MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE

Seventy-Seventh Session
May 9, 2013

The Committee on Judiciary Subcommittee was called to order by Chairwoman Lesley E. Cohen at 11:23 a.m. on Thursday, May 9, 2013, 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 nelis.leg.state.nv.us/77th2013. 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:

Assemblywoman Lesley E. Cohen, Chairwoman
Assemblyman Richard Carrillo
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Andrew Martin

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator David R. Parks, Clark County Senatorial District No. 7
Senator Donald G. Gustavson, Senatorial District No. 14
Senator Ruben J. Kihuen, Senatorial District No. 10

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Stephany Madsen, Senior Vice President of Special Projects, American Resort Development Association
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada; Member, Commission for Common-Interest Communities and Condominium Hotels
Samuel McMullen, representing American Resort Development Association
Paul Terry, representing Community Associations Institute
Garrett D. Gordon, representing Olympia Companies; and RMI Management, LLC
Michael Joe, representing Legal Aid Center of Southern Nevada
Jennifer J. Dimarzio-Gaynor, representing Associa
Fredrick Wilkening, President, Frontier Estates Homeowners Association
Pamela Scott, representing the Howard Hughes Corporation

Chairwoman Cohen:
[Roll was taken.] We have a quorum. We will recess until the call of the Chair. Because of committee meetings this afternoon, we are not sure when we will be back. We will try for as early as possible. It will probably be around 6 p.m., but as late as 8 p.m. I am sorry, but this is the way it is during the last three weeks of the session. We only have 120 days to get the State's business done every two years. Unfortunately, this happens. We will get back as soon as we can. The Subcommittee stands at recess [at 11:24 a.m.].

[The Subcommittee reconvened at 7:07 p.m.]

If you were not here earlier, we already called the meeting to order and called roll. Mr. Carrillo and Ms. Fiore are here, but Mr. Martin and Mr. Duncan are still in meetings. Hopefully, they will be joining us soon. [Committee protocol and rules were explained.]

Today we have three bills: Senate Bill 130 (1st Reprint) on common-interest communities, Senate Bill 280 (1st Reprint) on homeowners' associations, and Senate Bill 383 (1st Reprint) on time shares. I am going to go out of order since one of the bills will not be controversial and all of the parties are in agreement. I would like to ask Senator Parks to come forward and we will start with Senate Bill 383 (1st Reprint).

Senate Bill 383 (1st Reprint): Revises provisions governing time shares. (BDR 10-916)

Senator David R. Parks, Clark County Senatorial District No. 7:
Senate Bill 383 (1st Reprint) is intended to strengthen the disclosures that are submitted by a time share developer in the public offering statement for a time share offering. [Continued to read from written testimony (Exhibit C).]

Chairwoman Cohen:
We will have Ms. Anderson give her presentation, then we will take questions.

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry:
As Senator Parks has stated, Senate Bill 383 (1st Reprint) is a bill revising provisions of Nevada law concerning the sale of time shares, which is under *Nevada Revised Statutes* (NRS) Chapter 119A. Time shares are marketed and sold to residents of our state, but are also marketed and sold to visitors. Time shares are a very significant industry in our state. This Chapter, as I said, regulates the marketing and sales of time shares and the public disclosures related to the sale of time shares. [Read from written testimony (Exhibit D).]

I want to make a correction on the record to written testimony I submitted yesterday. Assembly Bill 404 was referred to the Committee on Ways and Means and I had referenced it differently.

We are going to be working with the amendment (Exhibit E) to the first reprint of Senate Bill 383 (1st Reprint), which was submitted with the permission of Senator Parks. The intention of the amended first reprint is to reconcile the two bills—S.B. 383 (R1) and A.B. 404—so there are no substantive conflicts left to be resolved. There are also some consolidations, better wording changes to make the disclosures more reader friendly, and all of these amendments with Senator Parks' consent were worked on with the resort development industry, who will also testify in support of this bill. We have been working together. [Continued to read changes from written testimony (Exhibit D).]

We have added a definition of "component site" to section 2 of the bill. We are updating it and the definition is needed because of the multiple sites that are in some of the time-share collections that are being packaged and sold to consumers.

Section 3 adds a new definition for "sales and marketing entity." That is to define the entity that may be hired to conduct sales and marketing activities in a project when that activity is not conducted by the developer. As an example, the Trump Tower in Las Vegas was built as a condominium tower, but has now designated units as time shares, so they have hired a sales and marketing entity.

Section 4 is a large section, and a very significant section that sets forth that the developer must file with the Division for approval to use a public offering statement. The public offering statement is a key document for the consumer that is filed with the Division as part of a larger package of documentation. I am deleting by amendment section 4, subsections 2 and 3. The substance and content of section 4, subsections 2 and 3 is in the other time-share bill, and we wanted to avoid conflicts with some of the fine points of the language. Although deleted from this bill, the substance and the content will not be disregarded this session.

The new subsection 2, which is the old subsection 4, sets forth that certain disclosures must be included in the public offering statement prepared and filed by the developer. This public offering statement is the disclosure the consumer receives on the time-share product. It advises the consumer to refer to the public offering statement, time-share plan documents, and the contract for correct representations, and not to just rely upon oral representations made at a sales presentation.

These are important disclosures for Nevada. It sets forth that Nevada makes no guarantees concerning the continuance of the offering; the financial future of the offering; or any plan, club or association affiliated therewith. It advises the purchaser that expenses of the operation are difficult to predict accurately and that most expenses increase with the age of facilities and with increases in the cost of living. It also advises consumers to read the documentation and information presented to them. Most importantly, it informs the purchasers of their right to cancel the contract of sale “until midnight of the fifth calendar day following the date of execution of the contract.” These are very important disclosures that will mean informed consumers, and these are advisements the state wishes to disclose to consumers.

The other large section, which I will be able to summarize briefly, is section 4, subsection 5 in the amended first reprint. This is the section that sets forth the details of the information that must be included in the public offering statement the developer prepares and files with the Division as part of the application, which is the public offering statement. The details of this are outlined in paragraphs (a) through (z). As an example, there is history of the developer; a description of any judgment against the developer, and managing sales and marketing entity; the name and address of the developer; summary of the current annual budget of the plan; description of the time-share plan; description of all restrictions, easements, reservations, or any other limiting factors; and you will be familiar with the mandatory description of the organization of the association for the time-share plan, because time-share plans do have unit owner associations.

Those descriptions are made along with the descriptions of existing or proposed accommodations; existing or proposed amenities of the time-share plan; name and principal address of the manager, if any; liens, defects, or encumbrances on or affecting title to the time-share interest; and any special fee due. This is a very detailed disclosure and all or most of the information is itemized in the statute. We asked on the application what the public offering statement must contain. We are codifying it in statute.

Section 5 in the amended document sets forth what the developer must provide to the purchaser. Those items would include a copy of the public offering statement, a signed receipt for receiving the time-share plan documents, and any addendum to the public offering statement summarizing any pending amendments to the public offering statement which have been submitted to the Division, but not yet approved. As a note, the developer is not required to provide all of the exhibits that are submitted to the Division, but they must be made available to the purchaser upon request, and that can be in electronic form.

Section 6 requires the developer to provide to the managing sales and marketing entity the public offering statement, so they can provide it on behalf of the developer.

There are a number of technical amendments that the Legislative Counsel Bureau has added. Section 6.5 is deleted by amendment because it is covered in the other bill. There are also definitions of “developer,” "project broker," and "public offering statement."

There are a couple of things that are clarified. Senator Parks mentioned in the introduction that there will be direct supervision of time-share sales agents and provisional sales agents. This was an important component for me, because we have a project broker for every project in our state. The brokers handle many projects. The requirement is that there is direct supervision. The broker can assign a broker-salesman—a licensee under NRS Chapter 645—to supervise sales agents. The other requirement is to capture the time-share resale broker in the reporting of any felony conviction or plea. There are also some other technical adjustments.

Overall, this is intended to be a consumer enhancement piece for the marketing of time shares and for the reputation of time shares in our state for our residents and visitors. That is my summary.

Chairwoman Cohen:
Are there any questions? [There were none.] I have a few. You mentioned the reputation of time shares in our state. What is the current reputation?

