any cost sharing agreement, which binds the association. For example, there could be a cost sharing agreement with a neighboring property for a common road, or any other shared arrangement. Subsection 2 covers financial disclosures relating to the association, which must be in the public offering statement. This language was moved from subsection 1. Section 54 is only a stylistic change.

Section 55 is important, as it corrects a long-standing error in the law. The protection against delinquent assessments was intended to apply to purchasers and not to sellers. Page 58, line 5, should have initially read "purchaser" and not "seller". It is the purchaser that is not liable for the delinquent assessment if the association fails to properly disclose the assessment on a sale. This will protect the purchaser who will have no way of knowing what the delinquent assessments are.

In section 56, the change from "any seller" to "a declarant" is a Uniform Act change, however I believe the trial lawyers will ask that the change not be made to the bill. Our committee would have no problem in leaving the law as it states currently, which is "any seller."

Chairman Ohrenschall:
Okay, I understand you are saying that the State Bar Committee has no problem with leaving it as seller rather than changing it to declarant. If it were changed to read declarant, what would the change be?

Karen D. Dennison:
It would only apply to the initial sale, and the declarant is not always the seller. You can be a declarant and have merchant builders on all of your projects, so you would never be considered the seller to any consumer. I am not sure why the Uniform Act changed the language to read declarant, but I believe that express warranties made by any seller, if relied upon by the purchaser, are created. That would apply to all sales, including resales, if existing law were to stay as it is. Section 57 is a stylistic change. Section 58 is only a conforming change. Section 58, subsection 4 is new. This has to do with the independent committee during a period of the declarant's control. The association may

authorize an independent committee of the executive board bringing actions to evaluate and enforce any warranty claims which involve the common elements. Only members of the executive board elected by the units' owners, other than declarant and other persons appointed by those independent members may serve on the committee, and the committee's decision must be free of any action of the declarant. The idea is that this committee must be completely independent of the declarant in evaluating and bringing an action on these warranty claims.

Section 59 consists of portions that have been relocated. I believe this language may also be included in Senate Bill 174. There is a new section, which was added in the amendments that we did not bring forward. It is an amendment to the chapter dealing with community managers, which is NRS 116A.410. This removes the requirement for a bond for community managers. I do not know why this section was amended, but that part was added on the Senate side. Finally, section 60 is a repeal of NRS 116.31177, which is now in NRS 116.31175. That concludes my testimony. I would be happy to answer any other questions.

Chairman Ohrenschall:
Thank you very much, Ms. Dennison, for presenting this for the Committee.

Assemblyman McArthur:
Regarding section 59, subsection 3, was that the part that you said was changed on the Senate side?

Karen D. Dennison:
Section 59.5 was added on the Senate side.

Assemblyman McArthur:
I do not see any changes on section 59.5. There are some deletions. Is that what you are referring to?

Karen D. Dennison:
Yes, that is what I am talking about. It is the deletion of the bond requirement for a community manager's certificate.

Assemblyman McArthur:
I have a question about section 59, subsection 3. Has this been a problem, and have the boards been covered previously? Why is this new language included?

Karen D. Dennison:
I cannot answer why it is there. I do not know if it has been a problem, but I believe it is just to further the policy that is elsewhere in the law to insulate members of an executive board from personal liability. It is difficult enough to get people to serve on an association board. They should not be personally liable for a crime that they were not involved in.

Assemblyman McArthur:
I understand that. I assumed that some of these issues were already addressed in language in the statute.

Karen D. Dennison:
My notes show that this language was relocated from section 37, which is NRS 116.31036. Is that correct, Senator?

Senator Copening:
I do not know whether you have it in front of you, but there has been an analysis submitted of S.B. 204 (R1) (Exhibit E). It should have been provided to assist you to walk through each section of the bill. On the very last page, under section 59, it says it relocates the existing language from NRS 116.31036. [Senator Copening continued reading from the referenced section.] I did not write this up, but Michael Buckley is present in Las Vegas, and he can interpret this better for you.

