MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
February 22, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:15 a.m. on Friday, February 22, 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:

Assemblyman Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Aizley, Clark County Assembly District No. 41

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Dianne Harvey, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

Barbara Holland, President, H&L Realty and Management Company, Las Vegas, Nevada
Garrett D. Gordon, Reno, Nevada, representing Olympia Companies; Southern Highlands Communities Association
Angela Rock, Las Vegas, Nevada, representing Olympia Companies; Southern Highlands Communities Association
Jack Mallory, Private Citizen, Las Vegas, Nevada
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
John Radocha, Private Citizen, Las Vegas, Nevada
Tim Stebbins, representing Nevada Homeowner Alliance, Las Vegas, Nevada
Gary Seitz, Private Citizen, Henderson, Nevada
Joseph Nascimento, President, Monument at Lone Mountain Homeowners' Association, Las Vegas, Nevada
Gary Lein, Private Citizen, Las Vegas, Nevada
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Michelle D. Briggs, Senior Deputy Attorney General, Office of the Attorney General
Robert Robey, representing Nevada Homeowner Alliance, Las Vegas, Nevada
Rana Goodman, representing Nevada Homeowner Alliance, Las Vegas, Nevada
Mark Coolman, representing Community Associations Institute, Nevada Chapter, Las Vegas, Nevada
Don Schaefer, Private Citizen, North Las Vegas, Nevada
Paul Terry, representing the Community Associations Institute, Nevada Chapter, Las Vegas, Nevada
Byron Goetting, representing Complex Solutions, Las Vegas, Nevada
Greg Toussaint, Private Citizen, Las Vegas, Nevada
Donna Toussaint, Private Citizen, Las Vegas, Nevada
William Paul Wright, Member, Common-Interest Communities Committee, Real Property Law Section, State Bar of Nevada
Avece Higbee, Private Citizen, Las Vegas, Nevada

Pamela Scott, representing The Howard Hughes Corporation, Las Vegas, Nevada
Jan Porter, Private Citizen, Las Vegas, Nevada
Robert Frank, Private Citizen, Henderson, Nevada
Delores Bornbach, Private Citizen, Sparta, Wisconsin
Judi Gesh, Private Citizen, Las Vegas, Nevada

Chairman Frierson:
[Roll was taken. Committee protocol and rules were explained.] Good morning. We have two bills today which have generated a lot of correspondence.

The Legislature is recognizing homeowners' associations today. If members of the same group are here to testify, I ask that they consider selecting a person, or a couple of people, to be spokespersons to help us get through testimony. As Chairman, I am going to have to manage the flow of the Committee to be sure we make it through both bills. If we do not, there is a chance that some people are going to have to just rely on having signed in. In order to give organizations a voice, I ask that you be mindful of that method to get your voice heard on the record. I think that we should have a very informative set of discussions today.

We are going to go out of order and will first hear Assembly Bill 98. I invite Mr. Aizley to come up. I encourage anybody else to be prepared for his or her testimony following the introduction of the bill. I will open the hearing on Assembly Bill 98.

Assembly Bill 98: Revises various provisions relating to common-interest communities. (BDR 10-488)

Assemblyman Paul Aizley, Clark County Assembly District No. 41:
I am here this morning to present Assembly Bill 98 for the Committee's consideration. This bill amends *Nevada Revised Statutes* (NRS) Chapter 116 to address three issues of importance to the associations. These issues are the qualifications of candidates for the board of directors; the procedures for obtaining and reviewing bids for association projects and services; and the requirements for auditing association budgets.

Before going into the bill, I want to say that I was a homeowners' association (HOA) president many years ago and, at that time, I worked with Barbara Holland who writes a homeowners' association column for the *Las Vegas Review-Journal.* She is present in Las Vegas. She and I worked together on the bill; she has had a lot of input and has been a good source of information. I have also talked with Assemblywoman Spiegel who also has

experience with homeowners' associations. We are presenting this bill for your consideration and possible changes and amendments.

I will now go through the bill. Section 1 of the bill amends current provisions of the law that deal with the qualifications of a candidate for board office and disclosure of a candidate's potential conflicts of interest. Subsection 8, paragraph (b), places responsibility on the candidate to disclose whether he or she is a "member in good standing." The law defines good standing status as not having any unpaid and past due assessments or construction penalties. The law does not indicate what recourse there may be if the candidate does not make this disclosure. In addition, the law does not include unpaid fines in the definition of what would prevent a candidate from being in good standing.

I have had many conversations about these definitions and I think this one might be subject to amendment. In the current bill, it is not clear what "good standing" is. With an amendment, you may want to restrict just the assessments that are of some size to the definition of "good standing." Assembly Bill 98 removes the candidate's responsibility to disclose his or her good standing status, and instead, requires all candidates to be in good standing. The board of directors already has the information to make this determination.

Assemblyman Ohrenschall:
I have a question on section 1. Hypothetically, if you had a homeowner in the association who was disputing an assessment or a fine, pursuant to section 1, would that homeowner be precluded from candidacy because he was not in good standing?

Assemblyman Aizley:
If the fee were actually owed, when it is a fine, the candidate would have time to pay the fee before the end of the nominating period. They could then be a candidate.

Assemblyman Ohrenschall:
They would have to pay the fine they are disputing in order to become a candidate for the board; otherwise they could not run. Is this correct?

Assemblyman Aizley:
The way I read it, I think that is correct.

Assemblyman Carrillo:
I have a concern with section 1, subsection 8, paragraph (b), lines 35 and 36, where it talks about fines, unpaid and past due assessments, and penalties.

You could have someone say that a person is in violation of a rule and assess a fine. Could that board potentially prevent a person from running as a candidate because of a fine, which may or may not be valid?

Assemblyman Aizley:
There is legislation where you might be in violation of the law if you interfere with the normal election process. Those things can happen, but there are laws and penalties to take care of it. It also could be taken care of with more definitive amendments specifying that $25 is not going to stop a person from being in good standing. If you have not paid your dues of several hundred dollars a month for a period of time, that is what is going to stop you.

Assemblyman Carrillo:
My concern is not the dues, it is the fines. The fines may be levied on anybody through the process of a courtesy letter, then to the board, and then the fine. I could be in Carson City for four months and my board is having elections in June. By the time I go through the process of getting a fine off my record, they could say I could not run for the board because of the outstanding fine. Let us talk about the fine, not the dues or construction penalties. That is the issue I have because it is easy to assess.

Assemblyman Aizley:
As I said earlier, the bill is open to suggested amendments. I would like to hear amendments to make as many people as happy as possible with the bill. In fact, one reason I proposed the bill is during the campaign season the number one complaint I got from my constituents was about homeowners' associations. There are people who do not complain. I know there are plenty of associations that are fine, but after people told me as a candidate I have to fix education, the next thing they would do is complain about their homeowner's association. It seems to be a standard complaint. The reason for doing this is to make the HOAs more professional associations. I think this is a difficult thing to do considering some of the backgrounds of the board members. They are brand new and they do not know what they are supposed to do. They also have an abusive power that seems to go to their heads as HOA board members. I do not want to blame all HOA people for that, but that is out there. I can give you incidents about constituents who are very unhappy because of potential fines and violations of some of the laws. As far as a $25 fine, I think that we need to define "good standing" and clarify the law.

Assemblyman Carrillo:
You mentioned a $25 fine. No matter the dollar amount, a fine is a fine.

Assemblyman Aizley:
Yes, but it should not affect your "good standing."

Assemblyman Carrillo:
In my particular HOA, no matter what the violation, the fine is $100. They would have to change that just to qualify to run for the board.

Chairman Frierson:
Mr. Aizley has indicated a willingness to work with people to solve some of these issues. For example, this would be irrelevant to a particular HOA that does not have a $25 fine. I have a couple of other thoughts or ideas. One of them is wording that not only suggests there is an outstanding balance or some unresolved issue, but makes it clear that it has to be after all due process options have been exercised. It is not necessarily considered to be in violation until any appeals process on any disputes has a final resolution. At that point, that might be considered to be a factor.

The other thought I have has to do with Mr. Carrillo's example of being away. While I seriously doubt that a letter would say Assemblyman Carrillo could not be on the board, there are times when people are gone for extended periods of time. Maybe if someone sends in an application or an expression of interest, and he does not know that he has an outstanding balance, there should be a mechanism in place allowing him to be provided notice and pay it before the actual election date so he is not precluded. This would be an opportunity to cure. Those are just some thoughts based on the dialogue we have had so far.

Assemblyman Ohrenschall:
With the current way *Nevada Revised Statutes* 116.31034 is structured, and the mandated disclosure, has there been an issue where candidates have not disclosed? Is that the policy or rationale to make sure the fine or assessment penalty is resolved prior to someone being able to be a candidate? Mrs. Holland may be able to answer that.

Barbara Holland, President, H&L Realty and Management Company, Las Vegas, Nevada:
I would like to address some of the things that have been mentioned. First, in regard to your questions, yes, we do have problems with regard to people disclosing. Let us talk about that one section. Even the Real Estate Division in its advisory opinion of July 30, 2009, recognizes the current law does not address a penalty for failure to disclose complete or accurate information in a candidate's required disclosure. When we have sent information during the 30-day period—which most use for completion of forms—we have seen situations where people have not completed the forms or have not disclosed

issues. I have received quite a few letters of complaint through my *Las Vegas Review-Journal* column where a person will refer to a husband and wife with two different last names. For example, Barbara Kamanitz is my maiden name and I am running for the board. My husband, Andrew Holland, is on the board right now, and I have not disclosed our relationship. Relationships may go as far as the fact that my uncle is the owner or the supervisor of the landscape company. We are not allowed to do anything about these things; we are not allowed to tell the homeowners there is a husband and wife or significant other running. That is a current issue.

In the current law, you are not a member in good standing if you owe assessments or construction penalties. The problem is that we cannot disclose this; that would be a violation of confidentiality in the law. In the newsletter, I cannot say that Barbara Holland owes money. When a person is elected, the penalty falls upon the association. You need to look at NRS 116.31031, subsection 9 that says, "A member of the executive board shall not participate in any hearing or cast any vote relating to a fine imposed pursuant to subsection 1 if the member has not paid all assessments . . . ." We have many boards with three people. Suppose we have just selected someone who owes assessments. Hearings are one of the most important functions that boards actually do on a regular basis without having administrative assistance from management. This person is going to be disqualified from participating in those hearings. For a three-person board you now have one person saying, well maybe the person should be fined, and the other person saying they should not. Obviously, nothing happens because there is a tie. You have that issue to consider.

Chairman Frierson:
In the interest of time, we are going to work our way through the entire bill. I would like to delay focusing on the question because we are not finished with the presentation of the bill. Then we can get back to any individual questions that deal with the overall bill. Or, if you want to follow up after Mr. Aizley has presented the entire bill, that is certainly Mr. Aizley's prerogative as a presenter. I would like to get through the bill before we go in many different directions, and then we can revisit any introductory issues or any questions that the Committee might have beyond this particular section.

Barbara Holland:
I would just ask that you look at NRS 116.31107, because that is where you could add another section. If an association falsified a fine, they would be disrupting the election process.

Assemblyman Aizley:
Let us move on to conflicts of interests. Section 1 of the bill also deals with candidates' potential conflicts of interest. Section 1, subsection 8, paragraph (a) requires a nominee for board office to, "Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest," if the person were to be elected. This bill strengthens conflict of interest protections during elections for the board of directors. If a candidate fails to make the existing required disclosures prior to the close of nominations, section 1 of A.B. 98 authorizes the association to either reject the person's nomination as a candidate or, if the association has reason to believe a potential conflict of interest exists, to distribute the disclosure to the homeowners on behalf of the candidate.

Assemblyman Wheeler:
If someone is running against a sitting board member and that sitting board member decides his opponent has a conflict of interest, without much review he could remove this person from the ticket. Is that correct?

Assemblyman Aizley:
No, I think the board would have to take him off the ticket if there is cause. I do not think that one board member could do it.

Assemblyman Wheeler:
What constitutes cause? By my interpretation, it looks like candidate A is already on the board and candidate B is running for his seat on the board. Candidate A says that candidate B did not disclose that his great aunt's second cousin was one of the contractors who installed three pipefittings. There is a conflict of interest and, therefore, I am asking the board to remove him. Is that correct?

Assemblyman Aizley:
I do not want to be flippant in answering, but that great-aunt would not be close enough to constitute a conflict. It seems as though there would be recourse if someone were lying about his or her conflict of interest. I think we are looking for a larger notion of conflict. For example, a conflict of interest would be if I hired a property manager who was doing the entire repair work through her husband's company. I think that is the kind of issue for which we are looking.

Assemblyman Wheeler:
I wish the codification were a little clearer.

Assemblyman Aizley:
I would welcome new wording in an amendment.