Gail Anderson:
We actually have a pretty strong reputation in our state. It is a regulated industry. The entity that is here to testify, the American Resort Development Association (ARDA), represents their members and can speak for them. Time shares have become—with the growth of the larger entities that are doing time shares—a much regarded vacation option, and it goes pretty well. The only time the Real Estate Division has complaints, which we follow up on, is if all of the documentation and paperwork has not been provided. That is what we want to ensure is taken care of, or there is a rescission of the purchase if that cannot be supplied.

Chairwoman Cohen:
Would you say there are a lot of complaints to the Division about the system?

Gail Anderson:
There are not a lot, but we do get some. We are adding a rescission period to the time share resale in the other bill. We are addressing that area to strengthen our laws for consumer protection. One of the things that I went over quickly was the rescission of a time share. We are changing that. The documentation does not have to be sent just by United States certified mail. We are allowing shipping by common carrier, such as FedEx or UPS, because we often have tourists from other states and countries where they cannot get to a post office to file something. We are making that change to modernize our law as well.

Chairwoman Cohen:
I have never been to one of those time-share presentations, but you hear the stories and see the parodies of them on television. Do we have people who come forward saying that they could not get out of there? Or that they bought a time share when they had been partying too much?

Gail Anderson:
I think the hard pressure is gone and over with, at least in the last ten years that I have been with the Real Estate Division. That does not happen. I am sure there are people who have little recollection of the things that they did, but that is why we have the rescission period, and that is why it is a key part. In fact, the sales contract that is mandated in Nevada includes the rescission period printed in large red letters on the front, in addition to the public offering statement. We help people if they call to ask what they do.

The Real Estate Division staffing will be getting compliance enhancements. Our budget closed this week and we are going to be dedicating some investigative time on the Las Vegas Strip in this area.

Chairwoman Cohen:
What is the basis of the public offering statement? Is this from another state or is it things that you have seen over the years that you thought should go into the statement?

Gail Anderson:
The public offering statement basis is all of the information that a consumer needs to be aware of concerning the developer, his reputation, any judgments or litigations, and everything itemized in (a) through (z). We have looked at Florida and California law to see what is comparable. We are one of the larger time-share marketing states, so I look at the other jurisdictions to see the types of disclosures. I am also involved nationally with real estate regulators and a time-share subgroup, and we talk about the issues in time-share resale and transfer and what other jurisdictions are doing. That is the basis. A lot of it is historical; we have done it for a long time. We have added things over time as things have changed, like multisite components and the other options that are there for participating in a multisite plan that has 30 or 50 locations. Those are part of the adjustments here: how to address those multisite plans.

Chairwoman Cohen:
To confirm, everything that has been deleted in the amendment is in A.B. 404?

Gail Anderson:
That is correct. We have been working together very diligently on this so we do not have any reconciliation problems at the end with the two bills.

Chairwoman Cohen:
Senator, do you have anyone else as part of your presentation?

Senator Parks:
No. I have nothing to add. It was well done and I appreciate all of the work that has gone into this.

Chairwoman Cohen:
Then we will take any support in Carson City.

Stephany Madsen, Senior Vice President of Special Projects, American Resort Development Association:
We represent over 1,000 corporate members involved in the time-share industry, including developers such as Disney, Diamond Resorts, Starwood Resorts, Wyndham Vacations, Hyatt Vacation Resorts, Marriott Vacation Club Ownership, and other smaller regional developers. We also recommend marketers, banks, and associations. We also have an affiliated organization called the ARDA Resort Owners Coalition, which has the participation of over one million time-share owners across the country.

We are here in support of Senate Bill 383 (1st Reprint). I believe Nevada has had one form or another of a public offering statement for time-share sales delivered to the purchaser since that law was enacted in 1983. This bill will modernize, update, and codify much of what should go into the public offering statement and what appears in public offering statements in other states. We fully support the bill and have worked diligently, as Ms. Anderson said, to harmonize the two bills and to provide good consumer protection to time-share buyers in Nevada. I can give you whatever information you may need.

Chairwoman Cohen:
Are there any questions? I think we are good. Is there anyone else in support in Carson City? [There was no one.] Is there anyone in support in Las Vegas? [There was no one, and there was no opposition.] Is there anyone neutral in Carson City? [There was no one.] Is there anyone neutral in Las Vegas?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
I am neutral.

Chairwoman Cohen:
Senator Parks, do you have any closing remarks?

Gail Anderson:
This is good consumer protection and it modernizes our law. I echo and thank ARDA for working with us and bringing some of the best practices from other states and jurisdictions for our consideration.

Samuel McMullen, representing American Resort Development Association:
I want you to know that we are processing an amendment through the Committee on Ways and Means on the fiscal note to A.B. 404, which you dealt with in your Committee. We are, with the Administrator's and everyone's full agreement, processing fee increases that will actually support additional staff for Ms. Anderson and the Division to make sure this and the existing workload will be handled and managed in a way that is positive for consumer protection. I wanted you to know just in case you see that in another environment.

Chairwoman Cohen:
That brings a close to the hearing on S.B. 383 (R1). I see Senator Gustavson, so please come forward and begin your presentation on Senate Bill 130 (1st Reprint)

Senate Bill 130 (1st Reprint): Revises provisions governing common-interest communities. (BDR 10-428)

Senator Donald G. Gustavson, Senatorial District No. 14:
Many Nevadans, including me, live in a housing development that has a homeowners' association (HOA). Let me be clear that I do not have a problem with living in such a development with an HOA, as long as the HOA is there to protect the homeowners' interest without any unnecessary harassment or aggravation. [Read from written testimony (Exhibit F) and referred to submitted pictures (Exhibit G), (Exhibit H), (Exhibit I), and (Exhibit J).]

Chairwoman Cohen:
Are there any questions? I see none. I looked at your exhibits and thought what really bad quality they are. I cannot see them. I thought it was because it was a third-generation copy. Are you saying that it is as bad as when you received it?

Senator Gustavson:
Yes. I am glad you asked the question. I do have the original ones with me and have made several copies that got as close as possible to the originals that were sent to me.

Chairwoman Cohen:
I am interested in exactly what you are looking for in the details of the report to satisfy the requirements of the bill?

Senator Gustavson:
First, I would like to have a clear photograph. I can take a clearer photograph on my cell phone than what you are seeing here. I talked with a homeowners' group and worked with them. We made some changes from the original bill to clarify that the HOA needs to give a better description of the problem and what the alleged violation is.

Chairwoman Cohen:
In section 1, subsection 7, on lines 13 through 16 on page 4, I am concerned about this being used to make a violation be continuous. Is there an intent of when the fine would end, or is this something that could be ongoing?

Senator Gustavson:
This was put in there by Legal to correspond with the existing language in the other parts of the section. If you read it without the existing language, you will see that the fine may be imposed without notice or opportunity to be heard. This clarifies it a bit better. It does not extend the time period any longer, which is elsewhere.

Chairwoman Cohen:
I am young in comparison to most people in an HOA, but I am not good at technology. What about HOAs where you have people who just do not do things with technology? Are we putting a burden on those who do not use cameras, have cell phones with cameras, do not email, or do that type of thing? Are we giving them requirements that they may not be able to handle?

Senator Gustavson:
We did address that in the Senate hearing. We extended the effective date of this bill to January 1, 2014. That gives the associations plenty of time to comply. Yes, there are some small associations, so we wanted to give them the opportunity to get the equipment or cameras that they would need to take the photographs.

Assemblyman Carrillo:
A picture is worth a thousand words. I am trying to determine the quality of the picture. My HOA has someone who drives around the entire community twice a month and looks for violations. I do not think they have ever taken pictures. This is an interesting concept. I am not saying it is something new, but the person who has received a violation may be called to a hearing. He will take pictures and tell the HOA that is what he has, and the HOA says this is the issue, so he has proof and he makes them provide proof as well. This is like comparing apples to apples.

In reference to purchasing equipment, we are not talking about a $1,000 camera to take these pictures. I am assuming that the board could make a decision to buy an official camera for the board. The person taking pictures in the community would have to use that camera to take pictures. I am trying to understand this.

Senator Gustavson:
I have only been a member of two different HOAs, and I was president of the first one I was in. It came out in the Senate hearing that there are some associations that do not take pictures and send them out. They may take pictures, but not send them to the homeowner. They have the pictures there when you go for the hearing. You would bring a picture of your property after you repaired it. You would have some type of evidence that you repaired the alleged violation, and they will need to have evidence that there was a violation.

Chairwoman Cohen:
My concern is not as much about the cost as it is for the people who are low technology. I would need to have someone else take the pictures.

