MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
March 16, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:07 a.m. on Wednesday, March 16, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Karen D. Dennison, Common Interest Communities Subcommittee, Real Property Section, State Bar of Nevada
Michael Buckley, Common Interest Communities Subcommittee, Real Property Section, State Bar of Nevada
Renny Ashleman, City of Henderson
Michael Schulman
Robin Huhn, D.C.
Michael Randolph, HOA Services
John W. Griffin, Nevada Justice Association
Tim Stebbins

Bob Robey
Jonathan Friedrich
John Radocha

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 204.

SENATE BILL 204: Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

SENATOR ALLISON COPENING (Clark County Senatorial District No. 6):
I am sponsoring S.B. 204 at the request of the Uniform Law Commission.

The Nevada Legislature adopted the 1982 version of the Uniform Common-Interest Ownership Act (UCIOA) in 1991. It was a culmination of a nine-year effort by the Commission to offer comprehensive legislation providing an overall structural scheme applicable to the three forms of common ownership of real property: condominiums, planned communities or planned unit developments and cooperatives. These are now referred to as common-interest communities (CICs).

The Commission was established in 1892 and is a nonprofit, unincorporated association. Its members are practicing lawyers, judges, legislators, legislative staff and law professors who have been appointed by state governments to research, draft and promote enactment of uniform state laws in areas where uniformity is desirable and practical. State uniform law commissioners come together to study and review the laws of the states to determine areas in which the law should be uniform. It should be emphasized that the Commission can only propose legislation. No uniform law is effective until a state legislature adopts it.

Since it was first written in 1982, the UCIOA has been amended twice by the Commission.

KAREN D. DENNISON (Common Interest Communities Subcommittee, Real Property Section, State Bar of Nevada):
The Common Interest Communities Subcommittee is made up of real estate law practitioners. The group is representative of all the stakeholders in this bill, including developers, builders, homeowner associations and managers. We

come from different points of view, but we adhere to the Real Property Section's mission statement, which states:

> The Section's proposed legislation or position on legislation must relate closely and directly to the administration of justice. It must involve 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 come within the Section's special expertise and jurisdiction.

In addition, it must be legislation that comes within the Section's special expertise and jurisdiction. For this reason, we did not include every revision of the UCIOA in S.B. 204. We did not include any provision that was political or controversial.

If you recall, last Session this Legislature adopted several uniform act revisions that either were in the 1994 UCIOA Act or the 2008 UCIOA Act. Those had to do with commercial projects, cost-sharing agreements and a definition of CIC. Senate Bill 204 is long and seems daunting at first. However, many of the sections simply move things around to make them easier to find, make stylistic or technical changes or do some wordsmithing. I will point those out as we go through the bill.

You might wonder what the value of a uniform act is. Nevada does not always have a lot of case law to help us interpret laws. A uniform act allows us to look at case law from other jurisdictions that have adopted the same uniform act. That is the value of conforming our law to the uniform provisions, to the extent we can.

I have a handout describing the impact and intent of each section of S.B. 204 (Exhibit C). I will cover sections 2 through 38, and Michael Buckley will cover sections 39 through 61.

Section 2 of S.B. 204 is a universal notice provision. If there is no other provision in law requiring a specific method of giving notice, section 2 specifies the way notice must be given to owners in a CIC. The first method is to send either mail or e-mail to the address designated by the owner. If the owner has not designated an address, the notice can be delivered to the unit by hand or sent to the mailing address. Finally, subsection 2, paragraph (d) allows notice to

be given by "Any other method reasonably calculated to provide notice to the unit's owner." This might include posting a notice on a central bulletin board or placing sandwich boards at the entrances. Subsection 2 states that if a good-faith effort is made to give notice and fails, that does not invalidate actions taken at or without a meeting. Subsection 3 states that this provision does not apply to foreclosure notices or to any other provision that specifies the method by which notice is to be given.

Section 3 states that S.B. 204 supersedes any contrary provisions in federal law in the federal Electronic Signatures In Global and National Commerce Act, Pub.L. 106-229, 14 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch.96. This is not a new provision to Nevada statutory law. *Nevada Revised Statute* (NRS) 107A also contains this language.