Section 2 of the bill refers to bids for association projects and service. It establishes procedures whereby an association solicits and reviews bids for projects and services. Existing law simply requires that if an association solicits bids for an association project, the bids must be opened during a meeting of the executive board. Currently, there is no requirement that bids be consistent or comparable, nor is there any express authorization for associations to request bidders to revise and resubmit their bids. In addition, the current definition of an association project involves "maintenance, repair, replacement or restoration. . . of the common elements or the provision of services to an association." There is no monetary limit in this definition. This omission leads to the question of whether or not requesting bids on very small projects or service contracts is cost-efficient. Assembly Bill 98 tries to establish criteria to put the bidding process on a more businesslike footing. Section 2 provides that an "association project" involves projects or services costing at least $2,500 or costing more than 10 percent of the annual assessment made by the association as being the ones to be considered. I already have an amendment to the bill that comes into play here (Exhibit C). It appears that homeowners' associations frequently have to have bids resubmitted, and the way the bill is written, in the resubmission process they have to be sealed. Since that has met with some opposition, it has been removed in the amendment I have submitted. That was the only issue that had any discussion.

Section 3 refers to audits of association budgets. It amends the requirements for obtaining independent audits or reviews of associations' financial statements. Currently, Nevada law provides for a complex, tiered system of audits or reviews of associations' financial statements based on the size of the annual budgets. Assembly Bill 98 would simplify this system, make it more predictable, and increase safeguards against mismanagement and fraud by providing that the financial statement of an association with an annual budget of less than $150,000 must be independently audited at least once every four fiscal years and independently reviewed in any fiscal year for which an audit is not conducted. The financial statement of an association with an annual budget of more than $150,000 must be independently audited every fiscal year. For any fiscal year in which the independent audit will not be conducted for an association with a budget of less than $150,000, 51 percent of the voting members may cause an independent audit to be performed. I think the current statute is 15 percent.

Finally, A.B. 98 requires the Commission on Common-Interest Communities and Condominium Hotels to adopt regulations requiring the audits and reviews to be

performed in accordance with generally accepted accounting principles in the United States.

This concludes my summary. I do not know if Ms. Holland would like to add anything to this testimony. Otherwise, we are here to answer questions.

Chairman Frierson:
Ms. Holland, do you have anything generally to add to the presentation of the bill before we get deeper into questions?

Barbara Holland:
I have already mentioned the fact that the law has no penalty for the candidate who is not a member in good standing and has a conflict of interest. I mentioned one part of the law in which a person who owes money and is elected cannot participate in a hearing. In response to the questions about conflict of interest as asked by one Committee member, if you take a look at section 1, subsection 10, paragraphs (a) and (b), we do not necessarily have to reject that person's candidate application, but what can be stated is that the association can at least say that Aunt Sadie is related to the candidate. It is not an either/or situation. We had the opportunity of saying you did not disclose something that we know you should have disclosed. It allows the association to make a statement. Let us assume that I want to respond to the board's statement saying that the board thinks I have a conflict of interest, but I am fighting that. We already have a law that protects that person; it is NRS 116.31035, subsection 1. It says, "If an official publication contains any mention of a candidate or ballot question, the official publication must, upon request and under the same terms and conditions, provide equal space to all candidates. . . ." Therefore, in the example that a Committee member made, I could say yes, the board and I have a conflict, but . . . and then explain my position. So there is a certain amount of protection already in the law, as well as the disruption of the election process. If you wanted to add one more line that would specifically say that if an association did falsify a fine, that would be part of the B felony process.

In reference to the bidding process, when this law was first passed it was not realized that associations do not have administrative people that can prepare special specifications for bids. By having different companies come out and look at the community to make proposals, when the envelopes are opened at the board meeting, the specifications of each bid are different. You are not comparing apples to apples. You actually have to table the motion and take the bids to the management company and try to do a spreadsheet to try to create accurate apple-to-apple comparisons in order to make a decision. Unfortunately,

many of the decisions on projects have been delayed to the detriment of the individual homeowner.

My final thought pertains to the financial reviews. Just because an association has less than $45,000 of an annual assessment, it does not mean that they could not be awarded $6 million worth of a construction defect award. Right now for those associations, there is no accountability to the members and the public as far as what they did with the money because they are not required to have any type of financial review. The current law is between $45,000 and $75,000. If someone thinks that you are saving the association money by doing a review one year prior to the reserve study, that is not going to happen. Let us assume in 2010 an association between $45,000 and $75,000 did a review. The law then changed in 2011. The association says that they are not going to do reviews now. They will wait until 2014 because in 2015 they have to do the reserve study. Now they are asking a certified public accountant (CPA) to complete a financial review. They have to go back to 2010 because each year there is a beginning set of balances for your general ledger accounts and an ending set of balances. Complications could be that you have had multiple treasurers. To recreate that information the CPA needs to complete the 2014 review will cost the association more money than doing the review annually. If all of our proposed laws were based upon whether or not it costs money to operate our associations, we could eliminate a whole bunch of laws under NRS Chapter 116 right now.

Chairman Frierson:
Mr. Aizley, I want to make this point in considering any suggestions that you get. The one thing that gets my attention is in regard to the potential conflict of interest section. When there is a difference of opinion about whether or not something constitutes a conflict of interest, it says, "has reason to believe." It would be nice to consider some way for a person to be able to have a voice in whether or not it is a conflict of interest. If there is an official notice from the association that says so-and-so wants to be on the board but has a conflict of interest, and the person disagrees with the conflict of interest, there should be a way to ferret that out before it actually goes out.

Assemblyman Aizley:
I think the balance there is do you want to put that into the homeowner association rules, or do you want to enter it into statute? I think the rules should cover those things.

Assemblyman Martin:
I have actually audited and reviewed about 200 homeowners' associations in my career. I like certain elements that Assemblyman Aizley is proposing, but

I want to do a little Auditing 201 primer concerning the point which was raised earlier about switching back and forth between an audit and a review. I am concerned because I feel most people do not know the difference between an audit and a review. There are three levels of reporting. Compilation means the CPA puts the financial statements together and does not do any analysis; management or the homeowner's association is responsible. A review is far more extensive than a compilation; it is the mid-level reporting and it will have full note disclosure, meaning if there is something going on you will know about it; the responsibility still lies with the HOA or condominium board, not with the CPA. You are shifting the liability with the audit to the CPA where he gives his opinion and certifies the statements are true and complete. You need to be a CPA in order to do that. It is about four times more expensive to perform an audit than to do a review.

Obviously, the burden on a small homeowner's association would be tremendous if you are talking about one with a $50,000 budget spending $10,000 for an audit. My old firm would not touch an audit for under $10,000 or $15,000, but a review could be completed for $2,500 to $3,000. Switching back and forth is a nightmare from an auditing prospective because in order to do an audit for one year, you need to go backward and audit the prior year's balances; so if you think about it, you are actually doing it for two years. Pick a threshold—I like the simplified tier—and allow for the review with full note disclosure and still allow the fact if there is a problem the association can demand a full-blown audit, or better yet, a forensic accounting exam. Do not go back and forth. I want to make sure that people understand the clarification between a review and an audit and what the problems were in terms of the cost. I definitely like the idea of lowering the burden of the cost factor for a full-blown audit. It is just not needed, but certainly some reporting should be done every year.

Chairman Frierson:
For the edification of everyone else, I think Mr. Martin was asking Mr. Aizley if he would consider a compilation instead of a review versus an audit. I ask that you engage in a conversation with Mr. Martin about auditing. I appreciate Mr. Martin's expertise, and I would welcome a conversation between the two of you.

Assemblywoman Spiegel:
Mr. Aizley, there is one piece of this bill that I question. In section 1, subsection 10, paragraph (b), line 13, we talk about what happens if a candidate fails to make disclosures. It says that if the disclosure was not made or that there was a conflict, the association could distribute the disclosure. If there was not a disclosure provided, then the association does not have

anything to distribute. I was wondering if we could talk about that off-line as well.

Assemblyman Aizley:
Absolutely.

Chairman Frierson:
Are there any other questions for Mr. Aizley? I see none. Again, Mr. Aizley, I appreciate your willingness to work with others to come up with something that is practical and workable.

I am going to move to those wishing to testify in support of A.B. 98. Now would be the time for those in Carson City to come forward. I ask that those in Las Vegas come forward as well.

Garrett D. Gordon, Reno, Nevada, representing Olympia Companies; Southern Highlands Communities Association:
We have spoken to both sponsors, Assemblywoman Spiegel and Assemblyman Aizley, who were receptive to some of our amendments, many of which were discussed today. We will work with them prior to the work session on a good, comprehensive amendment that does discuss both, possibly taking out the fines and only keeping the objective standard of good standing for assessments. Assemblywoman Spiegel questioned whether the association has the right to provide disclosures on behalf of a candidate. We will work with both of them and see you back at work session. Thank you.

Angela Rock, Las Vegas, Nevada, representing Olympia Companies; Southern Highlands Communities Association:
I do thank you all for the opportunity to speak with you and work on amendments. I appreciate the intent of the bill, and as someone who works on the ground floor with these, and has been through hundreds of elections, I do see the intent and I do see where the path can go astray.

I would ask for an objective standard on the good standing definition. On the disclosure issues for a potential conflict of interest, I ask that be further defined and we do not engage in any language that puts the burden for disclosing on an association and, therefore, subjects them to potential defamation liability. One helpful thing I have seen done with my clients in situations such as that is we sit down and talk to the potential candidate about our concerns and their concerns. I have seen that be effective; however, as you will hear later today, there is some movement to narrow the definition of meeting and I would not want a discussion on conflicts of interest to be held in an open meeting. With that said, I do support much of what we have heard here today.

I understand that there is discussion for changing the issue of open bids. I do think after discussions with others over the years that sealing the bids has become burdensome, difficult, and associations and their management companies can adopt a business plan that works with that. It is becoming overly burdensome on the vendors and the people that service association communities. I know there are some individuals who are willing to discuss that in work sessions or with the sponsors. I am available for any questions.

Chairman Frierson:
Are there any questions? [There were none.] Is there anyone in Las Vegas testifying in support of A.B. 98? [There was no one.]

We will come back to Carson City. We are going to those in opposition to A.B. 98. I ask, if there are groups, to be mindful that we have a big bill coming up and that you identify somebody who could speak on behalf of that group. Those of you who are in opposition to A.B. 98, please come forward at this time.

Jack Mallory, Private Citizen, Las Vegas, Nevada:
I am Jack Mallory, and I am appearing today as a private citizen. I should disclose that I am currently the treasurer of Harmony Point Homeowners' Association, a smaller common-interest community of 95 units in North Las Vegas, Nevada.

Under the rules that have been adopted by the Assembly, I reluctantly rise in opposition to the bill that is before you today. I support what Mr. Aizley and Mrs. Spiegel are proposing, and I think that creating that clarification is something that is important. I would like to speak about four particular issues that I see with existing legislation and with the bill.

I believe that section 1, subsection 8, paragraph (b), that is proposed to be changed in this bill needs further clarification on the issue of construction penalties or fines. I think this pertains to the issue that was brought up by Mr. Carrillo in dealing with the potential for imposition of capricious fines or penalties by incumbent members of the board to avoid having to run against somebody. I would suggest that this provision be amended to allow for construction penalties or fines which were levied either during the preceding board meeting, or in the period between the preceding board meeting and the date of the election, which may be subject to appeal. I think that is something that may address the potential for a capricious fine that would be intended to preclude somebody from running for and sitting as a board member.

I would also address section 1, subsection 9, regarding the issue of potential conflicts of interests and the disclosure thereof. There may be individuals who run for these positions who may have a conflict of interest, but they do not know it. They do not understand what a potential conflict of interest is. I think that can be addressed either in statute or in regulations as far as the definition of what a potential conflict of interest is. That statement should be included and fully disclosed in the notification for nominations sent to the members of the association so that individuals who may, in fact, have a conflict of interest are aware that they have a conflict of interest. They will then have an opportunity to disclose what that conflict of interest may or may not be. In section 1, subsection 10, there is no provision on what happens with someone who fails to disclose an unknown conflict of interest. I believe that there is potential to clarify that in this legislation.

I believe there should be an additional provision put in section 1, subsection 11. In some of the reports about problems with homeowners' associations, particularly in southern Nevada, you have what would be considered board stacking with multiple family members, or if there are multiple units owned by a corporation, being overrepresented on homeowner or common-interest community boards. To potentially address the stacking issue in regard to individual persons, provisions should be inserted which prevent a person, a person's spouse, or the person's parent or child from being a member of the executive board if another person so related is also a member of the board unless the other person is a bona fide owner and resident of another unit within the association. This would prevent the stacking of the board by having, let us say, a husband and wife who live in the same residence from both being members of the executive board. I would be happy to answer any questions.

Assemblywoman Spiegel:
I appreciate your coming in and sharing your views; I think you raised some excellent points. I do have a question about your last set of suggestions. If different members of a family own multiple units, but not all of those members live there, are you suggesting that they not be allowed to serve on the board if somebody else in their same family who is also a bona fide owner of a different unit is also on the board?