I just thought of another thing. Is there a requirement that the association let you know what section of the covenants, conditions, and restrictions (CC&Rs) you are in violation of?

Senator Gustavson:
Yes, there is. The violation is on the illustrations, but it looks like they did a cut and paste on it. They do not specify what actually needs to be done—like the boards need to be replaced on your fence. It just says your fence is in disrepair; it is very vague.

Chairwoman Cohen:
Is there anyone else that is part of your presentation?

Senator Gustavson:
No. This was not a controversial bill on the other side, so I did not have anyone come down to testify.

Chairwoman Cohen:
We will move to support in Carson City.

Paul Terry, representing Communities Associations Institute:
The Communities Associations Institute (CAI) is an organization consisting of homeowners, developers, and vendors that service that industry. We are in support of this bill, although it will add some costs. We think the cost-benefit analysis is appropriate. The homeowners should know what infractions they are accused of, and should have an opportunity to correct them. One issue was the timing for the management companies to acquire the software, so this system can be automated and available. The extension of the implementation period set aside that concern, so we are in support.

Chairwoman Cohen:
Are there any questions? Seeing none, is there any other support in Carson City? Seeing none, is there any support in Las Vegas?

Jonathan Friedrich, Member, Commission for Common-Interest Communities and Condominium Hotels:
As a disclosure, I will be wearing two hats on this bill. I am a homeowners' representative of the Commission. The Commission for Common-Interest Communities and Condominium Hotels and the Commissioner took a position on this bill on March 11, 2013. They sent a letter signed by Randolph Watkins, who is the chairman, and it was the unanimous opinion to support this bill. That concludes my testimony as a member of the Commission.

Chairwoman Cohen:
Is your testimony for yourself going to be in support as well?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
I am speaking strictly as a homeowner, and not on behalf of the Commission. Since this bill was introduced—and I did speak on it then—I received a notice of violation and a photograph from my HOA. A copy of this was sent up this morning, but I do not know if you received it. The photograph is of poor quality. It is very dark and there is a tree nearby that threw additional shade on the picture. Did you receive it?

Chairwoman Cohen:
We did not receive that. The committee manager has just verified that.

Jonathan Friedrich:
I gave it to the Legislative Counsel Bureau down here and they were to send it to you. The point is that the photograph is too dark and you cannot determine from the picture what the problem is. I had to drive up to the property, which is about 45 minutes from where I live; it is in Siena. I went in to see the community standards manager to find out what the problem was. She stated that the rocks needed to be "refreshed." It is rock landscaping and the photograph shows two small bushes and a large boulder between them. The complaint was that there were some bare spots that the soil showed through. They wanted those bare spots taken care of. With that, I had to drive for 45 minutes to see what the real issue was and then, on a subsequent trip, deal with correcting it.

As far as something that you had asked before, in this particular notice of violation, it talks about the violation: CC&R section 3.6(q) Landscaping: Design Guidelines, section 2, Maintenance Standards for Landscaping, Ground Cover, and Stone. They were very explicit in that, but again, the picture was very poor and lacking. I support the bill, and supported it when it went through the Senate, and I believe it is much needed.

Chairwoman Cohen:
Are there any questions? Seeing none, is there any other support in Las Vegas? Seeing no one, we will go to opposition in Carson City. Seeing no one, is there opposition in Las Vegas? Again, seeing no one, is there anyone neutral in Carson City?

Garrett D. Gordon, representing Olympia Companies:
I want to thank Senator Gustavson. We introduced the amendment to section 2 to extend the effective date to January 1, 2014, giving the large associations time to implement the bill. We appreciate his working with us on amending the bill. We are now neutral.

Chairwoman Cohen:
Is there anyone else neutral in Carson City? [There was no one.] Is there anyone neutral in Las Vegas?

Jonathan Friedrich:
Someone just came in and said the picture was sent up this morning.

Chairwoman Cohen:
I will check with our committee manager and make sure it gets out to all of the subcommittee members, but we have not received it.

Jonathan Friedrich:
On the fax transmission it says it was sent to Room 3138.

Chairwoman Cohen:
We will find it and send it around. That was everything, so Senator Gustavson please come sum it up.

Senator Gustavson:
You heard the pros and there were no cons on this bill. If you have any questions, I will answer them. I would appreciate your support in the passage of this bill. It is a consumer protection bill and does help them out.

Chairwoman Cohen:
This concludes the hearing on S.B. 130 (R1). We will take a brief recess before we start Senate Bill 280 (1st Reprint) [at 7:56 p.m.].

[The meeting was reconvened at 8:03 p.m.] We will come back and open the hearing on Senate Bill 280 (1st Reprint) and ask the Senator to join us.

Senate Bill 280 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-863)

Senator Ruben J. Kihuen, Senatorial District No. 10:
I am going to give you a quick overview of what the bill does, and the reason for introducing it. I will then have Mr. Michael Joe, who is in Las Vegas, go into detail on the different sections of the bill.

What is the problem? The problem with many of the homeowners' associations (HOA) is they fail to communicate effectively with homeowners. The result is the homeowners are unaware they are behind in their payments or assessments. The HOAs refer the case to collection companies that add on thousands of dollars in collection fees. It is not unusual to see homeowners who initially owe $100 to $200, but then find out they owe thousands of dollars more due to the collection costs that are added. If they had known they were behind, they would have cured the default. Some homeowners first find out they owe the association when someone posts a notice of sale on the front door. By then, they owe thousands of dollars and the sale is imminent. Current law prevents homeowners from challenging unreasonable or unfair charges in court.

Instead, the homeowners must challenge these costs in arbitration, but that process—which is time-consuming—does not stop the sale of the property.

What is the solution? There appears to be a missing step as some HOAs go directly from homeowners missing payments to foreclosure, giving the homeowners no opportunity to correct the problem. This proposed bill defines the minimum standard for the collection process that communicates with homeowners and provides an early opportunity for them to resolve the issue before additional costs are incurred.

With that, I would like to have Michael Joe discuss the bill.

Michael Joe, representing Legal Aid Center of Southern Nevada:
I want to talk about this bill. We incorporated a lot of the process suggestions made by Angela Rock of Olympia Companies. Those made this a good process.

When we talk about not getting the notice, we are not talking about the notice of foreclosure, the notice of delinquent lien assessment, the notice of default, or the notice of sale. We are talking about whether the homeowner knows that he is behind. Most associations use coupon books and do not send out statements. If you miss sending in a coupon, or miss making a payment, it is not clear that you are behind since you did not get a statement each month that says you missed a payment. What happens next is the associations tend to just turn it over for collection. The homeowners first hear they are behind when they get the notice of delinquency from the collection agency and, by then, they have started adding on fees and other costs. Those fees and costs, which are authorized by the common-interest commission, start in the $500 or $600 range. The homeowner may be behind $50 or $100, but his first notice is for $700 or $800, in which case they may or may not have the money and it is difficult for them to pay.

This bill does a couple of things, and I will talk about some of the main features. The first part of the bill, in section 1, talks about a statement and two letters. This is designed to ensure that each homeowner gets a statement. If they miss payments and fall 60 days behind, they get a statement that says not all payments were made, and you can see which ones you missed. Then the homeowner can cure it. I know that many homeowners do want to pay their association assessments, and would do so if they knew they were behind, but when they are hit with $700 or $800, they balk at paying it, or may have difficulty paying it. This bill addresses sending statements and letters in the beginning of the process, so they are aware of the problem. It also makes them aware that there is a collection process that adds significant costs, so they will realize it costs if they do not pay.

Chairwoman Cohen:
Mr. Joe, I am sorry but we have a question.

Assemblyman Carrillo:
I belong to an HOA and I have been in one since 1996, so I am well aware of the coupon books. I am wondering how someone who knows there is a monthly assessment could forget to pay it. They know it is due—especially if they are given notice when they first take over the HOA—unless they are not familiar with HOAs when they buy a house for the first time and no one tells them they are in an HOA. They should expect to pay a monthly assessment for which they usually get a coupon book. Right now, I am on a monthly draw from my checking account. I make sure it is done on the twenty-third of the month so it has seven days to get to the lockbox. I am trying to understand how someone who has forgotten or lost their coupon book could still not know the payment is due. I know I have a car payment and, if I lose my payment book, it does not mean I no longer have a car payment; it does not just go away. I understand hardships, but if I could not pay my mortgage, I would not wait six months until they send me a notice and put a foreclosure sign in my yard.