Section 4 is a provision entitled "termination following catastrophes" in the UCIOA. It covers termination of a CIC in extreme situations. This provision would apply if substantially all of the units of a CIC are destroyed and normal means of notifying owners are not available. Section 4 provides that in such a circumstance, the executive board "or other interested person" may bring an action in district court to terminate the CIC. The court is given latitude to terminate or reduce the size of the CIC.

Representatives of the city of Henderson have contacted me and expressed concern that a court could force a city to form a maintenance district if the CIC was a blight and if it was not sold as a whole to a third party because of economic conditions. I have looked at the official comments to the UCIOA, and I do not find any evidence that this would be possible. The units' owners are a party to the action, and third parties would have to be brought in separately. It is not our intent that a city would have to form a maintenance district or otherwise be burdened with the cost of the blight or problem.

Section 5 is not a change in the law. It merely moves NRS 116.31036, subsection 3, to a separate section. The same is true of section 6 of the bill, which moves NRS 116.31175 to a separate section.

Section 7 is an important change. Existing law could be read as allowing statutory definitions in NRS 116 to be changed through the declaration or the bylaws of a CIC. This section makes it clear that the terms defined in NRS 116 shall have the meaning set forth in statute and no other.

Sections 8 and 9 are grammatical changes.

Section 10 recognizes that common elements can include property interests outside the plotted subdivision of the CIC. For example, there may be easements outside the subdivision or other interests that both benefit the owners and are subject to the declaration.

Section 11 is a grammatical and conforming correction. The conforming corrections recognize that a declarant can be a person or a group of persons.

Section 12 is a correction recognizing that the executive board of a CIC is often not designated in the declaration but in the bylaws of the CIC.

Sections 13 through 16 are grammatical or stylistic changes.

Section 17 is a conforming change to recognize an exception in another provision of the law.

Section 18 adds to existing law that says that when you are interpreting NRS 116, you must look to the entire body of law that could affect real property or associations, such as the law of corporations. Section 18 adds that this applies to other forms of organization, such as limited liability companies or nonprofit organizations.

Section 19 is not substantive; it eliminates language duplicated in NRS 116.1114, subsection 1.

Section 20 clarifies which provisions of the bill apply to a subdivision located outside of Nevada. These sections relate to the delivery of a public offering statement, which is the disclosure document given to prospective purchasers. A technical correction may be needed to this section. I believe NRS 116.41035 has been omitted. It is not a section in the UCIOA under that numbering sequence.

CHAIR WIENER:
Could you tell where you would put that reference?

MS. DENNISON:
If we change section 20, subsection 2, paragraph (c) to say, " ... to the extent applicable, NRS 116.41035, 116.4104 to 116.4107, inclusive ... ," that would cover it.

Sections 21 through 27 are all either technical or conforming changes.

Section 28 pertains to further subdivision of units. In this case, "units" includes subdivision lots. This section provides for the reallocation of the allocated interests, such as how assessments are allocated and how votes are allocated. This change recognizes, consistent with the allocation section, that the further subdivision can be reallocated on any basis as provided for in the declaration of conditions, covenants, and restrictions (CC&Rs). That recognizes what is in existing law.

Section 29 adds to owners' easements. Existing law applies only to planned communities such as single-family lot subdivisions. This change recognizes that owner easements are also important or applicable in condos and co-ops, which are two other forms of ownership included in NRS 116. Subsection 3 clarifies that the owner's use of the common elements does not include limited common elements, which are things like patios and balconies that are intended for use by one unit.

Section 30 pertains to amendments to declarations. Subsection 1 is a uniform act change that allows amendment by a percentage other than a majority vote if the declaration provides for it. It could be more or less than a simple majority.

I would like to point out an error in subsection 4 of section 30. The deleted language should be retained, so that the section ends, "... of the units' owners affected and the consent of a majority of the owners of the remaining units."

Section 30, subsection 6 deals with amendments that restrict the use of the unit or the qualifications of persons who may occupy the unit. For example, if an amendment were to restrict the age of the residents of a CIC, it would not apply to persons who purchased before the amendment went into effect. In fact, it would not apply to that unit until it was sold. This is a protection from amendments that did not apply when the unit was purchased.