Jack Mallory:
I know there are situations where individuals own multiple units within common-interest communities. Those multiple units are additional units owned for the purpose of investment property. I do not believe that it is appropriate that they utilize that investment property in an effort to achieve a greater number of seats on an executive board. I believe that if, for example, a person's parent or a person's child owns a separate unit within the community

and they live in that unit, they should have the opportunity to run for and sit on that board because they do have a separate vested interest. I do think it is inappropriate for individuals, the example being a husband and wife who live in the same unit but also own additional units as investment property, to both sit on the board as executive board members. They are exerting a different type of right under that scenario and I believe that is stacking.

Chairman Frierson:
Are there any other questions? I see none. Thank you, Mr. Mallory.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
Good morning, Mr. Chairman and members of the Judiciary Committee. I have a disclosure to make, as I am a commissioner on the Commission for Common-Interest Communities and Condominium Hotels. Mr. Mallory stole about half of my thunder. I will be brief; I am sure that you will appreciate it.

As far as good standing is concerned, a board could use good standing to eliminate competition where there are differing opinions. If a fine was assessed, or even if assessments were withheld, a homeowner could be declared delinquent even though he actually paid his monthly assessments, but they had not been deposited. That could be used to prevent that individual from running for the board. There is a lot of legislative history dealing with good standing, if you go back through the legislative testimony of Senators Maggie Carlton and Michael Schneider back on April 11, 2005. I will quote what Senator Carlton stated then: "The board should not have the right to take anyone's name off the ballot. I see the potential for the board to manufacture or interpret the facts so as to remove the name of anyone they do not wish to be on the board." At the same meeting Senator Schneider stated, "This provision could be used to keep someone out of the running by imposing a fine at short notice so there would be no time to pay it." I believe the existing language that is in statute should remain and it should not be changed (Exhibit D).

Stacking, which Mr. Mallory brought forth, is being addressed in Assemblyman Munford's bill [later introduced as Assembly Bill 397]. There was a case involving an investor in a Paradise Spa Homeowners' Association where he became the major owner in that complex. I was not on the Commission at that time, but there was a hearing and he was fined for violations.

Moving on to the bids; by opening them and not comprehending what is going on could lead to bid rigging in that someone who is favored to get the proposed work now knows everyone else's numbers and if they go back and change or review them, it does not create a level playing field for all of the bidders. They put in time and effort and now an original low bidder may be out of the running.

In regards to changing the four-year auditing, I would agree that it is expensive to have a full-blown audit. Allowing a four-year period between some sort of compilation review or audit would allow a dishonest board member or members or a manager to cook the books and steal. Two cases have come before the commission in the last six months; one is Case No. IS 10-2074 and the other is Case No. IS 10-2194. There was no auditing or review done over a ten-year period in the Bitsky case, and the man embezzled over $10,000 from the association. Currently in southern Nevada, there is another case that has come to light where there is a lot of money missing involving board members. By going to a four-year period, you are allowing potential harm to the homeowners with respect to stolen money. Someone will have to repay the stolen money.

Chairman Frierson:
Are there any questions for Mr. Friedrich?

Assemblyman Martin:
I do not believe the proposal is for an audit just once every four years and nothing in between. I think what is being proposed is a review on an annual basis with an audit every four years. Would the Chairman or Mr. Aizley clarify the intent? It is making it sound as though there is nothing going on in between the four-year audits and, obviously, your concerns would be greatly magnified if this were the case.

Chairman Frierson:
In the interest of managing time, Mr. Aizley, please make a note of this in case there are some other issues that you need to clarify when you come back up.

Jonathan Friedrich:
I appreciate the question. The way I understood it, it was a void for four years. That was my concern.

Chairman Frierson:
Any other questions for Mr. Friedrich? I see none. Is there anyone in Las Vegas testifying in opposition to A.B. 98?

John Radocha, Private Citizen, Las Vegas, Nevada:
My name is John Radocha. I am an HOA victim. I am here to speak against A.B. 98; the entire bill (Exhibit E). If this bill passes, I, as an assessment paying unit owner, would never be able to run for the board. I have been hit with a bogus fine of $8,200. [John Radocha continued to read from paragraph 2 of written testimony (Exhibit E).]

Therefore, what happened was retaliation. Selective enforcement was used against me, and I was slapped with this bogus $8,200 fine. Even Senator Schneider said there were too many red flags. I never paid the fine. As the previous law now reads, the only requirement is that I disclose it. That is the way it is now; all I have to do is disclose it. I ran for the board unsuccessfully in the past years with votes being close. The law as written now permits me to run for the board.

I would also like to bring up requiring associations with a budget of under $150,000 a year to only have an audit every four years. That is what would allow a board member or management company to embezzle HOA funds and not be discovered in a timely manner. Please do not change the current requirements for accounting. The other thing is, how do you get 51 percent of homeowners to come to vote when the meeting is called at 12 noon and it is 40 miles away from where the people in the HOA live? Ridiculous.

The third and last item would allow the unscrupulous board members or management companies to rig bids by allowing changes in the scope and pricing of the work or services to be performed for the association after the initial opening of the bids. [John Radocha continued to read from written testimony.]

Tim Stebbins, representing Nevada Homeowner Alliance, Las Vegas, Nevada:
I am against this bill; but, there are a few areas that do not make sense. In section 2, subsection 3, paragraph (b), it talks about services being more than $2,500 or 10 percent or more of the total budget before this process begins. In a large association, that means this does not start until the project is over $1 million; anything under $1 million is not addressed. That is ridiculous. In my particular association, our annual budget is $9 million, so 10 percent would be $900,000 and anything below that would not be addressed. I do not believe that is the intent of the bill and it should certainly not intend to do that.

Another concern is section 3, subsection 2, which talks about changing 15 percent to 51 percent. In a large association, 15 percent is a major struggle and 51 percent is impossible. Where I reside, our association has over 7,000 homeowners and to get 51 percent to do anything is impossible. We could hand out $100 bills, and 51 percent of the people would not show up to grab them.

There were some comments made earlier about conflict of interest and disputes, whether the conflict of interest exists or not, and who decides whether it exists or not. What if Supreme Court Justice James Hardesty was the homeowner and we had a volunteer board member who claims there is a conflict of interest

and Justice Hardesty says there is not. Who decides? That could disqualify Justice Hardesty from running for a board. To me that is not fair.

We also had a situation that was brought up in earlier testimony about a publication in which an association made certain comments about an election, and they had to give equal space to the opposition. While the period is typically at least 30 days between those publications, the elections could be over before the opposition got a chance to speak. That is in the law, but it is basically worthless and does not offer any protection for those that oppose an area.

Thank you very much. If you have any questions, I will be happy to answer them.

Assemblywoman Spiegel:
Mr. Stebbins, you referenced section 2, subsection 3, paragraph (b), line 28, when you were talking about the $2,500 or ten percent or more. Would you be comfortable if that said "whichever is less?" Would that address your concern?

Tim Stebbins:
Yes, I think that would address the issue. Again, in large associations, we have to consider this and here in Las Vegas we do have some very large associations. Ours is big, but it is not the biggest. Thank you very much; wording like that would be very helpful.

Chairman Frierson:
Are there any other questions? I see none.

Gary Seitz, Private Citizen, Henderson, Nevada:
The bill stresses voting and bids. We all know about the enormous HOA fraud over the past two years that has been perpetuated and is shortly going to trial. The enabling device was the voting; it enabled these individuals to manipulate the board. It was the board that had the power, not the unit owner. Anything that restricts candidates and gives the board the same or more power over them is too restrictive and invites more fraud and more abuse. Instead, have it more open like federal elections and state laws; let it flow. It is good for the government, good for the state, and should be good enough for an HOA. In the law, the association, the association directors, officers, employees, and agents of the association are immune from criminal and civil liability for any act or omission which arises out of the election process. If they want to make it fair, they should also include the candidate, or just strike that. The board is covered for defamation under the law right now. If they want to make it equal, more equalization for the candidate would be fairer.

Regarding bids, any restrictions on bids which would make it easier for fraud and abuse should not be considered, especially during this time.

Chairman Frierson:
Are there any questions? I see none. I did not see anyone else in Las Vegas who wishes to testify in opposition, so I am going to return to Carson City to those here wishing to testify in a neutral position. I see no one. If there is anyone in Las Vegas, now is the time to come forward. We have another bill, so I ask everyone to be brief and try not to repeat any points that have already been made.

Joseph Nascimento, President, Monument at Lone Mountain Homeowners' Association, Las Vegas, Nevada:
My name is Joe Nascimento, and I am the president of Monument at Lone Mountain. Everybody is doing a great job, but what you do not know will kill you (Exhibit F).

My board was taken over by outside individuals. I was elected president in April, two years ago. My term will be up soon so I began looking at the books. We are supposed to have approximately $300,000, some of it in U.S. Bank. I went to U.S. Bank, identified myself, and learned that we had no funds in the account.

Chairman Frierson:
Sir, if I may interrupt, I ask you to speak to the bill and provisions of the bill and be sure to testify neutral as previously requested.

Joseph Nascimento:
If you give me a few seconds, it will come together. I looked for the $126,000 and it was not there. We filed complaints with the Real Estate Division. We taped the takeover of the board. Just like here, if I wanted to take over your position and I had a few corrupt people backing me, I could do it. I showed up and they voted for me and they took over the board in September. The Real Estate Division has done nothing about it. They extort money from, and threaten, people.

The bill needs an enforcement provision. You can have any type of rule that you want, but the Real Estate Division is not enforcing the law. We met with the Federal Bureau of Investigation (FBI) who said they are sick and tired of dealing with the Real Estate Division because they are not enforcing the law. The Real Estate Division has been given copies of the minutes so they came and took over our board. The FBI said they do not have the resources for this.

Chairman Frierson:
I am going to stop you now, sir, because it sounds like you are in opposition to the bill, which we have already called for, or public comment, for which we call next. At this time, I am really trying to get through the provisions of the actual bill. If you would like to make some statements in public comment afterwards, that would be fine.

Joe Nascimento:
The bill has no enforcement. Who enforces the bill? This complaint has been going on for two years. No one has done anything.

Chairman Frierson:
Are you neutral on the bill?

Joe Nascimento:
Yes, I am neutral. I am not for the bill; I am not against the bill; I am just telling you the bill does not work.

Chairman Frierson:
I appreciate that. It sounds like you are against the bill so we are going to move on. If you have some additional comments for public comment, I will welcome those at that time. I want to give the people who have a neutral position and something to contribute, without any regard for whether or not the bill is adequate or inadequate, an opportunity to do that for the record.

Joe Nascimento:
Thank you, Mr. Chairman, but you cannot enforce a bill if no one enforces it.

Gary Lein, Private Citizen, Las Vegas, Nevada:
My name is Gary Lein. I am a licensed CPA in Nevada, and am the CPA representative on the Commission for Common-Interest Communities and Condominium Hotels. I am a unit owner within a community that has an annual budget of less than $45,000. I am here this morning on behalf of myself and as a CPA, not on behalf of the Commission, as we have not discussed this bill yet as a whole.

Overall, I feel that the changes made at the last legislative session were positive. I did have some issues that concerned me back in 2011. There were no conditions set forth as it relates to the governing documents. In some homeowners' associations, the governing documents call for an audit of the books and records on an annual basis. Section 3 of the bill ignored the governing documents. I think we need to potentially address the governing documents and the requirements for an audit in the documents.

The issue that I had was related to self-managed associations. Frankly, that is where I see a lot of abuse. Overall, I feel good about the existing law, but with some provisions or some corrections as it relates to self-managed associations. I think there is a problem with having an audit every four years. Assemblyman Martin has already articulated the point of having to go back and audit the prior years, specifically the ending balances at the end of the prior year. Some of the other problems that we, as CPAs, have are that we have to go out and look at the internal controls and the accounting systems; how they make deposits, write checks, and how the financials are put together. That is a huge burden and cost. There are many associations, specifically in northern Nevada, that have very small budgets. There are a number of associations that have a budget under $10,000. If there is an audit cost of $3,000 or $4,000, that is a significant increase and is punitive to those associations. My feeling is that putting the requirement at 51 percent of the unit owners to request an audit six months in advance of the end of the year seems to be very high. I would make a recommendation of bringing that back down to the 15 percent so for those associations that are not required to have an audit, there is still a reasonable trigger that could occur that would mandate an audit by the association. I do like the tiered structure.

If you continue to move forward with the proposed changes to statute, I am troubled with the every four years provision. You will notice in section 3, subsection 1, paragraph (a), the association will have an updated reserve study. So, if an association was going to have its reserve study updated in 2014, that means that the association would be required to have a reviewed financial statement for the year 2013. The thinking was that the association would have some kind of confirmation or independent analysis and scrutiny so those numbers would be utilized as part of the reserve study. Reserve studies are required every five years in Nevada, per NRS 116.31152. I would make a suggestion, if you are going to move forward with every four fiscal years, to change that to every five fiscal years. I like the idea that it is the year preceding the year that they would have an updated reserve study, so there is a specific purpose in timing behind having the audited financial statement.