Michael Buckley, Private Citizen, Las Vegas, Nevada:
I was a member of the Real Property Subcommittee. If you look on page 30 of the bill, lines 2 through 14, the language in section 59 has simply been moved from there. You are correct, and it is already an existing law.

[Assemblyman Carrillo assumed the Chair.]

Acting Chairman Carrillo:
Is there anyone else present who would like to speak in support of the bill?

Michael Randolph, Private Citizen, Las Vegas, Nevada:
I am here in favor of the bill. I would like to answer Chairman Ohrenschall's question regarding section 49, subsection 11.

Acting Chairman Carrillo:
The Chairman has temporarily stepped out of the room. Meanwhile, is there anything else you would like to bring to the Committee's attention? I do not want to have you repeat yourself when he returns.

Michael Randolph:
That was the only area of discussion I had. I just wanted to answer the Chairman's question on why this section was needed. Perhaps you can excuse me, and I can come back up when he returns.

Acting Chairman Carrillo:
Okay, that will be great. Please do not go too far. Is there anyone else wishing to testify in support of S.B. 204 (R1)?

Gary Lein, Private Citizen, Las Vegas, Nevada:
I would like to address section 45, related to the crime policy. I am a member of the Commission for Common-Interest Communities and Condominium Hotels. The question is related to the conviction requirement as referenced on line 10. As part of the Commission process in dealing with the bond requirement for community managers, we met as a group to address the issue of fraud and embezzlement relating to community associations. We developed the language which was inserted into S.B. 174 (R1), Senator Copening's bill. One of the things we found through our research was that the average policy covering crime contains a conviction requirement. Generally, the Las Vegas Metropolitan Police Department (Metro) will not investigate these types of crimes. If Metro will not investigate, and there is no conviction, the average insurance policy will not pay claims, making the community association whole. It is an important requirement that any crime policy may not contain that conviction requirement. We need to make sure the insurance company meets up to its responsibilities and pays claims on embezzlement or fraud. Subsection 1, paragraph (c) is also important because there are also required endorsements covering the community manager and the management company. There have been cases of fraud, and although there may have been a crime policy, there was not the appropriate coverage to include the community manager and company employees. The central issue is to make sure there is no conviction requirement, and the insurance policy would be paid.

Acting Chairman Carrillo:
Thank you, Mr. Lein. Is there anyone else wishing to testify?

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:
I have a constituent and friend named Trudi Lytle, who is present in Las Vegas. We have worked together to create an amendment which we would like to propose.

Acting Chairman Carrillo:
Yes, we have received your proposed amendment (Exhibit F). Do you have any questions on the amendment, Mr. McArthur?

Assemblyman McArthur:
I have not had a chance to review it.

Assemblyman Segerblom:
Ms. Lytle has some testimony on the amendment.

Trudi Lytle, Private Citizen, Las Vegas, Nevada:
I am here today to testify regarding S.B. 204 (R1). There are many parts which affect small planned communities. [Continued reading from prepared testimony (Exhibit G).] Thank you for the opportunity to speak. If you have any questions, I will be happy to answer them. I am simply a homeowner speaking to keep my rights.

Acting Chairman Carrillo:
Maybe we can have the bill's sponsor discuss the amendment. Is that something you would like to follow up on?

Senator Copening:
I have to confess that I am very lost in all of the testimony but, if it is in writing, I would like to review it. I am not certain that everything that Ms. Lytle testified to is in this amendment. I could be wrong. If it is not, her written testimony will assist me in going through the bill. I am not an expert, which is why the Uniform Law Commission exists. What I will do is to defer the bill to the committee of the Uniform Law Commission. They can review all of the various requests, and come back to the Subcommittee with an explanation and suggestions.

Acting Chairman Carrillo:
I am not trying to put you on the spot. I know that sometimes as amendments are proposed, the sponsor may want to address them.