Section 30, subsection 7 provides that if there is a provision in the declaration that creates special declarants' rights, those provisions may not be amended without the declarant's consent. An example of a special declarant's right would be the right to add additional property to the CIC. Most sophisticated CC&Rs contain these provisions, and this codifies them.

Section 30, subsection 8 is consistent with the concept of an eligible mortgage holder that was adopted by the Federal National Mortgage Association, commonly known as Fannie Mae, some years ago. This provision has to do with which lenders are entitled to notice of amendments. To be eligible for notice of an amendment to the CC&Rs, a lender, guarantor or insurer of the loan must give notice to the homeowners' association (HOA) that it desires such notice. This provision recognizes that an amendment should not be delayed just because the lender fails to respond. It provides that the lender's consent is not required if refusal to consent is not received within 60 days after delivery of notice to the lender.

Section 31 incorporates the new termination provisions from section 4 into the existing termination statute.

Section 32 makes clarification changes. Subsection 3 provides that an HOA must have an executive board. There are many references in existing statute to such boards, and this section clarifies that an HOA must have an executive board to conduct its business. Subsection 4 recognizes that there are other forms of organizations beside those listed.

Section 33, subsection 1 makes it mandatory that the HOA adopt bylaws and adopt and amend budgets. These two powers are permissive in existing law. With respect to the amendment of bylaws, we have added that the bylaws could provide that amendment powers reside in the unit owners. The executive board is only required to amend bylaws if it has the power to do so. The rest of this subsection lists the permissive powers of an HOA.

Section 33, subsection 3 is a clarification as to when the executive board may take action. Many declarations of CC&Rs provide that the executive board is empowered to enforce the provisions of the declaration but is not required to do so. This subsection recognizes that there are certain circumstances in which it would not be in the best interest of the HOA to enforce the CC&Rs.

Enforcement actions can be expensive. Subsection 3 sets criteria the executive board can follow to determine when and when not to enforce the CC&Rs.

Section 33, subsection 4 states that failure to enforce any section of the CC&Rs is not a waiver by the HOA of their right to enforce that section. Enforcement action can be taken in the future under different circumstances as long as their decision to enforce or not is neither arbitrary nor capricious.

Section 34, subsection 1 adds officers to the statutes regarding standards of care for directors. It is clear now that officers and directors of an HOA are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation. This incorporates the nonprofit corporation statute. They are also subject to the business-judgment rule. They are also subject to rules concerning conflict of interest governing officers and directors of nonprofit corporations.

Section 34, subsection 2 specifies actions executive boards may not do. They may not amend the declaration, except as otherwise provided in NRS 116.2117; they may not terminate the CIC; they may not elect members of the executive board except to fill vacancies; and they may not determine the qualifications, powers, duties or terms of office of members of the executive board.

Section 35 is not new. This language was taken from NRS 116.3108, subsection 5.

In Section 36, the language regarding the voluntary surrender of declarant control of an executive board is also not new.

Section 37 was moved from NRS 116.3108.

Section 38 was taken from the UCIOA. Under existing law, an executive board can terminate management contracts, employment contracts and contracts relating to the lease of recreational or parking facilities with the declarant or an affiliate of the declarant. The executive board, which is elected by the owners, has an unlimited time to terminate these contracts, and it may do so without cause. This section would place a two-year statute of limitations on the ability of the owner-controlled executive board to terminate contracts with the declarant. There is no limitation on contracts or leases not entered into in good

faith or unconscionable. If either of those two elements exist, there is no limitation on termination.

SENATOR COPENING:
In section 38, what was the reasoning behind the two-year statute of limitations?

MS. DENNISON:
I do not know. I can only say there would be no certainty in contracts if you had an unlimited time within which to terminate these contracts after the owners took over the executive board. Two years seems like a reasonable amount of time for an owner-controlled executive board to decide a contract is not fair and terminate it.

CHAIR WIENER:
The Legislature cannot bind a future legislature to a course of action. Is there a similar rule governing executive boards of HOAs?