To a certain extent, I am for this bill because it is a stimulus package for CPAs. It will be more work for us and more audits and reviews. Again, I am very concerned for those small associations in both northern and southern Nevada, and especially those outlying counties in northern Nevada, in being able to find CPAs that have the experience and will do it at a reasonable cost. In summary, I am concerned about the self-managed associations. I think there should be some outside reporting on a timely basis. I think it is important that we have the associations following their governing documents if there is an audit that is required. I would suggest that if an audit is done every four years that it be

amended to every five years, but before the reserve study is prepared. I do agree with Ms. Holland as it relates to the construction deficit funds. Maybe that language could be inserted in section 3, subsection 2, as it relates to the language on page 9 that if 51 percent of the unit owners request an audit, the association is obliged to have the financial statements audited for that particular year. There could be another qualification if the association holds construction funds at that time.

Chairman Frierson:
Thank you, and if you propose any amendments, I would suggest that you get those in writing to the sponsor of the bill. I think that will be helpful to a future discussion on the matter.

I want to make sure that we get through Assembly Bill 34, so if anyone has any other comments to close, please come forward.

Mr. Aizley, I invite you to come back up and address at least that one point and any closing remarks that you may have.

Assemblyman Aizley:
I am finished.

Chairman Frierson:
I am closing the hearing on A.B. 98 and opening the hearing on Assembly Bill 34.

[Exhibits not mentioned previously include: Letter to the Judiciary Committee from Robert Robey (Exhibit G); Letter of Opposition from Robert Robey (Exhibit H); and Audits of Associations (Exhibit I).]

Assembly Bill 34: Makes various changes relating to common-interest communities. (BDR 10-354)

I want to remind you we have a very long bill and at least 25 people signed in to testify. The odds of us getting everyone to elaborate the way that we did on our first bill are going to be slim. I do have several people that checked in to testify on both, and I want you to know that my gentle redirection is only geared towards getting through everybody that needs to be heard and making sure that we have a thorough vetting on the issues in this bill. With that, I will welcome Ms. Anderson.

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry:
Good morning, Chairman Frierson and members of the Committee. I have the privilege to serve as Administrator of the Real Estate Division. Present with me today is Michelle Briggs, the Senior Deputy Attorney General who serves as full-time counsel to the Division for the common-interest communities program. The Division brings Assembly Bill 34 to propose substantive changes (Exhibit J) to *Nevada Revised Statutes* (NRS) Chapter 116 and a section regarding NRS Chapter 38.

We are the agency that receives the complaints. We investigate while attempting to resolve, we educate, and we prepare and prosecute cases that we bring under administrative law to the Commission for Common-Interest Communities and Condominium Hotels.

The primary stakeholders with whom we work, and the purpose of the Office of the Ombudsman for Owners in Common-Interest Communities, is the homeowners, and, of course, board members are owners in common-interest communities. Those are the primary stakeholders and I ask you to keep this in mind. We also have stakeholders in licensees, all of whom are licensed by the Real Estate Division in community management. Their duty is to carry out the law; I have great respect for the work they do.

You should have an amendment the Division submitted that incorporates all the sections we are proposing to amend (Exhibit K). I am going to refer very carefully to that amendment when I propose and walk through these things.

One of the main focuses of this bill is to add a component of authority to the ombudsman to appoint a referee who can issue a written decision on homeowners' associations' governing document disputes. The referee and the hearing decision would be offered at no cost to the parties other than a filing fee. The cost would be controlled by the individuals who serve as hearing officers as well as funded by the common-interest communities' program.

During this past year, the Division has participated in a successful pilot administrative law judge program through the Department of Business and Industry. The program proposed in A.B. 34 does have differences from what is being done in the pilot program, but the similarity is a hearing officer who would interpret governing documents, or make determinations regarding disputes on those governing documents. The referee's decision in this bill would be nonbinding which can be confirmed, but the process would satisfy the requirements of NRS Chapter 38 concerning the alternative dispute resolution requirement for common-interest community residents.

The first significant section of the bill is section 2, and I refer you to page 1 of our amendment (Exhibit K). We have received comments from some of the stakeholders and we have tried to incorporate some of those which we think appropriate. Section 2 defines "meeting" to be a congregation of the majority of the board to hear, discuss, or deliberate on any association matter. It provides exclusions for situations where board members meet within the community to determine violations of governing documents, or to inspect an association project. The amendment adds an exclusion of attending a class offered by the Ombudsman's Office or other formal education program from not being considered a meeting. The definition prohibits a series of gatherings by board members of less than a quorum with the intent to avoid the provisions of the meeting notice requirement; that would be serial meetings. Included in the definition of a meeting is a teleconference of a majority of the board.

Chairman Frierson:
I am sorry to interrupt. As you are going through these, can you refer to the section so that the Committee can follow? I realize that the amendment does not have the line number so it is even more important that we are able to follow along.

Gail Anderson:
I am in section 2. Do you wish me to refer to specific subsections as I go?

Chairman Frierson:
Please.

Gail Anderson:
The definition is in section 2, subsection 1, paragraph (a). The series of meetings is in section 2, subsection 1, paragraph (b), which is defined. The exclusions are outlined in section 2, subsection 2. There is a lot of confusion about what constitutes a meeting and what can be done without a "meeting." A meeting requires notice so there is an opportunity for owners to attend, a time for public comment, and audio recordation.

The Division receives complaints regarding meetings of boards that are not "notice and actions taken." The Division needs the law to be very clear in this regard so that board members and all homeowners understand these requirements and that unit owners have the opportunity to be aware of the considerations and decision making of their elected boards. Without such definition, there are simply too many abuses that can and do occur.

I want to point out that the exclusions are in section 2, subsection 2. I want to also note in subsection 2, paragraph (c) we are going to add, "To inspect or

discuss necessary repairs for an association project." We are trying to be very clear with what the exclusions are (Exhibit L). As you can see in paragraph (d), that is added language in the amendment about attending a formal educational offering.

Meetings have very specific requirements in existing law to allow transparency for board conduct, but since there is no definition as to what constitutes a meeting, boards are free to meet and discuss association business without calling a meeting. We have received complaints of serial meetings where members have discussed among themselves, one-on-one, in person, or by email, matters that are going to be considered at a noticed meeting. Boards hold what they call pre-meetings and some go so far as to determine who is going to make a motion, who is going to second it, and how they are going to vote. They do not take the vote, they discuss the process. Boards also have what are sometimes referred to as workshops, which is nothing that is defined or allowed in law, to discuss association business. They do not take votes on action, but the unit owners may not have been given notice and unit owners may not be allowed to attend or to comment. What often happens is that at the noticed meeting where action is taken, there is no, or very limited, discussion and votes just occur. There is a motion, there is a second, there is a vote, and it is done. The Division believes that all considerations and deliberations regarding the business of an association of unit owners need to be held in meetings that unit owners have an opportunity to attend, listen, and comment. Therefore, we find that a definition of meeting is necessary to make clear what must be done at a meeting and that it should include, not just to take action, but also to deliberate, discuss, and hear matters within the authority of the board. Section 4 is a section that also ties into a meeting allowing action without a meeting in very limited circumstances. We want to make it clear so boards cannot get around the meeting requirement by signing consents without a meeting.

Section 3 is on page 2 of the amendment document and concerns a concept, which we are introducing, called voting monitor. A voting monitor would have the Division establish a panel of available monitors though a registration process with the Division. I want to clarify that a voting monitor is not a mandatory function by an association. The voting monitor would supervise and administer the voting process in homeowners' associations. The Division is asked to monitor or conduct elections for associations where unit owners have concerns about various types of inappropriate activity and fraud. We cannot do that; we do not have the resources and the staffing to be monitoring elections. This was a remedy proposed as a possible way to address that for associations who have that concern. It gives the Division the authority to adopt regulations for the qualifications of the voting monitor. In section 3, subsection 1, the Division may certify and the administrator shall adopt regulations concerning the

qualifications and the standards of practice of a voting monitor and what they would conduct. Subsection 2 establishes when a voting monitor would be required to be used by an association. That is if it is requested by the president, or voted on by a majority of the executive board, or by petition of the unit owners constituting no less than 10 percent of the total number of voting members of the association. It probably would not be an easy process on a petition drive. For a small association it would be easier, but certainly not for a large one. There is also a provision that would allow the Commission to mandate a voting monitor in instances where there have been proven violations of law against board members or community managers for voting irregularities. We know that this is a very serious issue and we have heard other comments on this.

In section 3, subsection 2, there is a technical drafting error in the Division's preparation of this amendment. It is near the end of subsection 2. We request to eliminate a phrase in the last sentence of subsection 2. It is in the sentence, "Upon receipt of a petition from the units' owners complying with this subsection, the executive board shall," then strike "solicit bids from at least three voting monitors and" then go on to "hold a meeting of the executive board at which" strike "the bids are opened and." We have added, "the voting monitors are. . . ." The rest of the sentence remains the same. The reason for this change after some of our stakeholder input, was the process of bids for this and, if we certify voting monitors, the intent would be that the Real Estate Division would basically post on our website a list of these certified voting monitors and their rates, which would allow not having to solicit bids, but to actually be able to review and make a selection from the list of those certified individuals.

In section 3, there are restrictions as to who can serve as a voting monitor of a particular association. That would be if that voting monitor was on the board, the voting monitor holds an office for the association, or is the association's community manager. The Division is amending to add another exclusion, which would be a unit's owner or resident within the association. Those are the proposals where a certified voting monitor could not provide services to a particular association.

Subsection 4 requires the voting monitor to obtain a list of the owners eligible to vote, to compile and deliver the ballots, and to collect and log the returned ballots. The voting monitor is required to keep all returned ballots and deliver them to the unit owner's meeting where they are opened and tallied by the voting monitor at that meeting. The voting monitor then provides all records to the association, but is required to keep a record for a period of ten years of the owner list of who received ballots and the outcome of the vote. This would

include the names of the unit owners who voted so that there is a record of that voting process. We chose ten years because existing law in NRS 116.31175 requires associations maintain all records for a period of ten years, except minutes, which are retained forever. Subsection 6 defines the term of the voting monitor.

Section 4 ties back to section 2, and the definition of a meeting. This section does allow boards the right to take action by unanimous consent provided the action is purely ministerial, to implement actions that previously were taken at a meeting, or for an emergency as defined. An emergency is already defined in NRS 116.31083, subsection 12. This is a further enhancement to the allowances of what can be done without a meeting even though those things all have to be notified and followed-up on. The notice of unanimous consent on a matter that is ministerial must be given to unit owners promptly. That is where we had comments on the number of days so we did put in the amendment in section 4, subsection 2 of this section, "within 30 days in a reasonable manner, including without limitation, by publication in a newsletter, website, or at the next meeting of the executive board. . . ." There was some public comment that promptly was too broad so we want to give some reasonable definition to it. There are allowances; this is not a required mailing, there are other means by which notification can be given to unit owners about that consent action on a ministerial item. In subsection 2, we have also added to the amendment that the agenda for the next executive board meeting must contain an item for each action taken by the executive board under this ministerial emergency action provision to notify everyone that that has been done.

In section 4, subsection 1, we are requesting to add the word "only" after the word "meeting" and before the word "to". It would then read, "After the declarant's control of the association is terminated pursuant to NRS 116.31032, the executive board of the association may act without a meeting only to perform any ministerial act. . . ." That was a requested constituent clarification.

The language of section 4 is taken from the Uniform Common-Interest Ownership Act which was amended in 2008. We all recognize that homeowners' associations are organized under corporate law in the state of Nevada. Most of them are organized under NRS Chapter 82 as a nonprofit and there are rules that a nonprofit can take. Under corporate law in NRS Chapter 82, boards may take actions without a meeting with only a majority of the board agreeing. If section 4 became law, it would prevail over NRS Chapter 82 because NRS Chapter 116 prevails in that circumstance for a homeowners' association. The Division thinks it necessary for NRS Chapter 116 to address when an action can take place and what kind of

things can happen without a meeting and not for corporate statutes to apply. That is a major section for the Real Estate Division of issues, concerns, and complaints we have received concerning a meeting. Without a law defining a meeting, it becomes nearly impossible for the Division to bring a complaint before the Commission concerning a violation of meeting. Except for those limited provisions already in law that say contracts must be approved at a meeting, but there is no definition of a meeting. I urge you to consider that very carefully.

Section 5 introduces the referee program that I mentioned in my opening comments. The referee program is a process proposed in which the ombudsman may refer matters to a third-party referee for a decision concerning a governing documents dispute between homeowners and their association. This expands the authority of the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels to provide more than an informal conference, which we do offer now to attempt to resolve the dispute with homeowners. More importantly, I think it also provides an alternative to the mandatory arbitration mediation program under NRS Chapter 38. By the way, the homeowners' association section of NRS 38.300 through NRS 38.360 is administered by the Administrator of the Real Estate Division and the Division program. This would satisfy the proposal of the outcome and the requirements of NRS Chapter 38.

Section 5, subsection 1, expands the authority of the ombudsman to appoint a referee for the purpose of hearing and deciding cases concerning homeowner and HOA complaints. The cost of the referee program would come from the Account for Common-Interest Communities and Condominium Hotels to the extent funds are available; meaning if we have more claims than what we are budgeted for, we would have to stop until a new fiscal year, or seek further funding through the interim process. I note that this item is included in the Governor's recommended budget.