I guess they just do not understand personal responsibility. I have never been late on an assessment payment. Why? Because I know it is my monthly responsibility to ensure the HOA gets its money every month. Why does this bill make excuses for people who should understand they have an obligation? It comes down to personal responsibility. I need to make sure I understand where this is going.

Michael Joe:
I have seen hundreds of homeowners in the last year, and maybe thousands over the last several years. Yes, there are some homeowners who do not live up to their responsibilities. There are also homeowners who mail their payments—or at least they think they mailed it—or may have mailed it to the wrong place, or it may have gotten lost in the mail. I see a lot of homeowners who say they never thought they would be in that situation, but are because of the economic crisis that we have had over the last several years. We see a lot of homeowners who have always paid their associations and have lived up to their responsibilities, but now cannot for a number of different reasons. Sometimes it is the economy; sometimes it is people who have health and medical problems and fall behind. This bill is not intended to allow people to ignore their responsibilities.

I have been a member of a lot of associations and I do recognize that it is a responsibility. I have met with different collection companies. We talked

about homeowners who have automatic deductions from their bank accounts, and that is a great thing. They do not fall behind; they make their payments. Not everyone does that and some people miss payments for whatever reason. I do not think it is necessarily intentional, and I forget sometimes.

One of my homeowners was a woman who had a stroke and ended up with short-term memory loss and would forget to pay bills or pay the wrong amount. There are a lot of reasons why people end up in this situation. Even those who cannot pay now may get a job again and are then able to pay. This is designed to help them to do that.

This bill offers a mandatory payment plan. It basically says if you were behind and could not make those payments for five months, but are now working, you can pay through a payment plan offered by the association before that amount grows to $1,000 or $3,000. Maybe you cannot pay the entire $1,000 today, but you can pay it over a period of time. Typically, what happens is they add on all of those charges, and head down the road to foreclosure because they can. Homeowners may not be able to deal with that during this recession because they may have gotten too far behind. This provides an opportunity to do two things: to be fair to the homeowner, and to get assessments into the hands of the associations. It is designed to help people pay. You will find that a lot of homeowners, given the opportunity and awareness of the problem, would pay. It is not just a notice problem; they know about it. It is also a problem that they just cannot pay given the economic situation they may be in.

At Legal Aid, we see the worst of the worst. We see people who are in terrible situations. Some people may have fallen behind because the wife got cancer and they spent all of their money trying to pay the medical bills and could not pay the HOA. In this particular case, after his wife died, he went to the HOA to pay, but could not pay it because he could not get a payment plan from them.

The other option offered to a homeowner is a hearing where he can give an explanation. I see many people who are told they owe $1,000, who thought they made all of the payments. Sometimes a payment may be lost, or fees were added that they did not know about. The homeowner may have been fined and not known about it. This is an opportunity for them to resolve the issue inexpensively and easily with the association. Those people know what all of the costs are and resolve the issues before they become a bigger problem.

In terms of the cost of the program, it costs to have people administratively send letters. We do allow the HOA to recover costs of the program. We allow a $50 charge for a payment plan, and $50 for the program. I submitted written

testimony (Exhibit K) and a sheet from a company that does collections. They send five letters and make three phone calls, and do skip tracing and credit reporting for $20. I think the $50 is more than enough to cover the cost of this program. It makes it better. It is all about getting homeowners to pay, and giving them an opportunity to pay before the extra costs are charged.

We discuss redemption in section 11 of this bill. I see a lot of homeowners who are not aware that their HOA could foreclose on them, and are willing to buy the property back if they were given the opportunity. Section 11 does allow the owner of an owner-occupied property to come back and redeem that property within 120 days. Some of the better investors allow the owner of an owner-occupied property to buy the property and restore ownership to him. That is a good thing in this bill.

In summary, there are two goals in HOA legislation: to get the assessment into the hands of the associations, and to treat homeowners fairly. This bill does that; it gives homeowners a fair opportunity to pay the fees and assessments before they add on the high cost of collections. Ninety percent of homeowners pay those fees prior to foreclosure. They may not pay them when they first find out that they are $500 or $600, but many homeowners pay the fees when they become $3,000 because they want to save their homes.

Chairwoman Cohen:
Could we get a walk-through of the bill? Can someone go section by section?

Michael Joe:
The primary feature of the bill is to allow for a statement and letters. In section 1, we require the HOA to send a statement and two letters prior to starting the collection process—which is the notice of delinquent lien assessments.

The second thing required is to offer a payment plan. The payment plan, depending on how much is owed, has to be done over 12 months. The homeowners do not have to pay it all at once, but can pay over time if they want.

A homeowner may choose to have a hearing in front of the board, where he can ask for an explanation and have them verify that the cost he is being asked to pay are true costs. To do that, we added the $50 cost of the program and $50 for the running of the program.

In section 5, we require the HOA to accept payments from the homeowner and explain how to apply those payments. One of the provisions in the law is that

you cannot foreclose except for the assessments. You cannot foreclose on the fines and penalties. This essentially says you can direct that your payments are applied to the assessments. You will be current with the assessments, since the HOA needs the assessments to run their annual budget. This bill is designed to achieve that.

In section 9, we talk about the threshold for foreclosure. We define the delinquent assessment amount at which you can start the foreclosure process to sell the home: $1,000 or 12 months' worth of assessments.

In terms of the redemption, which is section 11, it must be owner-occupied, and we limit it to a 120-day period in which a homeowner can purchase the property back. If the property was sold at the foreclosure sale, the homeowner can redeem the property within 120 days by paying the amount he owes in addition to the association dues that the new owner has paid, and the property taxes. Those must all be recovered.

Assemblyman Duncan:
I want to focus on section 11. From a policy perspective, the right of redemption seems to have a chilling effect on people buying foreclosures in the sense that there is a cloud hanging over them. The person could, in good faith, want to buy the foreclosed property, but there is a cloud hanging over it because the original owner has the right to redemption. I see that as a problem. Can you tell us your reasoning for putting that in there? Please talk about the effect this would have.

Senator Kihuen:
Mr. Joe sees a lot of clients who get behind on their payments—maybe they lost their job or have medical expenses—then lose their homes. During that process, they find jobs and get back on their feet. By then, it is already too late for them to get their homes back. We want to offer an opportunity for these folks to get back on their feet and be able to reclaim their home, the home they worked hard to purchase. The Legal Aid Center often sees people in these circumstances. We are not trying to have an adverse impact on the investors, but we are here to represent our constituents, people who are struggling. During the last six or seven years, Nevada has had over 100,000 people lose their jobs. Some of these folks are finally getting back on their feet, and they should have the opportunity to reclaim their homes.

Assemblyman Duncan:
I appreciate that. In terms of long-term policies, we have bills this session to go back and fix bills from last session. There is a shrinking inventory of homes for regular folks who want to get into their first home. Maybe they will have the

opportunity to buy a foreclosed property and get a good deal. The argument cuts both ways. There are so many middle-class people, there is not enough inventory for them. Does this bill, by doing this, actually shrink the inventory and not allow folks to buy their first home?

Michael Joe:
I want to comment on that issue. First of all, at these HOA foreclosure sales, it is generally not homeowners who want to own a home coming in to buy properties. The vast majority, 95 to 98 percent, are the investors who buy them for investment purposes. One reason for that is the majority of homes being sold are underwater with their mortgage. The first mortgage still exists and the bank still thinks it is owed. If you are buying an HOA foreclosure for $5,000, you still have an issue with the bank. I do not see homeowners coming to buy them. Occasionally, I see people come in. Last week, the renter of the property, who had paid $8,000 to try to buy the property, came in only to discover that $250,000 was owed to Bank of America on a property that was probably worth $80,000 to $90,000. I think it is a problem if they buy it.

In terms of the number of people we see and what they tell us, at the Self-Help Center at the Regional Justice Center, we see 45,000 to 50,000 people a year. Many of those people come in with HOA problems. When they come in because the property has been sold, they have a notice from the new owner. They state that they did not know the HOA could sell their homes. It is not that well known that the HOA can sell your home.

The clients also say that they received the notice that the property was being sold, called the bank, and were told that the bank was not selling the property. Some banks even tell clients that they cannot sell the home, which is taking legal advice from a person in a bank who is not an attorney. There are a lot of people who, had they known this could happen, would not have let it happen. That is why we are trying to provide a backstop, or a last chance to save their home.