Assemblyman McArthur:
I feel the same way. We ran through a lot of numbers and changes quickly. It was difficult to keep up with it. I believe I understand the intent. There were two different numbers referenced. Can we have Legal review the part about 6 units and 12 units? Perhaps they can provide the Committee with a brief explanation regarding the two? Afterward, we can always reexamine it at a work session.

Acting Chairman Carrillo:
Are you talking about the amount of units?

Assemblyman McArthur:
Yes, it is the number of units. The laws apply differently for each. I believe we can get a basic explanation from Legal.

Nick Anthony, Committee Counsel:
I believe Mr. McArthur is talking about NRS 116.1203, which is generally the exception for a small homeowners association. If we look at NRS 116.1203, subsection 1 exempts HOAs that have less than 12 units from the provisions of NRS Chapter 116, unless their declaration specifically provides that the entire chapter is applicable. Subsection 2 states that certain HOAs between 6 units and 12 units are subject to the provisions of NRS 116.3101 through NRS 116.350. That is the difference. Small HOAs below 6 are not subject to any parts of NRS Chapter 116 unless provided for in their declaration. HOAs between 6 and 12 are subject to certain provisions of NRS Chapter 116.

Acting Chairman Carrillo:
Ms. Lytle, I want to let you know that we will work with the bill's sponsor to review your amendments and move forward. Is there anyone else who would like to testify?

Yvonne Schuman, Private Citizen, Las Vegas, Nevada:
I would like to thank you for this opportunity to testify. We feel that with some amendments, we can support the bill. Before highlighting the most troublesome of those proposed changes, we would like to acknowledge there are several provisions in this bill that are unequivocally good for homeowners, and we are pleased to support them. [Continued reading from prepared testimony (Exhibit H).]

Regarding section 33, subsection 4, if a board chooses not to take enforcement action for a particular type of issue, they should not take enforcement action whenever that issue arises with other homeowners. They should not be able to selectively choose which homeowners to enforce action on. Section 35, subsection 3 was discussed earlier. We feel this should be modified to allow for electronic notice and delivery consistent with the changes in section 2 of the bill.

Section 45, subsection 1, paragraph (b) is a provision which removes the requirement for the HOA to have insurance coverage for a death in connection with the common elements. We believe this is unwise and creates undue financial risk and potential hardships for unit owners who will have to pay in the event a court finds liability. So if a death occurs in or on the common elements, and there is no coverage, and the court finds that the HOA is liable, the

individual unit owners would have to come up with the money. Therefore, we do not want to see "death" excluded from the insurance coverage.

Section 49 consists of the most areas of concern. As you know, the declarants write the CC&Rs to be Fannie Mae compliant so that banks will lend, allowing them to sell the properties. The changes proposed in this bill are going to create conflicts with that. Specifically, the addition of reasonable attorney's fees and costs, and other fees, to this section, is unacceptable because it is inconsistent with the Fannie Mae guidelines and imposes significant financial burdens on homeowners. [Continued reading from prepared testimony (Exhibit H).]

We offer our assistance in making the necessary amendments. Thank you again for the opportunity to present these comments. I am happy to answer any questions you may have.

Acting Chairman Carrillo:
Are there any questions from the Committee?

Senator Copening:
Thank you, Mr. Carrillo. I appreciate your allowing me to provide a little bit of context to this. To put Ms. Schuman at ease, one of the sections she just discussed, which is on page 61, was simply moved. It is existing language. Sometimes seeing language marked in blue may lead people to believe it is new language. This specific language was simply moved from one section to another section in order to fit accordingly with the subject matter. Section 37, on page 30, lines 2 through 5, which is discussing punitive damages, has been stricken and moved. Additionally, we did state that this does not have to do with super-priority, as addressed in section 49, which talks about attorney's fees and costs. This is not part of super-priority, and we can possibly have someone further clarify the issue if you would like. I will review Ms. Schuman's written testimony and provide a written response because many of the issues she talked about have simply been moved. I just want to make sure that her testimony is not confused by a lack of understanding of where certain provisions are found in the bill. Karen Dennison or Michael Buckley can talk further regarding section 49 regarding attorney's fees and costs.