MS. DENNISON:
I do not know of anything that would bind an executive board to decisions made by a prior executive board. The executive board must act within the scope of the CC&Rs, the declaration and the law, but a decision made by one executive board could certainly be changed by another executive board.

CHAIR WIENER:
What is the business-judgment rule?

MS. DENNISON:
I am not prepared to give a definitive answer. In general, the business-judgment rule gives the executive board latitude to exercise good business judgment. It is rather liberally interpreted in favor of the executive board's decisions. Executive board members have a fiduciary duty to unit owners to act in the best interest of the HOA and not in their own self-interest. The business-judgment rule allows the executive board, within that fiduciary duty, to use its best business judgment.

MICHAEL BUCKLEY (Common Interest Communities Subcommittee, Real Property Section, State Bar of Nevada):
With regard to the decisions of executive boards, in *Nevada National Bank v. Huff*, 94 Nev. 506, 582 P.2d 364 (1978), the court ruled that the bank could not suddenly start enforcing a rule it had always ignored unless it notified its customers first. The courts have placed limits on the power of an executive board to change its mind if people have relied on the way it has done business in the past.

CHAIR WIENER:
When there is a shift in a practice, would that require some sort of notice that we are changing how we do business?

MR. BUCKLEY:
Yes. If the executive board always did things one way and never enforced its own rules, they would have to give notice of the change.

With regard to the business-judgment rule, it is basically a defense. It means that so long as the executive board acted in good faith and was reasonably informed, its decisions are not going to be second-guessed. A court will not say, "That's not what they should have done." The executive board's business judgment will be upheld.

I would like to clarify a couple of matters of intent. Section 30, subsection 1 states that the declaration could require the approval of another person as a condition of the effectiveness of an amendment. There has been some concern that this might allow a declarant to be the other person. That is not the intent of this provision. The intent is that it might be a lender, a municipality or some similar entity. There are other statutes in NRS 116 that prohibit a declarant from trying to get more power than allowed by law.

The other clarification is in section 34, subsection 2, paragraph (c). Existing law allows directors to fill vacancies. The UCIOA places a limit on the term of people appointed by the executive board, which is an important safeguard for homeowners. Directors may appoint someone to serve either for the unexpired term or until there is an election, but they do not have an unlimited right to fill vacancies.

I will continue going through the provisions of S.B. 204. Most of the changes in section 39 are grammatical changes. Subsection 1, paragraphs (i) and (j) require that bylaws address procedural rules and any other matters required by the law governing that type of entity.

Section 40 moves provisions regarding removal of executive board members to a separate section. This is also covered in S.B. 174, and the language of the two bills will need to be conformed. The intent was that when existing law covered a number of topics, we put it into a separate section so it would be easier to find.

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

MR. BUCKLEY:
Section 41 is a technical change. This section now has a cross-reference to section 2.

Section 42, subsection 1 incorporates the concept of ballots that has been added to NRS 116.311, subsection 2. It refers to the ballot provisions of section 43. Subsection 3 clarifies that a quorum is determined when the vote is taken rather than when the meeting starts. Subsection 4 specifies that *Robert's Rules of Order* are to be used as the default procedural reference. The intent is that there be a default way of running meetings if an HOA has not adopted them.

Section 43 deals with ballots. The intent was to allow balloting and specify in greater detail how vote by ballot is to occur. The intent is to lay out a procedure to tell the HOA how to conduct a vote by ballot.

Section 44, subsection 1 states that unit owners are not liable for damages to the common elements just by the fact of being unit owners. Subsection 2 clarifies that the proper party in a common element lawsuit is the HOA, not the unit owners. Subsection 3 is a cross-reference to NRS 116.4116, subsection 4. It allows for a warranty inspection process before the end of the declarant control period.

Section 45 states that in addition to property, casualty and liability insurance, an association should have fidelity insurance. This was addressed in greater detail in section 10 of S.B. 174. The two sections should be combined.

Sections 46 and 47 are basically stylistic changes.

Section 48, subsections 1 and 2 are stylistic changes. Subsection 4 clarifies that an HOA can have cost centers, where particular units are charged for particular services. In assisted living facilities, for example, food services are charged on a different basis than other common elements. The new definition that was enacted last Session refers to services.