Chairwoman Cohen:
Do you have any documented statistics on who is buying the homes, such as investors versus people who just want to own a home?

Michael Joe:
I am not sure if there is anything available. I have talked to most of the investors who are active in the session. There is really no one else who goes through this. Channel 8 was at the auction yesterday, and there were only ten people there, and they were all investors. Occasionally, you have a homeowner show up, but they are not generally buying the property.

Unless you are really good at researching, you are at risk buying that property. Not only are there liens by the mortgage companies, there are also property tax liens, judgment liens, or other liens. People trying to buy a house should not be doing that in this area; it is a bad idea for most people.

Assemblyman Duncan:
The way I read the bill, an investor or a homeowner could make a decision to buy the property. The property could have been vacant for three or four years. There could be a foreclosure sale that occurs three or four years later, and the homeowner would still have the ability to redeem it since it is at the point of sale. I do not know about this and I question the public policy.

Michael Joe:
That is incorrect. If you are not owner-occupied, you do not have the right to redeem; therefore, if it is vacant, you cannot redeem. One day an entity bought 21 properties, of which 19 were vacant. A lot of the HOAs foreclose because someone is in the home, but no one is responding. Many of these foreclosures are unusual properties, vacant or abandoned properties, and the redemption does not apply to them.

Assemblyman Carrillo:
When it comes to HOAs, the homeowners may think they are all right with the bank, then they find out the HOA is foreclosing on their home. It seems there should be something on the front side to tell homeowners that a lien will be put on their homes, or there will be a foreclosure if they are delinquent on the assessments—and their homes will be sold right out from under them. That may be legislation that is already in place. In the disclosure process, that should be in big, bold letters as they walk in the front door of their home.

I understand people trying to get caught up in making payments. How is the HOA assured that the homeowners are not going to miss future payments? If the homeowner talks to the board and negotiates payments over several months, how is he sure he does not get behind? He makes his current payment at the same time he makes his payment on arrearages. Does this have anything in there that ensures they are not going to get behind on future payments as well?

Michael Joe:
A lot of the payment plans that I see incorporate the future payments as well, so it is not just the payments for the past fees, it would be the entire amount. If you are behind $1,000, you will pay $100 a month. If your dues are $150, you would pay $250 a month to stay current. That is what it is designed to do.

It does not specifically say that. It is not designed to just pay past assessments and not the future ones.

Assemblyman Carrillo:
I know some of the smaller HOAs may only have quarterly meetings, and that could be burdensome for some people. Can they have other meetings outside of what they would normally do? I am looking at the mandated meeting. Can you clarify that?

Michael Joe:
That is something we have talked about. It was an issue when we talked to Olympia Companies. The small associations probably do not have that issue as much. If you have to wait for the quarterly meeting, it does add a little time to it. It is a process that is needed for the homeowners and HOAs to address their delinquency. One of the requirements in law now is that the president of the association, or his delegate, is supposed to sign the notices of foreclosure anyway. Most HOAs that I know of meet to determine if they are going to foreclose. It is essentially the board's decision. This was intended to be an add-on. When you are taking someone's home, that intervention should be added.

Assemblyman Carrillo:
I know it can be 120 to 180 days before it can be sent to collections. I understand there are financial hardships, but it is still the same thing. There are homeowners who pay in a timely manner and are fulfilling their obligations, so why are we giving those who are not paying all of that extra time? That is up to six months, so why such a long time?

Michael Joe:
It is 56 days before they can start the process, but not an additional 56 days. When would the process have started anyway? The total process from start to foreclosure is already 141 days. This is designed for an earlier start. The process adds a little time, but not 56 days. The first step is to mail the first statement, then you have to wait 15 days before you mail a letter. Then another ten days for the next letter. Depending on what happens with the hearing, if the homeowner asks for a hearing, it may or may not take 30 days. That is the 56 days of this process.

Assemblyman Carrillo:
I am trying to find where the bill discusses future payments as being part of the payment plan. Is that somewhere in here? Is it in there, or does it need to be there? You said that was part of the process, but is that in statute?

Michael Joe:
It does not specifically say that, but that is a good suggestion. We may have some other changes to the bill, so I would be happy to incorporate that clarification.

Chairwoman Cohen:
Are there statistics on how many homes are in foreclosure for HOA debt? Constituents and others throughout the state say less that 1 percent of all foreclosures in Nevada are related to HOAs. I do not know where this statistic comes from, but I have heard it frequently the last few days.

Senator Kihuen:
I do not have that information and I do not think Mr. Joe does either. There may be someone else who has that information.

Paul Terry, representing Community Associations Institute:
I have a copy of the letter submitted by the common-interest community committee of the State Bar of Nevada (Exhibit L). It cites Real Estate Division statistics that the association foreclosures make up approximately 1 to 2 percent of the total number of foreclosures. There is a copy of the data attached.

Chairwoman Cohen:
Do you know how many houses are in collections because of HOA fees?

Paul Terry:
I am not aware of any statistics on how many are in the collection process.

Chairwoman Cohen:
Going to section 1, subsection 5, there is a payment plan offered, but there is no interest. Then, in section 1, subsection 7, there is no penalty for noncompliance. I am concerned that this would encourage nonpayment? You are not being penalized if you do not pay.

Michael Joe:
The penalty for noncompliance is the HOA can start the foreclosure process again without a new payment plan being offered if they do not fulfill their responsibility under this section.

Chairwoman Cohen:
Is the proposed repayment plan on page 3, line 9, the same repayment plan as the one on page 4, starting at line 10?

Michael Joe:
The only payment plan that we refer to is the one that says, if the amount owed is less than $1,000, you have six months to repay it.

Chairwoman Cohen:
This is a drafting question. In section 9, subsection 5, paragraphs (a) and (b) on page 12, lines 9 through 12, the digest said it would be whichever is less, but I do not see that in this section. I want to ensure that is clear.

Michael Joe:
It is supposed to be whichever is less.

Chairwoman Cohen:
I am hearing from constituents and other people throughout the state who are in HOAs and are very concerned that this is going to financially penalize the members of the HOAs who are complying with their payments. They fear they will be stuck bearing the burden, since the bill makes it harder to collect from people who do not pay their fair share. Please address that.

Michael Joe:
It is just the opposite. It makes it easier for the association to collect. This is really a collection process. Prior to being an attorney, I spent approximately 25 years in business. I used to run credit and collections. Homeowners' associations here do not do collections; they go straight to foreclosure. This bill is a reaction to the current process that starts to sell someone's home without a collection process first. This is designed to collect money upfront. Done well, this will help most HOAs to collect more money. It will have the exact opposite effect; it will not penalize other homeowners, it will help them.

Chairwoman Cohen:
There is some dispute on whether that is the case; that they are not collecting. I have received emails from people concerned about the time frame, the $1,000 or more, and exceeding more than 12 months. That is a lot of money and waiting is also detrimental to them, especially a smaller HOA.

Michael Joe:
Initially, we just had the $1,000, but to be responsive to the smaller HOAs, we included 12 months of assessments. There are associations that only have $30 assessments a month. Others only charge fees once a year, or even quarterly. The 12 months is meant to address that, and give the same foreclosure rights to a smaller association.

Chairwoman Cohen:
To clarify, will the required phone calls violate the Fair Debt Collection Practices Act or any federal debt collection rules, as long as the parties are not in bankruptcy?

Michael Joe:
Originally, we had phone calls, but we have dropped them from the bill. An association may not have all of the phone numbers, since you do not have to give the HOA a phone number. They can skip trace the homeowner and get the phone number.

As for the Fair Debt Collection Practices Act, it is not a problem if you follow the Act. It is when you violate the Act that it is a problem. That is true even for the letters they send out.

Assemblyman Carrillo:
Who pays the assessments during the 120-day redemption period?

Michael Joe:
The new ownership should pay the assessments because they are the owners. We expect them to pay. The new owners can recover the assessments in the redemption if the homeowner wanted to redeem the property, but that is fairly rare.

Assemblyman Carrillo:
The new homeowner would be responsible for the 120 days. The fee for my HOA is $80 a month, so you are talking $320.

Michael Joe:
Let me put this in perspective. Generally, in an HOA foreclosure sale, most houses are sold for $5,000 to $15,000. The $320 is trivial compared to the cost of buying back your home. Tomorrow, I am having a homeowner buy his home back for $8,000. If there is an additional fee of $50 or $100, that is not going to stop a homeowner if he truly wants to redeem.