John Griffin, representing Nevada Justice Association:
Ms. Dennison already spoke regarding our issue, but I would like to make a statement for the record. We have a problem with the change in section 56. It previously read, "any seller" but was changed to "any declarant." I believe it was changed because "seller" seems to have been changed to "declarant" through most of the Uniform Act. If you read section 56 regarding the warranties and what they relate to, it applies to a seller and not a declarant.

We agree with Ms. Dennison, and appreciate her willingness to make the change to return the language to read "seller" if the Committee agrees.

Acting Chairman Carrillo:
Mr. Randolph, would you like to come back to address your issue, since the Chairman has returned?

[Chairman Ohrenschall reassumed the Chair.]

Michael Randolph, Private Citizen, Las Vegas, Nevada:
I am speaking in favor of section 9, subsection 11 on page 49. Chairman Ohrenschall asked a question earlier which I would like to address. The reason this section is so important is because of a homeowners association here in southern Nevada called Paradise Spa. A single group of investors has purchased 260 of the 388 units. There have been many problems and the Attorney General is involved. We have a situation where there are several hundred units under one single mortgage of $5 million. The association has no money because of the poor actions of the previous board, which includes the investor who is president of the board. This law will allow the association to request the court to provide a receiver. The receiver will assist in collecting rents on those units which are being paid to the investor, which will help to keep the association going when foreclosure is not an option. Thank you.

Chairman Ohrenschall:
Thank you very much, Mr. Randolph. I appreciate your input about what is happening at Paradise Spa. This would affect that sort of situation, correct?

Michael Randolph:
Exactly. An investor buys up property, collects rents, but does not pay the association fees. Many times, with condominium developments, the association is paying water, sewage, trash removal, et cetera. The investor collects rent but does not pay his share of the amenities. This situation is exactly what this provision is for.

Yvonne Schuman:
I would like to add a clarifying comment. I thank Senator Copening for her remarks. I want to make clear that our comments regarding punitive damages are to the substantive change and not the change of moving the language from one section to another. We do know it was there already, but we object to it on a substantive level. Thank you.

Chairman Ohrenschall:
Ms. Schuman, can you direct me to that specific section of the bill?

Yvonne Schuman:
It is section 59, subsection 5. As Senator Copening pointed out, it is already law but at this time we object to it on a substantive basis.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
There are approximately 9 items that I wish to discuss. There are many items that I support, but there are some that I find troubling. The first item is in section 19, on page 8, line number 25. I feel that this needs to be reinstated. The removal of this section denies a unit owner due process through the judicial system and injunctive relief. [Continued reading from his proposed amendments (Exhibit I).]

Section 49 talks about a receiver. I have been told by retired Chief Compliance Officer Bruce Alit, from the Nevada Real Estate Division (NRED), that a receiver can charge huge amounts of money. I am suggesting either a percentage or an actual fee be added for his or her services. This way it cannot run wild and end up costing the HOA more than what they actually collect.

I agree with the change in section 51, on page 51, lines 1 through 7. There have been many cases that have come to my attention where homeowners have requested to see the books and records, but they are not delivered by the board or the management company. There is a typo in my amendment, however. There should be a dollar sign in place of the number four, making it $25 per day. I am suggesting that if the books and records are not delivered within the 14-day statutory requirement, there be a penalty of $25 per day imposed.

[Assemblyman Carrillo assumed the Chair.]

Acting Chairman Carrillo:
I am sorry, but I was distracted for a moment. Are you talking about section 49?

Jonathan Friedrich:
I am talking about section 51, which is item number 7 on my proposed amendments. The typo is on my document. It is not in the bill.