Subsection 6 is a uniform change. This is addressed in section 12 of S.B. 174. The concept is that if someone damages a common element, the HOA can look to the person who did the damage for repair. If someone creates a problem for a common element, the HOA can look to the wrongdoer for payment rather than its own insurance.

Section 49 deals with the lien for assessments. This is dealt with in section 12 of S.B. 174. As Ms. Dennison mentioned, we did not address the issue of collection costs being a part of the superpriority, since we thought that was a policy decision. We did make all the technical UCIOA changes to this section, some of which might not be in S.B. 174.

Section 49, subsection 11 says if the HOA enforces a lien, it has the right to obtain the appointment of a receiver to collect any rents and have them applied to the assessments owed by that unit.

Section 50, subsection 1, paragraph (a) clarifies that if somebody gets a judgment against the HOA, it would cover not just the common elements but any other property the HOA owns. The remaining changes in section 50 are basically grammatical and cleanup.

Section 51 is an amendment to NRS 116.31175. It is not a uniform change but is also addressed in section 2 of S.B. 30. Basically, NRS 116.31175 and NRS 116.31177 deal with types of records that unit owners can inspect. Section 51 puts all of these things in one statute and repeals NRS 116.31177, which is now incorporated into NRS 116.31175. The intent is to put everything into one statute.

SENATE BILL 30: Makes various changes relating to common-interest communities. (BDR 10-477)

MR. BUCKLEY:
Section 51, subsections 6, 7 and 9 deal with official publications of an HOA, which have nothing to do with books and records of the HOA. Therefore, those provisions are being moved into a new section. The language in subsection 8 deals with the liability of officers and directors of an HOA, and that is being moved into the general section of NRS 116.4117.

Section 52 exempts the requirement of a public offering statement in the case of a commercial unit.

Section 53 deals with public offering statements. The declaration is recorded at the start of the project. The public offering statement is intended to be the most important disclosure document in connection with the sale or resale of the unit. The public offering statement and the resale certificate are updated from time to time. Section 53 is intended to expand and beef up some of those disclosures. The deletion of subsection 1, paragraph (e), which refers to financial statements, is because financial information is now going to be covered in subsection 2. This relates to sections 18 and 30 of S.B. 185.

SENATE BILL 185: Makes various changes relating to real property. (BDR 10-23)

Section 53, subsection 1, paragraph (f) of S.B. 204 is an expansion of the provision that all the fees a person would have to pay in an HOA must be disclosed. Paragraph (g) deals with transfer fees. This provision requires that the public offering statement clearly describe any kind of fee that would be payable in connection with the transfer of a unit. Paragraph (m) requires the public offering statement to include restrictions on leasing. The declaration is often around 100 pages or so; the public offering statement is intended to be more user-friendly and short, and is thus more likely to be read than the declaration. Paragraph (n) requires the public offering statement to include any cost-sharing arrangement that is a part of the CIC.

Section 53, subsection 2 is an expansion of the financial information in a public offering statement. At the meeting of the Commission on Common-Interest Communities and Condominium Hotels on Friday, Commissioner Gary Lein

indicated he had some technical changes that would probably be appropriate in describing this kind of financial information.

Section 54 is a grammatical correction.

Section 55, subsection 3, paragraph (b) corrects an inadvertent omission. The intent of subsection 5 is that if the HOA fails to disclose fees payable by the seller, it is the purchaser who is protected, not the seller. The seller is liable because he or she incurred the fees when he or she lived there and does not escape personal liability for those charges by selling the unit.

Section 56 is basically stylistic changes. Subsection 1, paragraph (b) is a clarification. A model is an express warranty unless there is a clear disclosure that it could be changed. This recognizes what is common practice.

Section 57 is basically stylistic changes.

Section 58 includes stylistic changes and new cross-references. Subsection 4 reflects what HOAs and developers do in practice. This section permits the opportunity to create an independent committee of directors who can examine the common elements to determine whether there are any warranty claims before the declarant pulls out. This independent audit committee would look at these things. This provision does not require such a committee be formed, but it does give the flexibility to allow it to happen so HOAs can work with declarants before they are gone to resolve warranty claims.