Section 5, subsection 2, requires that the referee be qualified in training and experience in real estate and common-interest communities law. Subsection 3 describes how the referee will conduct the claim; he must review a claim and an answer, and hold a hearing unless a hearing is waived, which has happened in the pilot program where the administrative law judge (ALJ) has reviewed submitted documents. Then we will issue a decision and an award that is provided to the parties and to the Ombudsman's Office. This section details the limits on the jurisdiction of the referee. The referee may not award damages in excess of $7,500 and may not award attorney fees to either side; each party bears their own cost if they have an attorney.

Section 5, subsection 4 allows the referee program to satisfy the requirements of NRS 38.300 through NRS 38.360. The decision issued by the referee is treated the same as an arbitrator's nonbinding decision under NRS 38.330. After that decision is issued, the parties can proceed to court for a de novo review of the claim within 30 days of the decision, or the decision can be confirmed by a court within one year. Subsection 5 makes it clear that any applicable statute of limitations is tolled during the referee process. Subsection 6 allows the administrator to adopt regulations concerning the referee program.

Language on page 5 of the Division's amendment (Exhibit K) adds a provision in section 6, subsection 7, that no party to the referee program may file a claim under NRS 38.320. We do not want to be in a situation where there are competing decisions in the same process. The referee program is referenced in other sections of the bill that tie the law back in to what would be needed to implement the referee program. This program would be a significant help to owners in common-interest communities. Under NRS Chapter 38, the current process can be extraordinarily costly. The point of this is to limit any award that could be given and to keep it expedited to get a decision. Often that satisfies someone who wants an objective party to have a hearing and make a decision on the matter. They then may, but not necessarily, proceed in the civil venue once that has been satisfied. Section 6 incorporates a definition in the main bill.

In the amendment document, page 5, section 7, is an amendment that would require board members to cause the association to maintain insurance coverage in all circumstances where the board grants an indemnification to a third party. If a claim for indemnification is made by the third party, that claim is submitted to the association's insurance company. This does not require every association to have indemnification insurance, only if they use that in their contract with third party contractors; that would include community managers.

The Division needs to add clarifying language to the amendment in section 7, subsection 1, paragraph (c). That language would be "shall" and add "cause the association to maintain insurance to cover any indemnification the association grants. . . ." We have provided that wording on a third document, which we will get to the Legislative Counsel Bureau (LCB) as well.

Section 7, subsection 4, requires board members who, at the end of their terms, have records of the association, to turn over those records to the new board or manager. There is no provision in the law right now for this requirement. We have encountered many problems in getting records for homeowners' associations. The provision requires the board member to get a written receipt from the person accepting custody of the records. Currently there is no

requirement but that requirement does exist in NRS Chapter 116 for community managers to turn over all records when their contract ends with an association. I realize by having this in the law we do have the potential for violation of law that we can present for those under our jurisdiction.

[Vice Chairman Ohrenschall assumed the Chair.]

We do want to add clarifying language to section 7, subsection 4, paragraph (b) based on comments from our stakeholders. It is at the very end. Paragraph (b) says, "Obtain a receipt for the books, records and papers which is signed by the member of the executive board or the community manager to whom the books, records and papers are provided." And here is the "unless" clause that we are adding: "unless the member has been elected to another term as a member of the executive board." Other language that we have provided in writing is "or is only in possession of copies of books, records or papers already within the possession of the association." We are not meaning that when a board member is no longer in office he has to turn over every record they have received as a board package. If he was the custodian of records on a self-managed board or served as president, there are times when those records simply are not recoverable to the Real Estate Division, the owners, or for the new board.

On page 8 of 30 in the amendment document, section 8, subsection 4, requires that a fine be based on reasonable evidence to support the violation. The Division receives multiple complaints regarding violations of this section of law concerning fines imposed by the association, but the Division has no ability to evaluate the decision of the board. We can evaluate the process the board took. In other words, there was a hearing, or an opportunity for a hearing, but not an ability to evaluate the decision of the board. If the board has an obligation to have reasonable evidence to support a finding of a violation, the law should make that clear. The amendment that is in subsection 2, paragraph (c), provides for situations where a fine is assessed against an owner, but the owner did not commit the violation. You see language that has been crossed out in the amendment because fines in law can be assessed against an owner even if they are not the one who committed the violation under certain circumstances that exist in law.

Section 9 concerns action taken for recovery of debt or enforcement of rights secured under NRS Chapter 40; basically it is foreclosure. This section proposes to require lenders to give the association notice of the results of the lender's foreclosure sale so the association can have a record of the new owner.

[Chairman Frierson reassumed the Chair.]

In section 9, subsection 2, the language says, "the person who filed the action or recorded the notice or had the notice recorded on his or her behalf. . ." I want to clarify with a comment that there are many times that a trustee or a servicer is performing these things in the foreclosure acts, and not the actual lender.

Chairman Frierson:
Ms. Anderson, if you could summarize so that we could get to a more thorough discussion about the bill, it would be appreciated. We have all read the entire bill and there may be sections where no one has a question. I would like to get to the sections where we have questions.

Gail Anderson:
I will do that. I want to clarify in this section that we do not intend for a title company, which records the notice but is not acting as a trustee, to be captured by this, but if they are acting as a trustee, they would be.

I will move over to section 12 which allows teleconferenced meetings. An important section here that came up earlier today in subsection 6 is the requirement for the reconciliation of any construction defect account to be reviewed at a meeting each quarter so that those funds are held in an account and can be accounted for separately.

Section 13 concerns bids and adds clarifying language to include renewals for contracts, that bids be opened and discussed at a meeting, and it provides for two exceptions to that. That is, when the contract totals less than $1,500 or 10 percent of the annual budget, whichever is less; and when renewals of a contract are without changes to the contract other than the date, but substantive changes and the term of that renewal is one year or less.

Section 16, as well as sections 23, 24, and 25, gives authority to the administrator to issue a subpoena for records requested by the ombudsman. The Real Estate Division is the investigative body and right now subpoenas are only issued by the Commission. The Commission is the adjudicatory body and that is a conflict to have the adjudicatory body issuing subpoenas based on evidence to substantiate the subpoena of what we are investigating. I am requesting administrator's authority to issue subpoenas for records and to compel witnesses. My counsel, Miss Briggs, had to go to court on a Commission subpoena because of enforcement's subpoena or a challenge to the authority for the subpoena.

Another important section is section 19, adding definition of breach for governing documents issues; violations are violations of law, breach would refer

to governing documents issues. Several sections actually incorporate that language.

Section 21 allows for the referee program and section 22 adds the discipline the Commission may impose in concern to requiring a voting monitor. In section 26, we are requesting to add language to NRS Chapter 116. It already exists in NRS Chapter 116A which is the licensees, the community managers, and our proposal in section 26 would prohibit the association from applying assessment payments toward any fine, fee, or other charge due, or refusing to accept payment of any assessment or other charge from unit owners because there is an outstanding payment due. This is for self-managed boards that do not use a community manager; they must apply assessments to assessments. I will be glad to answer any questions that you have.

Assemblyman Duncan:
Is the intent behind the bill in section 2 to eliminate workshops?

Gail Anderson:
Yes.

Assemblyman Duncan:
Where does a board seek legal counsel or legal advice because of confidentiality?

Gail Anderson:
The law already provides an exclusion for the board to hold a meeting in executive session. There are two exclusions. There is a provision concerning potential litigation, not just to meet with their attorney. I have a concern that it should be kept from unit owners. That is the conference, not the action for it. So there are a couple of provisions in law already for executive sessions. I would also note that there are provisions to the law in 2011 for notice that does not require a mailing. It allows for other means of notice such as websites, TV stations, newsletters, or emails. Every meeting does not have to be noticed by a mailing; I know that there were some cost concerns. There is a provision for personnel matters; discussions concerning character of personnel and potential litigation. This is in NRS 116.31085.

Assemblyman Ohrenschall:
May any unit owner take advantage of the referee program? Please give me a little background on how the pilot program is working.

Gail Anderson:
Yes, they can. The ombudsman is the gatekeeper. The individual would need to file the affidavit with the ombudsman and if the ombudsman could not get the parties to meet or resolve the issue, and it is a governing documents issue, then the ombudsman would refer it to the referee. The dovetailing within NRS Chapter 38 is there is a filing fee of $50 the parties pay to participate; otherwise, they pay no other costs. Right now, the law judge cost is $500 or less to do this and that is what we would also contract and envision in that area. Therefore, there is no cost to the homeowner except for the filing fee and they would still need to file the affidavit, which requires the certified letter to attempt to resolve. The ombudsman would attempt to see if she could meet to resolve. From there it could be referred to the referee program.

Assemblyman Ohrenschall:
Would this be in lieu of arbitration?

Gail Anderson:
That is correct. It would fulfill the certification requirements of NRS Chapter 38. If either party wanted to proceed with a civil action, they would have the certification to do so. The party could also get a confirmation within a one-year period of time, which would allow them to seek enforcement of that decision through the courts.

Assemblyman Ohrenschall:
I see that in order to get a voting monitor it is either up to the president of the association, the majority of the executive board, or by 10 percent of the unit owners. Is that going to be insurmountable to reach 10 percent in some of the large associations?

Gail Anderson:
We had comments on that in a forum that I had with some of the stakeholders. It was a significant concern. I do not know if that is a number which needs to change, but there should be a reasonable way to figure it. In small associations of 40 units, 10 percent is 4 votes; in a large association, it is much different. We recognize that and would certainly consider if there were ways that we can address that better.

Assemblywoman Spiegel:
I also had concerns about voting monitors and a number of other issues that are brought up in this bill. For the record, I sent you a long email last night with about three pages of questions, and I was wondering if you would be able to provide written answers to me and the entire Committee so that we can take

those into consideration as we consider the bill. I do not want to delay the hearing by asking them right now.

Gail Anderson:
I would be happy to do that.

Assemblywoman Spiegel:
If you did not receive it, please let me know.

Gail Anderson:
I will.

Chairman Frierson:
I appreciate it, Mrs. Spiegel. I received it, and it is an extensive list of questions that I think would benefit the Committee greatly.

Assemblyman Duncan:
Will the cost of the voting monitor be the responsibility of the members of the entire association? Are there other provisions in law right now that allow for an investigation of a vote as it is? If that is so, why do we need a voting monitor?

Gail Anderson:
The costs will be borne by the association. We anticipate the voting monitor would list their fees along with whatever we post on the website. It is an extensive process. Many large associations use individuals outside of the association right now to run elections and they have it in their budget; certainly not all of them do.

We do get complaints about irregularities and we investigate those. Sometimes the evidence is not there; the ballots are missing, what actually happened is not there. The concept of the voting monitor is to have an objective third party that is not related to the association conduct the investigation. We do have serious allegations about voting fraud. Individuals must bring in their own ballots and their names are crossed off the list. We have reports of individuals who bring in handfuls of ballots and other unit owners think that fraud is happening. When there is an association that has a history of troubled elections, it is difficult to go back after an election to reconstruct exactly what happened and who did what.

Assemblyman Ohrenschall:
Where is the definition of ministerial acts?

Gail Anderson:
Yes, it is defined in the bill in section 4, subsection 1, in the last sentence, which reads, "For purposes of this subsection, a ministerial action is any action which is required by law and performed without any individual discretion."

Assemblyman Carrillo:
My question is in regards to section 5, subsection 3, paragraph (a), which talks about the damages for $7,500. If a homeowner crashes into a common area and causes damage of $20,000, would that be the amount for which the homeowner would be liable? Would the HOA be subjected to the remainder of the expense? Would you clarify that for me?

Gail Anderson:
We would not send any claim for damages over $7,500 to the referee program. They would have to go through the existing alternative dispute resolution program if it was a disputed matter that they were going to take into civil action. If the respondent to the claim said they were claiming $20,000 in damages, it would not qualify. We have patterned this after small claims court in terms of some of the values and processes, but also to make it suffice to meet the requirements of NRS Chapter 38 for confirmation or for appeal.

Assemblyman Carrillo:
Let us say someone has a big motor home and it would be cheaper to be fined on a monthly basis than it would be to purchase a spot for it at a storage place. If you had a situation like that, essentially until it reached the $7,500, would it be a situation addressed in the bill because it would still be on the HOA property?

Gail Anderson:
If I understand correctly, you are talking about recurring fines that are less costly than remedying the problem. The association has authority for fines, and remedies that they would take for fines that are not paid. The referee program would deal with the dispute over whether that was a fine. Now if it is clearly a fine because you cannot park a recreational vehicle, that is a different issue under law rather than a dispute about the interpretation of the governing documents. Miss Briggs, am I representing this correctly? Miss Briggs commented to me that we are not trying to help the association get a judgment, but to resolve a dispute over an interpretation of the governing documents or the application of the governing documents.

Chairman Frierson:
Are there any other questions? I see none. Thank you for the presentation.