Assemblywoman Fiore:
Where is the incentive for a homeowner to keep up with his payments? If he is going to lose his home, why not go into default to get a better deal? With this bill, if he does not pay his mortgage and goes into default, and he can repurchase his house, why would he pay his mortgage? Where is the incentive for people to be responsible?

Michael Joe:
If you do not pay your mortgage, your lender will foreclose on you. That is always the incentive to pay your mortgage.

Assemblywoman Fiore:
How are you going to help them?

Michael Joe:
Homeowners who are current on their mortgages, but for some reason have fallen behind in their HOA fees, have the opportunity to save their home. Homeowners who, under some program, have a decent deal on their mortgage, but at the same time owe the association thousands of dollars and cannot come up with a lump sum to pay it, would be given a payment plan to pay it over time and stay in their home. I am trying to allow homeowners to deal with their financial situation and to stay in their homes. Legal Aid is about having homeowners stay in their homes.

Chairwoman Cohen:
You have a home and the HOA forecloses on it. You redeem it and pay your assessments every month. However, if you do not pay your mortgage every month, you will face foreclosure from your mortgage company. Correct?

Michael Joe:
Yes. That is correct. It is another issue if you do not pay the bank. The bank thinks they can foreclose even after the HOA foreclosure sale. They try to bring foreclosure actions on the new investors if they are not getting paid.

Chairwoman Cohen:
Are there any questions? Seeing none, I will take anyone in support in Carson City. [There was no one.] Is there anyone in support in Las Vegas?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
This bill is a life preserver for individuals who are trying to hold onto their homes after getting into financial difficulty due to circumstances beyond their control. I do support the bill and the intent.

I want to talk to you about the requirement that two statements and two letters be sent out. Several years ago, as a nonpaid, nonattorney advocate for homeowners, I was approached by a Chinese lady whose name was Mee Li. She owned a house and had no mortgage on it. It was in a community called Shaylon in the southwest part of the Valley. She always paid her association fees six months at a time. She was the original owner. She mailed her check to a lockbox in Los Angeles. It turned out that, during a time of transition,

that six-month payment was lost and has never been found. She did not realize it. She apparently was not balancing her checkbook and did not realize the check was never cashed. She continued to pay, but never realized she was six months in arrears. They kept hitting her with late charges. The bottom line was that it was turned over for collection. The final settlement, which I helped her with, was over $2,000. If she had received the statements showing her shortfall, which is required in this bill, and a letter telling her she was delinquent, this would never have happened. She would have been saved a lot of grief, heartache, and $2,000, and I would not have spent six weeks dealing with this problem.

Chairwoman Cohen:
Are there any questions? I see none. I have another question for Mr. Joe, so I would like him to come back up. When you have clients who come in and they did not know about their past due amounts, or knew but could not pay them, when you contact the HOA for them, are the HOAs receptive to payment plans and getting everything back on track? Are they receptive until a certain point and then reach a point of no return? What do you find in dealing with HOAs for your clients?

Michael Joe:
People come in after the matter has already been turned over to collections. Normally, it is already $800 or $900. You ask if the HOA is receptive, but once it is turned over to collections, the HOA is not involved. The collection companies are not receptive. They feel they can just foreclose and collect the money. If you have been around this issue for a while—there has always been an issue—you know that some of the collection companies were really bad. Some of them have gotten better and are receptive to payment plans. They will do a payment plan over two or three years if you owe approximately $5,000. The homeowners want some of the fees waived, but, in general, they do not do that because they have a lien on the property and feel they can collect it and do not have to give it up.

In terms of the associations, some of them are good and some are not. The good associations always want to do a payment plan. The bad associations just want to get their money. I understand that, since I have been on several HOA boards. You have a responsibility to get the money, but at the same time, my preference was always to do a payment plan when someone was willing to do one.

Chairwoman Cohen:
When it goes to collections, how much are the fees usually? What do you see?

Michael Joe:
There are two sets of fees under the Commission. There is a $1,950 cap, but there is about $1,000 in other fees on top of that. The total fee is about $3,000. There are three steps in the process: notice of delinquency lien assessment, notice of default, and notice of sale. The first step is about $800. The second step, depending on what they do with some of those hard costs, probably runs about $1,000. The last step runs to about $1,000. Depending where they come in, those are the numbers. That is on top of what you owe. If they have not paid in a year or longer, it is typical for us to see that homeowners owe several thousands of dollars when they come in. Of course, we are legal aid for our clients. Several thousand dollars is a killer, and they cannot come up with it. It is hard to come up with a payment plan, but if you want to save your home, that is what you have to do.

Chairwoman Cohen:
Do the caps apply even if it is in collections?

Michael Joe:
That $1,950 cap is a cap on the collection costs. It basically spells out that the agency can do a letter for a notice of delinquent lien assessment and charge $90. Then they charge $300 to do the next notice. The charge to do the notice of default is $425. There is a schedule of fees, and the total of those fees for the foreclosure steps cannot exceed $1,950. On top of that, there is a $200 management fee that goes back to the managerial company. They can add in the hard costs, which include $19 to record, and the cost to post and publish. The big cost is the trustee sale guarantee, which is a fee of $300 or $400 for an outside company when you go to sale to guarantee and protect the trustee. Those costs can be anywhere from $800 to $1,000.

Chairwoman Cohen:
There is no other support in Las Vegas, so I will move to opposition to the bill in Carson City.

Jennifer J. Dimarzio-Gaynor, representing Associa:
We submitted written comments (Exhibit M), so I will keep this brief. Although we do support the concepts found in S.B. 280 (R1), we have concerns about requiring an association to offer payment plans for past due assessments. Specifically, this is because the Federal Housing Administration (FHA) requires that a condominium association have no more than 15 percent of their units 60 days late in their assessments for any potential buyer to qualify for

FHA financing. Past due assessments—even those that are likely to be recovered through a payment plan—still count toward the FHA delinquency. Therefore, we would like to recommend that the Committee consider amending these provisions to exclude condominiums from the repayment provisions if such provisions breach FHA delinquency criteria or other federal underwriting requirements. In our written commentary, Associa suggested some language for this and we are hoping it will be a friendly amendment. I just spoke to Senator Kihuen about this, and he and Mr. Joe have not had a chance to consider this. We appreciate all consideration and would be happy to work with both Senator Kihuen and Mr. Joe.

Garrett D. Gordon, representing RMI Management, LLC:
I really appreciate Senator Kihuen and Michael Joe for all the time spent on the Senate side. We met numerous times. They were willing to amend the bill with some of our language. They know we had some additional concerns and we have drafted those additional proposals into an amendment (Exhibit N).

I will hit three or four highpoints and continue to work with Senator Kihuen and Michael Joe. Hopefully, this will turn into a friendly amendment at some point. I disagree with Mr. Joe that this only adds an additional 56 days. Our calculation is that, as Mr. Carrillo stated, it is approximately 120 to 150 days before the account could go to collections. I note that because, starting in section 1, subsection 2, even before this new process would begin, the unit owner has to be past due by 60 days; a 60-day period of no assessments paid to the association. Then there is another 15-day period, two letters that add another two ten-day periods, and the hearing that was discussed. At best, you would get to a hearing or meeting within 30 days, and at worst it might be quarterly or semiannually. We think that does add considerable time to the detriment of the nonprofit association. They have to balance their books and, if they are losing revenue coming in, it hurts them on the expense side for landscaping, security, et cetera. You will see in this amendment that it does request that you carve back a few of these deadlines. In section 1, subsection 2, rather than the homeowner being 60 days behind before this process commences, we would request 30 days. You will see throughout the amendment there is a request to carve back some of these days. If this bill is passed and the new process is implemented, compliance would be a little quicker.

The second point that I would note is the hearing. It is troublesome. If you have a mandatory hearing, some of the smaller clients who meet quarterly, would have to wait at least a quarter of the year, or they would need to have a special meeting, which is time-consuming. The language that we have proposed is that the homeowner may request a hearing that would not be

mandatory. The hearing could be at a regularly scheduled meeting, so there would not be a special or new meeting. For instance, Olympia currently goes over all of the accounts that are past due, the status, where they are in the process, and what payment plans are being offered at their regularly scheduled meetings. This is the second clarification that we would like to work on.