Section 59, subsection 3 states members of the executive board are not personally liable to victims of crimes; this was moved from another section. Subsection 5 regarding punitive damages was enacted last Session, and it was moved from another section. This language also appears in S.B. 174; however, we have added paragraph (d) protecting community managers as well. Since the intent was to protect volunteers rather than community managers, paragraph (d) should come out.

Section 60 repeals NRS 116.31177, which is now incorporated into NRS 116.31175.

Section 61 gives an effective date of January 1, 2012.

CHAIR WIENER:
You mentioned Commissioner Lein was going to provide additional information on section 53. Will you work with him to get that to us?

MR. BUCKLEY:
Yes, I will.

SENATOR COPENING:
With regard to section 59, subsection 5, paragraph (d), you said the intent was to protect volunteers. I presume you are talking about the volunteer executive board members who are mentioned previously in subsection 5.

MR. BUCKLEY:
I was talking about the volunteer executive board. We did not intend to change the law; we only wanted to move it from another location. The volunteers referred to are the members and officers of the executive board.

SENATOR BREEDEN:
Section 51, subsection 2 states the fee for copying documents may not exceed 25 cents per page. In other discussions, this has been stated as 25 cents per page up to 10 pages, and then 10 cents per page after that. That is not reflected here.

MR. BUCKLEY:
This is existing law, NRS 116.31177. Our subcommittee is open to whatever numbers you decide would be the best.

SENATOR COPENING:
I believe S.B. 185 strikes the language that said executive boards could charge 25 cents for the first 10 pages and 10 cents after that, which was existing law. I do not think it was Senator Schneider's intention to allow management companies or HOAs to charge more, but that was how it was interpreted. The question then is would this provision trump existing law?

MR. BUCKLEY:
Section 51 applies only to copies of minutes. This is not changing existing law.

RENNY ASHLEMAN (City of Henderson):
Ms. Dennison covered my major concerns on S.B. 204. The only other matter I would bring to your attention is in section 4, which has to do with emergency termination of an HOA. This provision states it applies when "substantially all" of the units in a CIC are destroyed. In Henderson and elsewhere in Clark County, we have some extremely large HOAs. It is conceivable that they might have a situation in which they have 100 units left standing and 1,500 units have been destroyed. The Committee and the sponsor might want to consider specifying a percentage in this section to make it clear when this provision would apply.

CHAIR WIENER:
Please work with Ms. Dennison and Bradley A. Wilkinson, Counsel, to see what other states do.

BRADLEY A. WILKINSON (Counsel):
Since this provision comes from UCIOA, I am not sure if it exists in other states.

CHAIR WIENER:
We want to determine an adequate and equitable percentage. There might be something comparable in other states. Please take a look and tell us what you find.

MICHAEL SCHULMAN:
I am in support of S.B. 204.

You asked whether the decisions of a prior executive board affect future executive boards. The answer from a practitioner's standpoint is that they do. There is case law from around the Country that if an executive board waives something enough times, it has probably waived enforcement for good. As Mr. Buckley suggested, if you then reinstate it through a new rule, you can start enforcing it again once you warn people. However, it is our practice to advise HOAs that if they do not enforce a rule once or twice, it might be okay; if they do not enforce a rule 10 or 20 times, suddenly enforcing it will be considered selective enforcement.

I would also like to explain what we as practitioners think the business-judgment rule is. It clearly says if an executive board acts in good faith

as a reasonable person would in similar circumstances, it will be alleviated of any responsibility, and the decision should be upheld.

With regard to the charge for copies, before 2009, the charge for copies was the cost of copying up to 25 cents per page, though everyone charged 25 cents a page. In 2009, a section was passed related to minutes that made the charge 25 cents a page for the first 10 pages and 10 cents a page thereafter. It would be nice if it was consistent throughout.

With respect to the bill itself, I am concerned about section 7. If we take out the language being stricken here, some developers may try to make the definitions in their documents different from the definitions in statute.