We are going to those who are in support of Assembly Bill 34, both in Carson City and Las Vegas.

Robert Robey, representing Nevada Homeowners Alliance, Las Vegas, Nevada:
I am the Vice Chairman of the Nevada Homeowner Alliance. My compatriot spoke on A.B. 98, however, I do want to say the following on A.B. 34. Please listen carefully; it will be quick.

Thank you Ms. Anderson, and thank you members of the Assembly for your questions. I wish I had the Hallelujah Choir singing praises. This is a fantastic bill (Exhibit M). I might have a couple of reservations, but this is long past due. Hallelujah and thank you, Real Estate Division. I am finished.

Chairman Frierson:
Thank you, sir, and you are welcome before this Committee any time. Is there anyone else in Las Vegas to testify in support of A.B. 34? Please proceed.

Gary Seitz, Private Citizen, Henderson, Nevada
I agree with Mr. Robey. The Division is now taking a more proactive stand on the unit owners' side and that is very good. I am in support of this bill overall. We need some clarifications, because as Ms. Anderson mentioned, there are always a lot of problems with interpretation, wiggle room, ambiguity, this, that, and the other, and counsels for the association like to play on that a lot.

Going to her proposed amendment (Exhibit K) with reference to section 2, subsection 1, paragraph (b), subparagraph (3), it says, "The series of congregations was held with the specific intent. . . ." Specific intent has legal meanings and I would like to eliminate "specific" and just leave "intent" or replace the word with "general intent."

In section 3, subsection 2, line 42, regarding how the voting petition is delivered, thank you again for getting away from limiting everything to certified mail, return receipt requested. That is so restrictive and outdated. Thank you for allowing other methods of delivery.

I have a question regarding the penalty for the voting monitor. If the voting monitor also commits fraud or abuse, is that another enabling device? As we know, and as I mentioned earlier, voting is a big enabler for fraud and abuse in the past and present.

Section 3, subsection 3, lists who cannot be a voting monitor. I would like to see, "or any employee of the community management company" added.

It should not just be a community association manager (CAM) but also an employee because that is also right.

In section 3, subsection 5, the unit owner should get the copy and review of the voting. Previously we had special election masters and we know that some of them have already pled guilty to the federal charges. We need to have something to cover the new group or category of voting monitors because there were no rules on the special election masters.

In section 8, subsection 4, paragraph (c), where it says, "there is evidence sufficient to support a reasonable belief. . . ." The standard of review is very important. Throughout NRS Chapter 116 there has been no standard of review. What is the legal standard of review? I think that should be replaced with "evidence sufficient to support the standard preponderance of the evidence." Attorneys and judges know what preponderance of the evidence means; it is very clear. That is not wiggle room.

Chairman Frierson:
I just want to make it clear so that everyone knows the rules provide that you are in support of the bill as it exists, or with amendments that have been cleared by the sponsor of the bill.

Gary Seitz:
I am sorry, that is my misunderstanding. I support the bill then. I am just trying to clarify points in case there are problems down the road.

Chairman Frierson:
I would suggest that everyone be eager to provide thoughts to the sponsor of the bill to consider. If you think the bill is good, but you have some ideas to make it better, that is fine. Those things should be provided to the sponsor of the bill. If you have more that you want to get on the record, I want to make it clear we are in the support section, which would be support for the bill as it exists or with amendments that have been approved by the sponsor.

Gary Seitz:
Thank you for letting me know; I am finished with my portion. Thank you very much.

John Radocha, Private Citizen, Las Vegas, Nevada:
I am in support of the bill. I believe that one thing that should be added being they are short-handed is they need another dollar a door to get people in there to take care of these things.

Rana Goodman, representing Nevada Homeowner Alliance, Las Vegas, Nevada:
I am in support of the bill. I would like to thank Ms. Anderson for her openness in the workshops in forming this bill. It was terrific. I love the referee system; it is fabulous and a welcome change to the arbitrators. That is going to be wonderful. I would like to suggest one small change on the amendment when it comes to renewals of contracts. In the renewal of one year, any association can renew a year and then another year and then another year. In my particular association, for example, we have had the same management company since transition from our developer and they just keep renewing. I think it is stifling competition. I would like to suggest renewal of one year, period, and then it has to go out to bid. I think that is reasonable. Other than that, I support the bill wholeheartedly.

Tim Stebbins, representing Nevada Homeowner Alliance, Las Vegas, Nevada:
I am a member of the Nevada Homeowner Alliance. I would like to express my support of the bill wholeheartedly. I like the idea of trying to define a meeting; this is something that is difficult to do and I think that this is a reasonable attempt. It may not be perfect, but at least it is a very good step in the right direction. I was going to comment on the 10 percent, but Assemblyman Ohrenschall has already talked about that. Again, I will comment that I do support the referee program. I do want to say I support the bill, and I thank you for the opportunity of speaking with you. I am finished.

Chairman Frierson:
Is there anyone else in Las Vegas to testify in support of the bill? I see no one.

It is time now for those to come forward in opposition of the bill. Again, if there are multiple people from the same organization, I would suggest selecting someone to speak on behalf of the organization.

Mark Coolman, representing Community Associations Institute, Nevada Chapter, Las Vegas, Nevada:
I am Mark Coolman from Las Vegas and I am here on behalf of Community Associations Institute (CAI). I am a professional insurance agent handling mainly HOA insurance and that is what I will be discussing. Several years ago, the Legislature passed a law that told the Commission for Common-Interest Communities and Condominium Hotels that they had to adopt rules for fidelity bonds for association managers to post their licensing. Unfortunately, there was no product in the market that actually provided that type of coverage. I testified at many hearings which were continually postponed until the law was changed. If you review the insurance requirements you have for indemnification, there is no insurance product that provides coverage for indemnifications. There are several lines of insurance that have contracts, and

there are different parties under those contracts, but you might be the named insured, and then there are insured persons, or persons of beneficial interests. Those determinations are made at the time of the claim, only on fact-specific cases by the insurance company. Under Nevada statute, only the insurance company can render a coverage opinion. As a professional insurance agent, I cannot provide that coverage to my client. I would be glad if we did put this into law because I could have Lloyd's of London make up a policy and make a lot of money on it, but at this time, there is no product that would meet the requirement of that statute. Thank you.

Jack Mallory, Private Citizen, Las Vegas, Nevada:
Today I am representing myself. I will disclose that I am the treasurer of the Harmony Points Homeowners' Association in North Las Vegas.

There are four areas of this bill with which I have issues. It is really more about a need for clarification than anything else. First, on page 3, section 2, subsection 1, the bill provides for exclusions from the requirement to hold a meeting. Our association has an architectural review committee which reviews submissions from homeowners on physical improvements to their property whether it is landscaping, putting a shed up in the back yard, and so on. When we receive those requests, if we have to wait until a regular meeting of the board, or we have to call a special board meeting, there would be additional costs associated with that special board meeting. Potentially, that undue delay would do harm to that homeowner. As I read the statute, currently there are no provisions in NRS Chapter 116 that allow for an architectural review committee, or a similar board, to either approve or deny a request and conform with the other sections in the bill as it is written as far as providing notice to the homeowners of action that has been taken. I would ask that the bill's sponsor consider that.

The second item is the timeline contained in the proposed amendment under section 4, subsection 2. I do appreciate the amendments that Ms. Anderson has put in the proposed bill, but I am concerned that 30 days might be an issue because of costs and the need to send out a special notice. I do think that this is something that is workable.

In section 7, subsection 4, in the proposed amendments, I certainly support the returning of records, documents, and property of the association. The one thing this section does not contemplate is somebody that resigns or is removed from office during the term that they were elected. I think that should be addressed by inserting a provision that provides for "upon resignation or removal from office," rather than extending that out all the way through the elected term.

Finally, on page 10, section 9, subsection 2, in the event of a foreclosure or another action against the property within a community, it is great that they are providing for a notification upon sale, but I think everybody may be aware of some litigation that is currently going on regarding a bank and a foreclosure action against a homeowners' association. I think the homeowners' association needs to be notified when an action happens if a foreclosure or other action is taken on a property, not after the action happens and there is a sale. That way the homeowners' association can appropriately deal with any outstanding assessments or fines with the entity that is engaging in the foreclosure or other action. I will be happy to answer any questions.

Chairman Frierson:
Do we have any questions for Mr. Mallory? I see none.

Mr. Mallory, I appreciate your offering some insight not only about your concerns, but what you think could be workable. I certainly encourage you to speak with the sponsor about any thoughts that you may have that might make it palatable from your prospective.

Jack Mallory:
Thank you, Mr. Chairman, and I will be happy to do so.

Don Schaefer, Private Citizen, North Las Vegas, Nevada:
I am a homeowner in Sun City Aliante in North Las Vegas. I am representing myself. I am also vice president of the current board. Mr. Chairman and honorable Committee members, you have received my comments, which were sent ahead of time (Exhibit N), but I ask your indulgence to speak on three specific items.

Section 2 deals with what is a meeting. I think this only confuses what is already in NRS Chapter 116 and NRS Chapter 82 which defines a meeting as an assembly where a vote or action is being taken by the board. It is just too broad of a position that says you cannot have meetings except for these tiny exceptions. You all know there are almost 3,000 associations in the state of Nevada; 2,000-plus are associations which have fewer than 200 units, which means the majority of those would only have three board members. It makes it very difficult for a small community when they only meet once a quarter, in most cases, to conduct the business of a corporation. That definition is much too restrictive and needs to be reviewed.

Section 3 deals with the placement of an election monitor. There is no trigger for this action. I could be a board president and get the feeling that the election is not going the way I would like it to go. The ballots have been mailed or are

coming in and suddenly I can request a monitor on my own. According to this provision, they would have to go back and mail the documents again and prepare everything again at a substantial cost. For me, there needs to be a trigger date for this. If I am running for a board, I have a 30-day period to submit my nomination. There should be a period that says if there is to be a monitor for this election; it needs to be within this time frame. As it stands right now, I could do it the day of the election if I wanted to be nasty. The fact is, in a small community where it says 10 percent, if I have 20 units in my association, and I get two people who get a little bit of a hair, they could stop the whole thing. I do not think this really stops fraud. In reality, who is monitoring the monitor? How are they handling ballots that are mailed in? I would like to think there is an observer just as in city, state, and national elections who sits in and can observe and any irregularities can be reported. I think we are using a sledgehammer on a nail brad for hanging a picture in this section.

The last section which I would like to comment on is section 13, which deals with the three-bid process. This was put into NRS Chapter 116 two years ago. Many associations have had trouble with it. One of the key phrases was "when practicable" you would go out for three bids. This has been stricken. I do not see any reason when a vendor comes to you and says we are offering a contract for three years and it is an extension of the current contract with no increase, why we have to go out for three bids. If the association is happy with this, it should remain our prerogative as a board, which has been elected by the homeowners and which has a fiduciary responsibility to the association, to make the decision whether we want to entertain new bids on a service. If it is a project where you are doing some construction, then there may be some very good instances where you have to bid. The provision that says $1,500 for my association is so miniscule; I pay that for bug spray on a yearly basis. It has to be substantially higher for large associations and I propose something along the line of 10 percent of your annual budget. Then you have something where you can hang your hat.

Mr. Chairman and Committee, thank you very much for hearing this. If you have any questions on this or any documents I sent up earlier, I will be happy to respond.

Chairman Frierson:
Thank you for your thoughtful insight and suggestions. I think that the people who are interested and have concerns are taking that to heart. There are some things that I think could be applied and adjustments made.

Paul Terry, representing the Community Associations Institute, Nevada Chapter, Las Vegas, Nevada:
We are in opposition to A.B. 34 and have submitted written comments to you (Exhibit O). In terms of the broad strokes, we appreciate the sentiment of this bill; however, we are concerned that it is too broad and it adds unnecessary expensive government programs and regulations that in the end will serve to increase homeowner assessments, which we are against. Finally, we are concerned about the apparent transfer of authority away from the Commission who normally writes the regulations, over to the Real Estate Division Administrator's Office. We think that is a significant separation of powers issue. We will continue to work with the author to see if some of these issues can be addressed. Thank you very much, and I will be happy to answer any questions.

Chairman Frierson:
Thank you very much. Are there any questions? [There were none.]

Byron Goetting, representing Complex Solutions, Las Vegas, Nevada:
Mr. Chairman and members of the Committee, my name is Byron Goetting. I am here representing my company, Complex Solutions, a small business that provides reserve studies long-term budgets for homeowners' associations.

I want to talk about the sealed bid process and the unintended burden it puts on small businesses. The process of printing and mailing is a minor inconvenience, however, the biggest problem we have faced is boards waiting until the last day before asking for bids.

[Mr. Goetting continued reading from prepared testimony (Exhibit P).]