You will also see language regarding the payment plan. We want clarification that, if a payment plan is breached, the collection process continues. You get one shot at the payment plan and cannot follow a cycle of negotiating a payment plan, breach it, negotiate a second one, then breach it. You have one shot and then move forward.

Regarding the redemption period, we have language on who pays for the assessments during the 120-day period. In our experience, if the HOA forecloses and there is a redemption period of 120-days, real estate investors will not buy the property and take it subject to the 120 days. The HOA does a credit bid and has the house in their name. First, you have no assessments coming in for the 120 days. Second, you have insurance issues. Third, you have to negotiate a new sale on day 121 if a real estate investor is savvy and knows that period has expired. Our amendment clarifies that, in the event there is redemption, the homeowner would have to become current with all assessments so the association is made whole and does not lose the assessment fees. Those are the highlights of the amendment and I am committed to working with the sponsor and proponents of the bill with language that works for everyone.

I would also note on behalf of Terra West—Terry Care represents them—that they wanted me to put on the record that Terra West is opposed to this bill. I know they are willing to sit at the table and try to work out a compromise. We will continue to work toward compromised language.

Chairwoman Cohen:
You mentioned Olympia. Do you know how many of those homes are in foreclosure or collections? Do you have any statistics like that?

Garrett Gordon:
I spoke with Ms. Rock a few weeks ago about that. I sent her a message when you asked that question to get clarification, but I have not heard back. When we have that information, I will share it with the Committee.

You were asking questions about the costs of collections, what those dollar amounts were, and what they can add up to. That is all in regulation, and I know Mr. Terry has it right in front of him. Let me note that the $1,950 does

not happen overnight. That is the worst case scenario if the home goes to foreclosure. The majority of those fees are at the tail end when you have to do a notice of sale, do the publishing, and actually have to go through the foreclosure process. As you mentioned, it is relatively rare that HOAs foreclose. You should not get to that point very often. The homeowner who gets behind a few months goes to collections. You will see that it should not be thousands of dollars. At whatever point in the collection process you are, the fees are very clear in regulation. If you are on number 3, the notice of default, that is a set amount and you know what you are getting into.

All of our clients support the new language in the bill, and a lot of them do it currently. Per section 1, subsection 2, the HOA sends the first delinquency letter, gives the homeowner a list of his payments for the last 24 months, and sends a schedule of fees that could be charged. That was important to a lot of folks who were involved with HOAs last session, and again this session, that you have a clear schedule of what the regulations say, how much you could be charged, and that you can lose your house. That will be in the first notice and, in our opinion, it should be in every notice or invoice that you send to the homeowner. In our experience, that has been an incentive to stay current.

Paul Terry, representing Community Associations Institute:
Before I get to my remarks—and I will be as quick as I can—I want to clarify a few things. I am looking at *Nevada Administrative Code* 116.470, which says the collection agency can charge no more than $150. Anyone who is delinquent in his assessments when he is turned over to collections does not get a bill for $1,000; they get a bill for $150. I would also point out that those charges were developed after almost a year of hearings by the Commission in which all of the stakeholders had an opportunity to present evidence on what the charges should be and what the costs were. That is where the schedule came from.

The second point that I wanted to make is that someone made reference to the trustee sale guarantee being ordered to protect the trustee, but they usually provide a very small amount of protection for the trustee. What it does is provide information about who is required by statute to receive statutory notices, such as banks and other lienholders. That is why the trustee sale guarantee has to be ordered. It is essentially a property title report that tells the trustee who he has to send notices to.

The final point is that when you purchase a home in an HOA, there is a required statutory disclosure in bold print that says exactly what the Subcommittee has been concerned about. If you do not pay your assessments, the HOA can sell

your home. That disclosure gets made to everyone when they first purchase their unit.

Turning to my comments, I want to again emphasize that the Community Associations Institute consists of more than 50 percent homeowners. My remarks are going to be focused on those homeowners who pay their assessments every month. A couple of basic points is that HOAs are nonprofit corporations, so they do not have profits out of which costs can be paid. If we add additional steps and additional costs, profits have not been made, so the only place that money can come from is out of the pockets of the owners who do pay their assessments.

The second thing is, unlike banks, the owners and the HOA have no ability to judge the creditworthiness of their potential neighbors, or to reject those potential neighbors who they do not think are creditworthy. They are stuck with those people. The bank can make a decision, but the homeowners cannot. We have to be careful of the burdens we put on homeowners when they did not get to choose their neighbors.

This is a really important point: the Legislature has granted HOAs a nine-month window of protection under the priority lien. As long as the association moves promptly through the collection process, which ultimately culminates in foreclosure within nine months, they can protect themselves and ensure they are not going to be out of pocket for additional assessments. Any time we do something that extends beyond that nine-month period, we put the associations at risk—and by association I mean the owners who pay their assessments—that they are not going to be able to recover some of those assessments.

Section 1 of the bill adds a number of additional steps and, again, all of those additional steps cost money, and all of that additional money has to be paid by the owners who are already paying their assessments and are already covering for their neighbor who has not paid up to that point.

The next point is that there is an emphasis on people who have financial difficulties. We want this legislation to protect them, but none of the early costs being imposed on the paying owners are going to help people with financial difficulties. Those costs show up in the early part of the process, so these provisions are not going to help someone who has lost his job, or whatever his financial condition is. They would have long since passed. Our position is that not all of these steps are necessary. We could mandate that one notice goes out with the fees. We can send one reminder to someone, but multiple steps cost money and time and extends the HOA beyond that nine-month period in which the association can protect itself.

Generally speaking, we are in support of payment plans and think they are a great idea. The problem is that one size does not fit all. We have a set of guidelines, and you can tell from the presenters they are geared toward relatively low-income people who come to Legal Aid. If we pass this, it applies to everyone. There are HOAs that have $80-a-month assessments. There are some associations that have assessments that are a couple of hundred dollars a month, and there are some that have assessments over $1,000 a month. Putting a mandatory repayment plan into statute that is geared toward one group of individuals is unfair when applying it to everyone. We have a problem with one size fits all.

A point was made, and we agree, that the payment plan should require the individual remain current on his future assessments. We believe reasonable interest should be allowed because someone is covering these payments while those people are not paying. If they are going to pay it back, they should have to pay it back with reasonable interest. One final point on that is there is a requirement that associations accept payments, and we are fine with that. The one addition we would like to add—and is the reason why most collection companies insist on full payment of the delinquent amount—is there have been cases that have held that accepting partial payments can invalidate the process. Collection agencies do not want to restart the process over again. If we are going to require that any payment being made is accepted, we should include a provision that, if the payment being made is insufficient to satisfy the amount that is delinquent, acceptance does not invalidate the process. We think that should be taken care of so that problem does not occur.

With respect to verification of the debt—which seems to be a big issue—one thing I would point out is that the Fair Debt Collection Practices Act has a mandatory verification process in it. The initial communication with the homeowner must include a large, bold statement that the homeowner has the right to verification of the debt. That obligation already exists. We do not have a problem with giving a homeowner the right to meet with the board to discuss what he thinks have been errors in the process, but we do not think it is necessary to stop the process at that point. The length of the process before someone's home is sold is so long there would be an opportunity for at least one, and probably two, board meetings at a minimum for a homeowner to meet with the HOA board in executive session and go over what they think are the problems, such as they made the payment, but it went to the wrong person, or whatever happened. We do not have a problem with them having a right to meet with the board in executive session; we just do not think it should slow down the process. As soon as we slow down the process, we can cause the association to go beyond the nine months. The other solution would be to

extend that nine-month period, but I do not think that would get by the banking industry. Whatever we do, we have to make sure it stays confined within that nine-month period.

With respect to redemption, it does not come up very much. It does occasionally, and in all instances that I am aware of, when the homeowner says he wants his house back, he is allowed to have his house back. Generally speaking, they can always get their house back. The problem with redemption is, who is obligated to maintain the process during that period? Who has to pay the assessments? Can you get the homeowner out of the property during the redemption period? Do you have a right to do that? That is not clarified in the bill. Our experience is the same as Mr. Gordon's and that is, basically, if you buy a property, it is going to sit there vacant for four months, because no one is going to pump money into rehabilitating the property or anything like that if there is a risk that the homeowner may come in and redeem it. You have no right to recover that money. If you have a right of redemption, you are basically telling the HOA that it is another four months of assessments that they are not going to get. It is a bad idea.