I have great concerns about the possibility of developers reserving the right to amend the documents forever by specifying that they cannot be amended without the developer's approval. I would like the statute to make it clear that once the declarant control period is over, developers no longer have a right to disapprove amendments.

With respect to municipalities and lenders, I have no problem.

Sections 42 and 43 talk about absentee ballots. Before I fell into the world of HOAs, I was a corporate lawyer. There is no concept of absentee ballots in corporations. You either vote at meetings or you vote by written ballot that goes out and comes back. If we allow absentee ballots, there will be more likelihood of fraud. The absentee ballots as designed will only go out to those people who ask for them. We will not know who is actually asking for absentee ballots. Written ballots are sent to everyone. I request that you consider taking that provision out.

I have no problems with the provisions in sections 39 and 40, but you have given us no mechanism to include provisions in the bylaws. We cannot just put things in documents. We have to have the right for the executive board to amend the documents since we will not be able to get unit owners to participate because of apathy. If these provisions are going to pass, you must either give the executive boards the right to make these amendments to bring them into compliance or grandfather in everyone as of the day you pass the law and tell developers to include these provisions when they write documents in the future.

Section 42 talks about when a quorum is needed in a meeting. With this change, if you have an executive board of five people and three show up for the meeting, one could leave before the vote and kill the meeting. That should not be allowed. If you have a quorum at the beginning of the meeting, you should be allowed to conduct business. If those three people are going to vote two to one on an issue, the one dissenting voter should not be able to get his way by walking out.

ROBIN HUHN, D.C.:
I have written testimony describing my concerns with specific language in S.B. 204 (Exhibit D). As it says in the preamble to S.B. No. 192 of the 70th Session, "Some unit-owners' associations in this state have a history of abuse of power." That is what I experienced.

I would like to keep in section 37, subsections 3 and 4 that are stricken in this bill. I also feel that the attorneys who made these changes could be construed as biased since they represent the HOAs, the property management companies and the collection companies. This is how they will put money in their pockets.

CHAIR WIENER:
In your testimony, you mentioned a concern with section 19. That language is in NRS 116.4117, which this bill does not change. Exhibit C is an analysis of the entire bill, and you might find it helpful in understanding the impact or lack of impact of each section of the bill. It is available online at <https://nelis.leg.state.nv.us/App#/Meeting/499/Exhibit/2320/SB204>.

MICHAEL RANDOLPH (HOA Services):
I am neutral on S.B. 204. I have a comment on section 49, subsection 11, which allows HOAs to ask for receivers to collect rents. If an HOA is to the point where it is asking the court for a receiver, can it get late charges? We are not worried about fines, just the expenses that come along with them.

JOHN W. GRIFFIN (Nevada Justice Association):
We are neutral on the bill as a whole. We oppose section 56, subsection 1, paragraph (b), which talks about express warranties on models. The law of express warranties is fairly well-settled not only in Nevada but across the Nation. Existing language says an express warranty is created in a CIC if there is a representation that the product will reasonably conform to a model or description that is offered. The new language suggests there can be some sort

of disclosure exemption. The concern we have is that having that disclosure exemption, maybe unintentionally, invites misleading or exaggerated models or pictures with a small disclaimer at the bottom stating, "Your unit will never look like this."

CHAIR WIENER:
Do you have language to replace this?

MR. GRIFFIN:
Our recommendation is that section 56, subsection 1, paragraph (b) be deleted, leaving the existing statute unchanged.

TIM STEBBINS:
I have written testimony explaining my concerns with S.B. 204 (Exhibit E).

BOB ROBEY:
I have written testimony regarding some possible concerns with section 6 of this bill (Exhibit F). This echoes Mr. Stebbins' comments about section 48.

Mr. Schulman objected to absentee ballots based on his experience as a corporate lawyer. We are not General Electric or RCA. We are a community of people trying to get along with each other. We should have the right to vote. This bill gives us the right to use absentee ballots and proxies. We need proxies mailed to homeowners. The proxy vote process is set up in NRS 116 with specific requirements that must be done in a specific way. I have had too many people go to their executive board with a petition and get turned away because they did not have proxies from the people who signed the petition. That is not a way to run an HOA.