Angela Rock, Las Vegas, Nevada, representing Olympia Companies; Southern Highlands Communities Association:
Thank you for letting us speak this morning. I think a number of our points have been hit so I will try to go rapidly. The first issue that I would like to address is section 2, the definition of meeting. I would like to respond to Assemblyman Duncan's question about whether or not conversations with counsel are in fact allowed in executive session, or would be stymied by the definition in this section. I believe the unintended consequence of how this is written is that those conversations would be stymied. The Real Estate Division directed you to NRS 116.31085, which defines when a board can speak to its attorney in executive session. It states that it can speak to matters relating to proposed or pending litigation. So if I may, I would like to go back to the conversation we had earlier today about a potential conflict of interest with someone running. The board becomes concerned with that and wants to speak

with their counsel. The way the definition of meeting is now set, they would have to do that in open and on a recording. If the person does not believe that he has a conflict of interest, he will feel defamed. The board members have to have the ability to speak with their counsel on matters of concern regardless if there is proposed or pending litigation.

I thank Ms. Anderson for her testimony where she clarified that educational classes are exempt from this; I just do not read it in here. I do want to note that for the record, but I will speak with her after the hearing. I do want to make sure that board members can continue to attend educational classes and get information and learn about the business that is becoming so very complicated. As an attorney, I do not often admit that I am getting confused, but I do need to say, as this gets bigger and more cumbersome, even attorneys are starting to get confused. We need to be sure that board members can be educated and speak with their attorneys.

The next issue I would like to address is the referee program, which was discussed in section 5, subsection 3. I thank Assemblyman Carrillo for asking questions about the $7,500 cap. I myself was confused and was glad to hear the testimony that it is a jurisdictional limit. I would ask that that section be rewritten to say that a referee shall not hear matters in controversy in excess of $7,500. That should clarify that as opposed to stating they cannot award in excess of $7,500.

There are some other matters in this bill on which I would like to speak with the drafter because I think they worked hard on this, and I know they have a hill in front of them on daily interactions with homeowners and boards.

The last issue that I would like to address is section 13 relating to bids. I think the gentleman who testified before me did an excellent job. We have spent a lot of time talking about boards, board members, and homeowners, but the vendors have an unrepresented voice. These people are working very hard to be vendors to the association. As the sealed bid process has gone on over the last four years, I have seen fewer and fewer vendors willing to solicit bids to associations. They say it is too cumbersome and difficult, and they feel as though they are constantly subject to scrutiny and possible liability, but more importantly, when they submit sealed bids the board has to have a meeting. They decide when they unseal the bids. If they do not understand the bid, it has to be rebid. I was speaking with one of your colleagues about a painting contract. It goes out to bid in January, bids are opened in February and they do not understand them; the next meeting is not until April, they get new bids. During this entire time, the painting contractor has had to hold a two-week slot open in June to commence painting. What if they had to do more clarification

at the end of that? The board does not decide until June; if they did not get the job, they have lost business. Requiring bids to be sealed, but more importantly requiring the rebid to be sealed, has become cumbersome. Now section 13 would not only add on to that, but even with renewal contracts for services, you have to rebid annually. That is my understanding of the intent. That is going to become immensely cumbersome and costly on the service providers in this state because not only are you bidding on renewal contracts for yourself, but chances are good you are going to be called to bid for contracts you are not actually going to get. Every vendor is going to be bidding on every association contract. Our budget is $8 million in Southern Highlands. Our security contract is over $1 million; the landscaper is $1.5 million. These are big contracts. They do not just print out an Excel spreadsheet and plop it in an envelope. There are services to be considered: manpower, vehicles, insurance; this is complicated. We would not even have to get to association business if the board handles every contract every year. Thank you for your time. I will make myself available if you should have any questions.

Chairman Frierson:
I see no one else in Carson City to testify in opposition. I will now move down to Las Vegas for those who wish to testify in opposition.

Greg Toussaint, Private Citizen, Las Vegas, Nevada:
Thank you Mr. Chairman, and thank you to the members of the Judiciary Committee. I serve as president of the Lakes Association, but I am here representing myself.

I want to speak to one issue. I think this one is quite compelling with regard to sections 2 and 4 about meetings and decisions or actions without a meeting. Our friends in the Real Estate Division who are doing a short sale call us. In the short sale process there are liens against the property. They wish to negotiate the fees, which are oftentimes fines and assessments, with the board. They tell us they need our decision in two days. How do we do that without a meeting? How do we do that without making a decision outside of a meeting? We cannot. There are numerous things boards need to do between meetings, and the rule is unanimously, outside of a meeting. We need to be able to discuss through emails, phone calls, or what have you, whether or not waiving these fines is a good thing for the association or it is not. We do not want to be put in the position of dragging our feet, which many real estate agents think we do, because we do not have a meeting for another three weeks. So I would encourage that the language be stricken almost entirely in this section because it makes it virtually impossible for boards of directors, volunteers who serve their communities at no cost, to do their job. I would appreciate you voting against this bill.

Barbara Holland, President, H&L Realty and Management Company:
I have three basic issues. One is section 1 as far as the definition of a meeting is concerned. As Ms. Anderson stated, this eliminates workshops. The problem is that even though associations are formatted in their governmental structure to mirror that of the city and the state, we do not have the administrative arm of the Division, the city council, or the state. When there is an issue where we need to obtain facts, we have to get our board of directors involved. There are not a lot of people saying that they want to be a member of the board of directors, let alone volunteers to help us in workshops. I think there would be an interesting statistic for the Legislature if the Division did a survey of how many people there are that we do not even elect by ballots because we did not have enough volunteers. If I had two board of directors who volunteered to work with management to review governing documents that would be presented to the full board, that would constitute a meeting.

When I first take over a homeowners association, I like to inspect the property with the full board so they can talk to us about issues. This way I am better informed and can be a better manager and have a better understanding of not only violations that have existed, but also some of the issues of the physical components of the exterior. That would be a meeting. Most governing documents say that if we do not make a decision within 45 days, a person that has submitted an architectural request would automatically be approved. Who serves on the architectural control? If we are lucky, we have committees. If we are not lucky, it is the board of directors and because we want to have at least two people to help make that decision, all of a sudden we have a meeting. So many issues can be added.

I taught a seminar with my board of directors because I needed them to better understand the foreclosure process since more associations are now property owners. I joined my board of directors and we opened the seminar to a community of 800; only three members attended. Since I am not an official instructor for teaching a workshop for my association, that would constitute a meeting. There are many times when companies offer workshops to better explain, inform, and teach the board of directors. The Legislature has workshops. Often during the workshops, all we have done is to divide work so that individual board of directors can help us gather information. In the absence of an action, there is no relevancy because there is no act that the association board did. A true workshop is for a discussion of members that are present, but there is no corporate action. I think that needs to be reviewed. I would personally like to see it eliminated as opposed to trying to make it a better balance.

In regard to the referee program, I do not have a clue as to why the Real Estate Division wants to have another layer of administration. The arbitration and mediation process in NRS Chapter 38 seems to be working properly, and one of the best programs that the Division has established is the ombudsman intervention program in which we are trying to avoid going through this process. As to costs, Ms. Anderson said it would only cost the homeowners $50. That is not a true statement because some of these cases pertaining to the interpretation of the governing documents are frivolous if you look at how many cases are won by the association. It is a fairly high percentage because people do not abide by the governing documents. If I have to have an attorney come in to represent us on a referee program, I can assure you that we will be paying more than $50. The costs of some of these frivolous cases goes back to the homeowners' association, and then to the membership at large. There is no real remedy for unpaid fines. The way the law is written, the only type of fine that an association can go to foreclosure on is health and safety. You have a lot of fines that sit on the books; you can place a lien, but you cannot act on that.

As far as the voting monitors, it is called a D felony and we already have it in the law. Obviously with the HOA sting, we already know that some attorneys whom we thought trustworthy were monitoring voting and that was not happening. The D felony was created to take care of voting fraud. Conviction of a D felony is five years in prison plus at least a $5,000 fine. So we already have something on the books if someone is interfering with the voting process. Additionally, if we are going to initiate something like this, it should be based on the history of the association. If the Real Estate Division is getting complaints about an association every year when they are holding elections, give them the opportunity as part of the fine process to require that association to have a voting monitor. Not too many community managers want to go to jail just because they want to see a certain somebody get elected. Most of us already have policies in place, and it is stated on our candidate's application that we will only accept ballots when you walk into the election meeting with identification. People are not walking into our meetings anymore with tons of ballots without proper identification. I do not think voting monitors are necessary because we have laws that affect those trying to create voter fraud, plus it is an additional cost.

Donna Toussaint, Private Citizen, Las Vegas, Nevada:
One of the concerns I have about this bill is that the president can ask for a monitor. I do not think that any one person in an association should have that much power. I was a president of a large master association for ten years and I would not want it either. I think that should be stricken and almost everything else has been said. I will leave it at that.

William Paul Wright, Member, Common-Interest Communities Committee, Real Property Law Section, State Bar of Nevada:

We have submitted extensive comments regarding this bill (Exhibit Q), so I just want to highlight some of those in the interest of time. When we as a bar section look at a bill, we are not looking at it from a policy perspective; we look at the language to see if there are drafting issues and interplay issues with other statutes. We also look at the unintended consequences, as they are often called, the cost of the implementation, and whether it is necessary or not. Attorneys by nature are conservative, so when we see language that is duplicative of something already in the statutes or that we feel is unneeded, we will make that comment. We also believe that any major changes to the law require extensive evidence that the change is needed. We have found most of the sections of this bill have been either unnecessary, duplicative, or will have extensive financial unintended consequences. We have concerns about changes in the power structure within the government and possibly due process. Our general comment in regard to A.B. 34 is that we would not agree with the implementation of most of the bill.

As for specific sections, the first is in regard to a meeting; workshops are meetings. They are just meetings that we have labeled as workshops because no action is taken. Under the current understanding of NRS Chapter 82 and NRS Chapter 116, a meeting, which requires a notice and an agenda which is really what we are talking about, would not fall into the category of a workshop because they are not taking any action. This would change that drastically and is an issue that came up before the Common-Interest Communities Commission previously. The administrators submitted the proposed regulations for *Nevada Administrative Code* Chapter 116 with the same language. This language is taken in part from the Open Meeting Law. The Commission unanimously rejected that proposed regulation and, in fact, many of the commissioners spoke stating that they believe workshops are useful. In testimony today, many of those situations have been outlined.

I would like to point out some of the unintended consequences of this definition. Testimony has already been taken that stated most of the associations in Nevada are three-person boards. With a three-person board, this definition will lead to absurd results. In between meetings, board members literally could not speak to each other; they could not formulate an agenda; they could not discuss whether to call a vendor if a gate broke down; and they could not schedule a date for their next meeting because any two of them talking constitutes a majority. Then when you add to the definition if the board hears, discusses, or deliberates, you eliminate a lot of useful forums that board members may want to attend such as commission meetings, court proceedings, arbitrations, educational classes, other than those presented by the ombudsman are grouped

into formal, for which we do not have a definition. In court proceedings arbitration and mediation, the majority, or the entire board, may want to participate, but now we have a situation where those may be considered a meeting where a notice and agenda has to be sent. I am assuming that the owners will not have a homeowner forum in district court. We have extreme examples of board members living next to each other who happen to be casually talking about wanting to install new plant life in their front yards which is something under the architectural approval and the authority of the board so they have now just engaged in an illegal meeting. Contracts for management companies contain board liaisons in order to keep costs down. Without one contact with the board, managers will now be unable to use those sections which will increase costs. That board member will not be able to speak with other board members and pass along information. If the manager tries to speak with more than one board member, they are going to be accused under the separate section, section 2 I believe, of circumventing the meeting requirements.

The larger issue we bring up is the attorney/client privilege communication. It is true, as was testified, that the executive section exemption is very limited. It is very limited because the board is going to actually be making decisions or taking action potentially on that advice and so that would be within a meeting. But if they are not doing that, and they are just being advised by an attorney on something that might become litigation, the last place that you want to advise someone is in an open forum on tape where that information can now be passed along to the opposition.

When we are talking about voting monitors, on January 24, 2013, there was a session with the Division regarding A.B. 34. At that time, representatives of the Division expressed the reasoning behind this section that there were complaints that had recently come through the system and through the Commission hearing with self-managed associations in voting irregularities. When the Division representatives were asked whether there are problems with the community managers, the answer was no. The Bar Section feels that this section is overbroad and should apply only to self-managed associations. As pointed out earlier, there is no timeline so the way that it is currently written there is potential for abuse by current sitting board members or homeowners. Then there is a question concerning who will be responsible for the voting monitor if they fail in their duties? For example, because they are approving this list and requiring that voting monitors be chosen from that list, and the voting monitor will have complete control over the election process and the board and management company will have no part of that process, will the Division be liable if something goes wrong with the voting process? Or, can we get language that would eliminate that liability?