Chairwoman Cohen:
Are there any questions? Seeing none, and seeing no other opposition in Carson City, we will go to Las Vegas.

Fredrick Wilkening, President, Frontier Estates Homeowners Association:
I am in opposition to this bill in its entirety. There are a couple of things I want you to remember. When buying a home in an HOA, the buyers have to sign a paper that they have received and read the CC&Rs. They are aware there is an assessment and when it is due, which is usually the first of the month.

Another thing to remember is that HOAs are like small cities and they take the responsibility for many of the things that cities and counties do outside of the walls of the HOA. They repair or replace the streets; repair and replace curbs and gutters; do the landscaping; fix the plumbing in the common areas; pay for watering, streetlights, sidewalks, walls, and all of the common area; paint; remove graffiti; and pay for electricity in common areas. Nevada Power does not wait nine months or 60 days for payment; if you do not make your payment, they shut off your power. The same holds true with the Water Authority. Homeowners' associations are the same way. They only have one way of collecting money. As Mr. Terry said earlier, they are not a business, they are nonprofit. The assessments that come in every month keep them making all of the repairs and doing all the things homeowners need to have done. At one of the earlier hearings, I heard that there are over 3,000 HOAs, over 600,000 lives are influenced by HOAs, there are over 40,000 units,

and in the last seven years there have been less than 700 HOA foreclosures. That is an important number, because it is less than 2 percent. Waiting 12 months, or until they are $1,000 delinquent, would be devastating in my HOA. We have 167 homes, our HOA dues are $88 per month, and it would affect us financially in very dramatic ways if we had to hold off for a year.

Pamela Scott, representing the Howard Hughes Corporation:
We develop in the Las Vegas Valley and have developed Summerlin, which is a very large association. I know a lot of people have spoken to what a burden this would be on small associations, but by the sheer numbers, this is also a huge burden on the large associations. A board of directors for 100 units could be the same number of persons as the board of directors for 15,000 units. One of our master associations at Summerlin North has over 15,000 units. They have a 6 percent delinquency rate, which means there are 915 units that are 60 days delinquent moving through the system in any given month. Some will go out at the end of the month, but new ones will come in. We are always dealing with approximately 900 delinquencies a month. How could one board hold 900 mandatory hearings a month? That is what this bill requires, and it is not just the homeowner who can request it. The board is always happy to meet with anyone who wants to request a hearing or a meeting, but to hold 900 mandatory hearings a month would not be physically possible.

The other thing is the sheer number of notices. This bill, as written, requires five different pieces of communication. As written, it requires us to tell them at each step that their payment plan would be based on the schedule of time that is spelled out. Each time we send a notice, we would have to recalculate the payment plan. Remember, this is 900 pieces of communication for each step of this process. There may be a little less when they are six or seven months out, but new ones keep moving in. Having to send these certified is a lot of money. We have made these communications so personalized that this is going to require that someone physically, do this hands-on.

We decided that, before we objected to it, we should calculate what this would cost one of our HOAs, so we chose Summerlin North. We did not guess at anything. We pulled out invoices to see what our envelopes and postage cost to mail certified. We did not guess at how much time it would take; we had people in real time go through the process to determine how much time is going to be spent on each one of these mailers. It averages out to 15 minutes, so five mailers would be 75 minutes. I sent in an exhibit (Exhibit O) and, as you can see, this bill would cost the Summerlin North Community Association $534,420 just for postage, supplies, and to hire the clerical persons. This is not

even talking about extra board meetings or management time. It is just for that simple process. This is a huge burden on the large associations as well.

I brought Summerlin North's financial statement. At the end of March, they had a common assessment receivable of $1,158,540. Now you are telling us to spend another $500,000 to collect the $1 million. That is not good business. They would be better off not to ever file another lien. What is going to happen if they never file a lien? No one will be on notice when the investors, realtors, title companies, and banks are looking to do their foreclosures, and they will want to know if they owe their HOA money, because no lien was filed. They will not know that. This will have consequences similar to what happened with Assembly Bill 284 of the 76th Session—unintended consequences—because there is going to be less notice out there if they just stop.

The other thing I want to make very clear is that, if this bill goes through, these notices that are being sent are not collection work, because it is very clear that management companies cannot do collection work. Also, I understand the intent behind the $50 fee. These are people who are not paying to begin with; they are not going to pay the $50 fee. We cannot send them a letter and say send us $50 because we have to send you five pieces of communication. That will probably never be collected.

Summerlin has no objection to payment plans; we do them all the time. We send out lots of notices and, I agree, we are one of the good HOAs. We do use coupons and send out quarterly statements so everyone will know if they got behind. We offer payment plans if they get four months behind. We send an intent-to-lien letter if they get six months behind. At that point, we will put a lien in place. It is a lot of money and a huge burden. I cannot see how this could be physically accomplished for a large association without hiring a lot more help. There is no way to hold mandatory hearings for that number.

Assemblyman Carrillo:
We can talk about the bad points of the bill, but do you see anything you can offer as an amendment that can be workable?

Pamela Scott:
I think there are too many notices; it is overkill. We are already sending out offers of payment plans at a certain time, and sending statements. I would have no problem if we were sending four statements a year to everyone who is delinquent 60 days, including the notices that are in this bill. The fee schedule is doable. The intent-to-lien letter goes certified anyway, so we are already doing those. In Summerlin, we are doing it at a later time, because our

assessments are less than $50 a month. We have large numbers to carry it, but at some point you cannot carry it any longer.

I have read the amendment that Mr. Garrett was presenting. There were some good things in it. I think it takes out the mandatory hearings, but I am not sure because the language is a little confusing in those sections, and I have asked that question of Mr. Garrett. I have no objection to a statement and one notice, but this is overkill. The mandatory hearings are a big issue with us too.

Chairwoman Cohen:
In Summerlin North, can you tell me how many HOA foreclosures there are, and how many have been turned over to collections?

Pamela Scott:
Summerlin North Community Association has never foreclosed on a unit. We do have about 600 liens recorded, and that is to protect the Association.

Chairwoman Cohen:
How many houses are in that area?

Pamela Scott:
In Summerlin North, at the end of March there were 15,245. Overall in Summerlin, we have approximately 27,000 units.

Chairwoman Cohen:
So, 15,000 plus units and 600 liens.

Pamela Scott:
Yes.

Chairwoman Cohen:
We would invite you to speak with the bill's sponsor and provide any suggestions you may have directly to him.

Is there anyone else in opposition in Las Vegas? Seeing no one, we will go to neutral in Carson City. Seeing no one, it is neutral in Las Vegas. Seeing no one, Senator Kihuen may come back for a brief closing.

Senator Kihuen:
I will be working with the opposition to try to come up with a compromise in the next few days. We are trying to meet a deadline, so I will address their concerns, and we will, hopefully, have something we can all work with.

Chairwoman Cohen:
With that, I will close the hearing on S.B. 280 (R1). We will open up for public comment.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
Unless I heard incorrectly, Ms. Scott said they send out quarterly or semiannual statements. I have owned a home in Summerlin for many years and I have never received a quarterly statement. Ms. Scott just informed me that it is only if you are delinquent. My apologies.

Chairwoman Cohen:
The meeting is now adjourned [at 9:42 p.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblywoman Lesley E. Cohen, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 9, 2013 **Time of Meeting: 11:23 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 383 (R1)	C	Senator David Parks	Written Testimony
S.B. 383 (R1)	D	Gail Anderson	Written Testimony
S.B. 383 (R1	E	Gail Anderson	Proposed Amendment
S.B. 130 (R1)	F	Senator Donald Gustavson	Written Testimony
S.B. 130 (R1)	G	Senator Donald Gustavson	Illustration of Yard
S.B. 130 (R1)	H	Senator Donald Gustavson	Illustration of Yard
S.B. 130 (R1)	I	Senator Donald Gustavson	Illustration of Yard
S.B. 130 (R1)	J	Senator Donald Gustavson	Illustration of Yard
S.B. 280 (R1)	K	Michael Joe	Written testimony
S.B. 280 (R1)	L	Paul Terry	Letter from the State Bar
S.B. 280 (R1)	M	Jennifer Dimarzio	Letter from Associa

S.B. 280 (R1)	N	Garrett Gordon	Proposed Amendment
S.B. 280 (R1)	O	Pamela Scott	Letter of Opposition