JONATHAN FRIEDRICH:
I have written testimony detailing specific language in S.B. 204 that have raised concerns (Exhibit G). Mr. Schulman mentioned the practice of absentee ballots being distributed to homeowners. In the HOA I have had for the past eight years, we have never received a ballot for the budget, only for the election of executive board members.

CHAIR WIENER:
Some of your concerns may also be covered by the information in Exhibit D.

JOHN RADOCHA:
When it comes to the blank checks that are given to HOAs, double-priced lawyers, management companies, arbitrators and collection agencies, homeowners need some reasonable caps. I know a lot of people on fixed incomes.

I would like to amend section 40, subsection 1 to allow for flexibility. Executive board members and homeowners may not be available to attend meetings on a fixed day. A 10- to 20-day window would be a good option.

I would like to see section 40, subsection 2 include the provision that signers of a petition cannot be fined or served with violations for 45 days. What happens is you take a petition to the executive board, and two days later, everyone who signed the petition receives a fine of some sort. People who sign a petition should be free from retaliation.

With regard to section 44, where does it define capital improvements? The dictionary says capital expenditures are funds used for something permanent.

Also, in my HOA, the executive board normally holds meetings locally. However, when it is a budget meeting, it is held 15 or 20 miles away.

I would appreciate a definition of "common elements" as used in section 58, subsection 2, paragraph (b).

MR. WILKINSON:
The term "common elements" is defined in NRS 116.017. This definition is also contained in section 10 of S.B. 204.

MR. RADOCHA:
My understanding is that capital expenditures are permanent. If the executive board decides to put a speed bump in front of someone's house, it is permanent. How can the executive board then call it a common element? There are too many loopholes. If the executive board is going to put bricks around an entrance, that is permanent, and we should be able to vote on that. But the executive board says that is a common element, and therefore we do not get to vote on it. The board should not have the right to do whatever it wants with our money.

CHAIR WIENER:
I will close the hearing on S.B. 204 and open the hearing on S.B. 222.

SENATE BILL 222: 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 S.B. 222 for your consideration. I have prepared opening remarks (Exhibit H).

MR. ROBEY:
After listening to Senator Copening's introduction to the bill, I applaud her for recognizing that there is a problem with some management companies charging a fee to register renters. I have a prepared statement suggesting a small change to section 4 (Exhibit I).

One interesting thing Senator Copening said was about the per door fee. It was amazing to hear her say the management company actually asked the executive board to change the bylaws so they could collect more money to keep down the per door fee.

SENATOR COPENING:
Your point is well-taken. However, I want to make it clear that I was speculating about per door fees. I do not know the reasons behind why they do it, and I will probably never be told.

MR. FRIEDRICH:
I have written testimony speaking to specific language in S.B. 222 (Exhibit J).

MR. RADOCHA:
I agree with Mr. Robey's comments. I am having a tough time with executive board members and the management company. When I question something like this, they do not like it, and they fine me. A lot of my neighbors ask why I fight them, and I say it is because they try to intimidate me. I own my house; I pay my assessments. If the person up the street has 10-inch weeds and mine are 2 inches, why fine me and not him? All I ask is that you throw some fairness into NRS 116 for homeowners who do not have the big dollars.

CHAIR WIENER:
Is there any further business or public comment to come before the Committee? Hearing none, I will adjourn this meeting at 10:26 a.m.

RESPECTFULLY SUBMITTED:

_____
Lynn Hendricks,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE: _____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 204	C	Karen D. Dennison	"Analysis of SB 204"
S.B. 204	D	Dr. Robin Huhn	Written testimony opposing S.B. 204
S.B. 204	E	Tim Stebbins	Written testimony opposing S.B. 204
S.B. 204	F	Bob Robey	Written testimony opposing S.B. 204
S.B. 204	G	Jonathan Friedrich	Written testimony opposing S.B. 204
S.B. 222	H	Senator Allison Copening	Written testimony introducing S.B. 222
S.B. 222	I	Bob Robey	Proposed amendment to S.B. 222
S.B. 222	J	Jonathan Friedrich	Written testimony regarding S.B. 222