Section 4 refers to action without a meeting. By its definition, a ministerial action is action taken without the discretion of the board required by law. It is not the type of situation that you hear anecdotally and needs to be protected against; these are decisions which are essentially already made for the board. They are nondiscretionary and required by law. We believe this section to be additional language that is not necessary because NRS Chapter 82 and NRS Chapter 116 already make it clear that the meeting which requires notice and agenda for a board is one in which voting or action will be taken. This section could be misconstrued to mean, or as I hear from testimony from the Division might be intended to mean, that boards could not take action under current law, which is a major change in current law. If that is the case, this section probably needs to be reworded to make that clear, because when we have a law passed that has an implication as compared to a statement, we have a situation like the one we had years ago with an implication where the board could raise reserve fund assessments without an owner vote. That implication was in the law, but we had to go through binding arbitration and then a new legislative session to clarify that later. If that is the intent of this section, we would suggest the language be clarified.

We understand there is a pilot referee program being used. We believe there are significant differences between the pilot program and the referee program. Under the current referee program there is a decision that is made, but it does not carry any penalties. It is not something that you would move on to district court for in this process. That is all being added to this procedure. This looks more like the current alternative dispute resolution (ADR) process under NRS Chapter 38 with a cap on the jurisdiction and prohibition for attorney's fees and a truncated hearing process or discovery process. Our thoughts on this are that the unintended consequences will be more cases, not fewer cases, will end up in district court. *Nevada Revised Statutes* Chapter 38 was enacted by the Nevada Legislature in 1995, and for the last 20 years it has achieved its goal in having community association disputes resolved faster and more economically than district court. The courts were pleased with the ADR process because of the reduction in their workload. Because there are no attorney's fees awarded in this process, there is nothing that keeps someone from bringing an attorney to this process, so the cost of that will be distributed amongst the paying owners within the community. Plus, if there is an expedited process in ADR, either party can now take it to district court and seek an award for attorney's fees which the court is already able to award. We also have a problem with the referees being chosen by the Division. There is an appearance of professional impropriety because they are selected by the Division and they are on the panel. The Division also has investigative powers so the decisions of the referees may be influenced by the fact that they want to be in line with the decision that the Division would find appropriate.

In reference to return of records by the director, I understand that now we have limited the number of the copies. That is good, although we should make it clear that the records are to be returned to the custodian of records, not necessarily any board member seated on the association board.

Section 28 was not discussed in the introduction. This is a large shift in power. The intervention affidavit process under NRS 116.765 was always understood to be a complaint-driven process. That is, if someone files a complaint, there is a jurisdiction of the Division to investigate begins. This section now adds language allowing the Division to start *sua sponte* their own investigations without a complaint being driven. We ask that before there is a major shift in the balance of powers that we have some evidence the state feels there are not enough investigations or they are not receiving complaints on things that need to be investigated. I will take any questions.

Chairman Frierson:
Do we have any questions? I see none.

Avece Higbee, Private Citizen, Las Vegas, Nevada
I have nothing to add.

Pamela Scott, representing The Howard Hughes Corporation, Las Vegas, Nevada:
My comments will be brief because others have touched upon my issues (Exhibit R). I do want to reiterate on section 13 with reference to the bidding process that I am in support of the comments that have been made already in Carson City. I think when you change language to say whenever possible from when practicable it makes a huge change. I also have a concern about the renewal of contracts every year. I would like to point out that many developer-controlled associations choose to provide the management services during the declarant control period and, while with some of them we do that, we do enter into a contract every year. Obviously we enter into the contract with ourselves to make sure we have all of the legal approvals to conduct the business of the association. Putting a bid out every year would be ridiculous because we are only going to award that contract to ourselves in the declarant control period. Huge associations—we have one master with over 15,000 homes—have not been declarant-controlled since 2001. It is still declarant managed because they will not let us leave. The contract is every year with a 90-day cancellation, but they have forced us to stay and promise to give them a two-year notice before we can leave. I do not see where this is practical for them to be putting this out, unless they change their mind about wanting that notice. We could be gone in 30 to 90 days in any contract.

I would also like to address section 20. Currently an intervention affidavit can be filed by anyone against anyone. It can be filed by an association against a homeowner, by a homeowner against an association, against a declarant, or against a manager. In this language right now, it appears complaints can only be filed against an association, an officer, or a board member. This leaves a whole lot of people out. If we are going to this referee program, it should not be a one-sided process. Associations should have the opportunity as well to take something to the referee program if they would like an interpretation and a clarification. I want to make sure we stick with the language in NRS 116.750 for all the persons whom the Division does have jurisdiction over, to make sure they all can go through the referee program. My concerns with section 28 have already been dealt with. Section 31 changes the definition of a civil action under the arbitration chapter, NRS Chapter 38. The Real Estate Division does control this section. I am not sure whether taking class actions out of the definition of a civil action will impact the civil action language in NRS Chapter 116 in any way. I think someone should look at this. I think the intent to change this language should be very clear that it is not meant to get around the voting requirements in NRS Chapter 116 for associations filing class action construction defects lawsuits.

In regard to the meeting section, during the declarant control period the board members are all working in the same office. It is very hard not to talk to each other. Most of them have three-member boards at that point, so I reiterate all of the problems that are involved in that.

Joseph Nascimento, President, Monument at Lone Mountain Homeowners' Association, Las Vegas, Nevada:
I would like to give a copy of what I was going to read to Assemblywoman Cohen.

Chairman Frierson:
We would prefer not having statements read to us, so please submit it to our staff.

Joseph Nascimento:
My opposition to this bill is that it has no time limits for enforcement. Everything that you are talking about has happened in my HOA, including a takeover. The board was fired with a vote of 2 to 1 and they refused to leave. The other president and I have filed seven complaints, but there has not been any action from the Real Estate Division. We even have a DVD of the board being taken over. The bill needs a time limit from the time that you submit a complaint until the time when the Real Estate Division takes action. It needs an enforcement provision.

Jan Porter, Private Citizen, Las Vegas, Nevada:
My name is Jan Porter. The Administrator was correct in reminding you that homeowners' associations are private corporations. I want to point out that the proposed definitions for meetings in this bill are more stringent than NRS Chapter 241. As a volunteer board member, I would like to enjoy some of the indemnifications that you receive through that chapter. The Committee on Government Affairs will be hearing Assembly Bill 65 that contains language that may prove reasonable for this Committee to consider.

Chairman Frierson:
Is there anyone in Carson City to testify in the neutral position? I would invite anyone in Las Vegas as well.

Robert Frank, Private Citizen, Henderson, Nevada:
Although I am a member of the Common-Interest Communities Commission as well as some of the other members who have talked today, but because we have not discussed many of these details in the Commission, and we have not taken a stand on them, I am here based on my own experiences. I am neutral because I was one of the ones interviewed by Richard Johnson, President of the Real Estate Commission, in developing his list of concerns that he gave to the Division.

I would like to be one of those who supports this bill, but I cannot in good faith because I feel that some of the solutions are not hitting the mark as well as they should, or could. I think some of the problems have been identified correctly. I am worried about the matters concerning the election monitor. One of the reasons why this issue came up was because it is not unusual; it is commonplace for members to be concerned in the midst or prior to the election and not having anyone that is able to help them deal with some problems in the election itself. While the monitor helps to deal with some of the problems, it does not deal with the urgency that often comes up to the Division. I will be working with the Division to see if we can do some work on that in the future.

Regarding the meetings, I cannot be 100 percent enthusiastic for the solution because I think it went too far. I agree with those that favor the bill because it is a step in the right direction. I think the other issues have been well covered by other people. I want to compliment the Real Estate Division for doing things that are controversial and contentious in some areas. It is long overdue. We have only just begun to deal with some of these problems.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
I would like to disclose that I am a commissioner on the Commission for Common-Interest Communities and Condominium Hotels. I missed the "in support" which you previously called.

Chairman Frierson:
I am sorry, but it is after 11:30 a.m. If you have anything additional to add, I welcome you to submit it in writing.

Jonathan Friedrich:
I have submitted suggested changes to Administrator Gail Anderson.

Chairman Frierson:
I meant they have to be submitted to the Committee as well. We are in the neutral position right now.

Jonathan Friedrich:
I do support the bill though.

Chairman Frierson:
Is there anyone else in the neutral position down in Las Vegas?

Delores Bornbach, Private Citizen, Sparta, Wisconsin:
I want to leave you on a happy note. I live in Wisconsin with no HOAs. I have met many of you, and I really would like you to come and visit me in Wisconsin where there are no HOAs. We have green grass and your kids can play on my lawn. I am going back in May and you are welcome to come; bring your family.

Chairman Frierson:
That was a nice note to end the meeting. Ms. Anderson, we often invite the sponsor to close the bill. There obviously is a lot of work and communication to be done. So at this time I am going to close the hearing on A.B. 34 and encourage you to continue working towards some common ground. I thank all of you for your patience. At this time, I invite public comment.

Rana Goodman, representing Nevada Homeowner Alliance, Las Vegas, Nevada:
I would like to make a comment on the arbitrator issue. Everybody said that the referee program was not necessary because arbitrators work well. Arbitrators work fine when someone has not seen their bills. They usually charge the homeowner because the homeowner loses and the bills are atrocious. I beg you to please think about this very seriously. The referee program is a wonderful break for people who lose these cases. Arbitrators charge through the roof. Most of the people who make the complaints and have to go into the arbitrator

program cannot afford it. When they make their interventions and they end up having to go into the arbitrator program, they usually run like scared rabbits and give up their claim because they cannot afford it. These bills run into thousands of dollars. These are the people that come to our alliance program and ask what they can do because they cannot deal with it. That is why this bill Ms. Anderson and the Real Estate Division put forth is so terrific for them, and it is the management companies, the CAI, and the attorneys who are fighting for it so hard.

Please realize in the 2011 Session the Legislatures said they wanted to hear from the homeowners; not the management companies, not the attorneys, but the homeowners. If you look at the people that are in support of this bill, it is the homeowners because they are the ones who so desperately need this.

John Radocha, Private Citizen, Las Vegas, Nevada:
If you go to a race and sports book, they give you odds. According to what Ms. Anderson has proposed, it is 85 percent in favor of the arbitrator, and 15 percent in favor of the homeowner. Who would want to go to his ADR when the odds are 85 percent to 15 percent? You need to look into it. The particular laws available to HOA boards need to be examined. Lawyers, developers, property managers, and collection companies designed the laws. These organizations are interested in just one thing—they are interested in getting your money fairly, or unfairly. Make it a fair playing field for us homeowners.

Chairman Frierson:
Mr. Friedrich, I note that you have already had an opportunity to voice your support, albeit during public comment.

Jonathan Friedrich:
I disclose that I am a commissioner on the Commission for Common-Interest Communities and Condominium Hotels. On NELIS you should have a copy of this matrix that shows the cost of all the arbitrator's fees and the attorney's fees involved in the cases. A homeowner paying such fees should be upsetting to you. There are four columns—the case number, the arbitrator's name, the arbitrator's fee, and the total amount of the attorney's fee; it is staggering. Four sheets were submitted to this Committee on NELIS concerning the cost of arbitration (Exhibit S). Please look at them. That is why we need the referee program. It would put an end to this.

Judi Gesh, Private Citizen, Las Vegas, Nevada:
My name is Judi Gesh and I am on two HOA boards: one with 3,104 homes, the other one with 189. I am representing myself. I want you to consider the

homeowner and the fees that would be charged to the homeowners by many parts of this bill which would increase the association fees, many of which are not being paid. I want you to look at the whole package; parts of it may be good, but on the whole, it has major issues.

Chairman Frierson:
I was originally against the idea of having a subcommittee, but I believe I have been convinced. We will look at that and come up with an efficient way to address the many HOA issues that will come before this Committee.

[Exhibits not mentioned previously include Letter of Opposition to A.B. 34 from Andrew Fortin, Dallas, Texas, representing Associa (Exhibit T) and Additional Comments from Michael Buckley, Co-Chair, Common Interest Community Committee of the Real Property Section of the Nevada State Bar (Exhibit U).] That is all of the business that we have for today. The Assembly Committee on Judiciary is now adjourned [at 11:38 a.m.]

RESPECTFULLY SUBMITTED:

_____
Dianne Harvey
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 22, 2013 **Time of Meeting: 8:15 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 98	C	Assemblyman Paul Aizley	Proposed Amendment
A.B. 98	D	Jonathan Friedrich	Letter of Opposition
A.B. 98	E	John Radocha	Written Testimony
A.B. 98	F	Joseph Nascimento	Letter
A.B. 98	G	Robert Robey	Letter to the Judiciary
A.B. 98	H	Robert Robey	Letter of Opposition
A.B. 98	I	Robert Robey	Audits of Associations
A.B. 34	J	Gail J. Anderson	Written Testimony
A.B. 34	K	Gail J. Anderson	Amendment
A.B. 34	L	Gail J. Anderson	Proposed Amendment
A.B. 34	M	Robert Robey	Open Meeting Letter
A.B. 34	N	Don Schaefer	Testimony
A.B. 34	O	Paul Terry	Letter of Opposition
A.B. 34	P	Byron Goetting	Written Testimony
A.B. 34	Q	William Wright	Written Testimony
A.B. 34	R	Pamela Scott	Proposed Amendment
A.B. 34	S	Jonathan Friedrich	Cost of Arbitration
A.B. 34	T	Andrew Fortin	Letter of Opposition
A.B. 34	U	Michael Buckley	Additional Comments