On page 60, section 58 talks about compromise. I would like to see that word removed from the language. If there is an issue, why should the board or homeowners have to compromise? If there is a defect, it needs to be remedied. [Continued reading from proposed amendments (Exhibit I).] That concludes my testimony.

Acting Chairman Carrillo:
Are there any questions from the Committee?

Jonathan Friedrich:
Last Friday, we testified on Senate Bill 254 (1st Reprint). There was some discussion regarding the arbitration statute not allowing for liens or foreclosures. I sent an email to you explaining that it could because the two statutes are intertwined. Although I am not an attorney, the way I read it, liens leading to foreclosure could be assessed based upon the nonpayment of an arbitrator's fee. I want to make sure the Committee received the email.

Acting Chairman Carrillo:
Yes, I believe that I did. Thank you, very much.

Robert Robey, Private Citizen, Las Vegas, Nevada:
I came here today specifically to applaud, clap, cheer, and shout for the section on page 23, lines 4 through 15, which allows the board of directors to use common sense to decide whether or not to spend money on a small, insignificant issue. I would like to ask a question. On line 42, of page 23 it says that executive officers "are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business-judgment rule." I have read most of the Uniform Code, and what I got out of it is the Code was trying to allow the boards to have a different way of making a judgment. They would not be required to use business-judgment rule. I do not feel that these two sections are compatible. I do not think that one section can require boards to use the business-judgment rule, while the other section says they can use other means of making a decision. Can anyone answer that question? Perhaps I can work with Mr. Buckley and he can explain it to me. However, I am very excited about the boards being able to use other rules rather than the business-judgment rule.

I have presented you with a proposed amendment (Exhibit J). I hope that you consider it a friendly amendment. Amazingly, when Mr. Lein testified, he said that they did not want the conviction requirement in the criminal policy because Metro will not investigate and will not get a conviction.

Acting Chairman Carrillo:
Are you referring to your amendment, or are we discussing something else?

Robert Robey:
What happens here is NRS Chapter 116 has stated that it all goes through NRED. Mr. Buckley is here and perhaps he can help. I was present at the Commission hearing, and heard about someone who stole $76,000. All he received was a fine, and there was no conviction. Metro is not going to investigate this? This guy became the president of the association and in two months, he robbed them, and left the state.

Acting Chairman Carrillo:
Mr. Robey, I want to make sure we get the rest of your testimony before we get into any lengthy discussion because we are on a time constraint.

Robert Robey:
In my amendment, I would like to allow people who have their cars towed by an HOA be allowed to go to court. They should not have to go to NRED. Mr. Buckley is here, and I would like to turn it over to him. I will send you a letter further explaining my issues.

Michael Buckley, Private Citizen, Las Vegas, Nevada:
I can respond to a question that Mr. Robey raised. I am the Chair on the Commission on Common-Interest Communities and Condominium Hotels. I would like to respond to the one issue regarding conviction. Actually, Gail Anderson would be the best person to address this. The Real Estate Division is not a law enforcement agency. If it uncovers evidence of criminal activity, the matter is turned over to Metro. They cannot convict people and, therefore, must turn it over to Metro.

Robert Robey:
I have just one more comment before you move on. I just heard that they refer matters to Metro, yet we heard from Mr. Lein that Metro does not do anything. This is scary. It seems that there must be a penalty for people stealing from HOAs. My amendment is asking the right of a unit owner to go to justice court, like everyone else in the state, to seek justice if cars are being illegally towed. The point I am trying to reach is that if someone cheats an association, there is no penalty. They are not fined, and they are not thrown in jail. Something is wrong here. I hope I have made my point.

Acting Chairman Carrillo:
Thank you for your testimony. Is there anyone wishing to testify in opposition of S.B. 204 (R1)? We will close the hearing on S.B. 204 (R1), and will bring it back to Committee. Will now open the hearing on Senate Bill 222 (1st Reprint).

Senate Bill 222 (1st Reprint): Revises provisions concerning the lease or rental of a unit in a common-interest community. (BDR 10-294)

Senator Allison Copening, Clark County Senatorial District No. 6:
I am here to introduce Senate Bill 222 (1st Reprint) for your consideration. This legislation addresses fees charged by a community association management company to a homeowner who rents his home. [Continued reading from prepared testimony (Exhibit K).]

You have before you an example of a brochure (Exhibit L) and an addendum to a contract from a management company that has a "Lease Registration Program" in place (Exhibit M). [Continued reading from prepared testimony (Exhibit K).

It is ironic that in some of the previous testimony, I have been accused of discrimination because I worked for a management company. The irony is that this bill is actually anti-management company, which further drives home the fact that the working group and I have been pure in our intentions with the bill brought forward. This was just another one in which all have agreed that it is not fair for the management companies to charge this fee. Thank you and I will be happy to answer any questions.

Acting Chairman Carrillo:
I do not see any questions. Is there anyone wishing to testify in support of S.B. 222 (R1)?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
I would like to shock everyone by telling them that I wholly support this bill. I did not support it when it was introduced originally in the Senate. At that point, there were fees involved. The Senate Judiciary Committee objected, and the decision was that no fees should be charged. Additionally, there should be no regulations by the Common-Interest Community and Condominium Hotels Commission (CICC). I applaud this bill the way it has been rewritten.

Yvonne Schuman, Private Citizen, Las Vegas, Nevada:
We support S.B. 222 (R1).

Robert Robey, Private Citizen, Las Vegas, Nevada:
I also support the bill. I think it is a wonderful bill. Last night, I watched my board decide to charge $100 for every new renter.

Acting Chairman Carrillo:
Let us move to the neutral position. Is there anyone wishing to testify? Is there anyone opposing the bill? We will close the hearing on S.B. 222 (R1) and will bring it back to the Committee. Is there any public comment?

Jonathan Friedrich:
Has a date been set for the work session for Senate Bill 254?

Acting Chairman Carrillo:
We have not been provided with a date yet. Keep watching for the agenda.

Yvonne Schuman:
I would like to add a few additional remarks about the bill.

Acting Chairman Carrillo:
We have already closed the hearing on the bills. We are accepting public comment only now. We are now adjourned [at 10:31 a.m.]. [Introduction of S.B. 204, dated March 16, 2011 and presented by Michael Buckley, has been submitted for the record (Exhibit N), but was not discussed during the hearing.]

RESPECTFULLY SUBMITTED:

_____
Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 10, 2011 **Time of Meeting: 8:15 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 204 (R1)	C	Senator Allison Copening	Prepared Testimony
S.B. 204 (R1)	D	Karen D. Dennison/State Bar Real Property Section	Legislative Proposal
S.B. 204 (R1)	E	Michael Buckley/Private Citizen	Analysis of S.B. 204 (1st Reprint)
S.B. 204 (R1)	F	Assemblyman Tick Segerblom	Mock-Up, Proposed Amendment 6818
S.B. 204 (R1)	G	Trudi Lytle/Private Citizen	Prepared Testimony
S.B. 204 (R1)	H	Yvonne Schuman/Private Citizen	Prepared Testimony
S.B. 204 (R1)	I	Jonathan Friedrich/Private Citizen	Prepared Testimony
S.B. 204 (R1)	J	Robert Robey/Private Citizen	Suggested Amendment
S.B. 222 (R1)	K	Senator Allison Copening	Prepared Testimony
S.B. 222 (R1)	L	Senator Allison Copening	Lease Registration Program Brochure
S.B. 222 (R1)	M	Senator Allison Copening	Northshores Owners Association Resolution for Lease Registration Program
S.B. 222 (R1)	N	Michael Buckley/Private Citizen	Introduction of S.B. 204