

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY  
SUBCOMMITTEE**

**Seventy-Seventh Session  
March 27, 2013**

The Committee on Judiciary Subcommittee was called to order by Chairwoman Lesley E. Cohen at 8:05 p.m. on Wednesday, March 27, 2013, in Room 3137 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](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

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

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman Lynn D. Stewart, Clark County Assembly District No. 22  
Assemblyman James Ohrenschall, Clark County Assembly District No. 12  
Assemblyman Harvey J. Munford, Clark County Assembly District No. 6



**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Linda Whimple, Committee Secretary  
Colter Thomas, Committee Assistant

**OTHERS PRESENT:**

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada  
Peter McAllester, Private Citizen, Reno, Nevada  
Gary Seitz, Private Citizen, Henderson, Nevada  
Tim Stebbins, Private Citizen, Henderson, Nevada  
Robert Robey, Member, Nevada Homeowner Alliance, Las Vegas, Nevada  
Robin Huhn, Member, Nevada Homeowner Alliance, Henderson, Nevada  
John Radocha, Private Citizen, Las Vegas, Nevada  
Robert Frank, Private Citizen, Henderson, Nevada  
Michele Mitemiller, Private Citizen, Las Vegas, Nevada  
Deane Downing-Delacruz, Private Citizen, Las Vegas, Nevada  
Garrett D. Gordon, representing Olympia Companies; and Southern  
Highlands Community Association  
Terry Care, representing Terra West Management Services,  
Las Vegas, Nevada  
Avece Higbee, representing the Common-Interest Communities  
Subcommittee, Real Property Section, State Bar of Nevada  
Eleissa C. Lavelle, representing the Common-Interest Communities  
Subcommittee, Real Property Section, State Bar of Nevada  
Bruce Flammey, representing the Common-Interest Communities  
Subcommittee, Real Property Section, State Bar of Nevada  
Michael Lee Dmytro, Private Citizen, Las Vegas, Nevada  
Michael Joe, representing Legal Aid Center of Southern Nevada, Las  
Vegas, Nevada  
Lex Moser, Private Citizen, Reno, Nevada  
David Hill, Private Citizen, Reno, Nevada  
Fahad Arif, Private Citizen, Reno, Nevada  
Rana Goodman, Member, Nevada Homeowner Alliance, Henderson,  
Nevada  
Paul Murad, Private Citizen, Las Vegas, Nevada  
Rutt Premsrirut, Private Citizen, Las Vegas, Nevada  
Delores Bornbach, Private Citizen, Las Vegas, Nevada

Jennifer J. DiMarzio, representing Associa

Joe Nascimento, Private Citizen, Las Vegas, Nevada

Mike Randolph, representing Homeowner Association Services,  
Las Vegas, Nevada

**Chairwoman Cohen:**

[Roll was taken and protocol was reviewed.] There are five members present, so we have a quorum.

I would like to welcome everyone to the second meeting of the Assembly Subcommittee on Judiciary, including those attending at the Grant Sawyer Building in Las Vegas, and anyone listening on the Internet. Assemblyman Jason Frierson, the Chairman of the Assembly Committee on Judiciary, has convened the Subcommittee to consider legislation related to common-interest communities (CIC) and homeowners' associations (HOA).

As stated in the notes on the agenda, we would like to focus our attention on one aspect of the laws on common-interest communities and homeowners' associations (HOA). That is the process for dealing with alleged violations of *Nevada Revised Statutes* (NRS) Chapter 116 and claims relating to the conditions, covenants, and restrictions (CC&R). This encompasses things such as arbitration, mediation hearings and hearing panels, the ombudsman, alternate dispute resolutions, and so on.

We have three bills on the agenda. Assembly Bill 320 and Assembly Bill 370 deal almost entirely with those subjects. The third bill, Assembly Bill 397, addresses those subjects and many others. We will have another meeting of the Subcommittee where we will consider issues such as management of common-interest communities, meetings and voting, fiscal affairs, liens, records, rights of homeowners, and so on.

If you are going to be a witness, please confine your testimony to the items on the agenda. We will have time for public comment on any subject you like after the bills have been heard.

Before we begin the hearing, I have asked Dave Ziegler, our policy analyst, to give us a very quick summary of the existing statutes dealing with alleged breaches of the CC&Rs and violations of NRS Chapter 116.

**Dave Ziegler, Committee Policy Analyst:**

The subject of tonight's hearing is the enforcement of the HOA governing documents and NRS Chapter 116. The Chairwoman and I thought that it would be useful to give you a quick recap of the existing laws.

When we talk about enforcing the rules and regulations of laws applicable to HOAs, there is an important distinction between enforcement of the governing documents, commonly known as the CC&Rs, and the enforcement of state laws. There may be situations where those two processes have to be coordinated, but the enforcement procedures are different for CC&Rs and violations of state law.

Regarding CC&Rs, no civil action on a claim related to the interpretation of CC&Rs or the procedures having to do with assessments on real property in a common-interest community may be commenced in court unless the action has been submitted to arbitration or mediation under NRS Chapter 38. To submit an action for arbitration or mediation, a party has to file a written claim with the Real Estate Division. If the parties agree to have the claim mediated, they select a mediator from a list the Real Estate Division maintains, and they complete the mediation within 60 days unless they agree to a different schedule. The mediator must put any agreement in writing and it would be enforced as any other written agreement. If the parties do not agree to mediation, they must select an arbitrator from a list that the Real Estate Division maintains; if they fail to agree on an arbitrator, the Real Estate Division will appoint one. The arbitration must be conducted in accordance with state law, and it may be nonbinding if the parties agree. In mediation, the parties are responsible for all costs; in arbitration, the arbitrator's expenses and fees and other expenses must be paid as decided by the arbitrator.

We will move on to NRS Chapter 116, and alleged violations of the law. In that chapter, the Ombudsman [Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels], who is within the Real Estate Division, and the Real Estate Division have the jurisdiction to investigate a person who commits a violation of NRS Chapter 116, or an adopted regulation, or an order of the commission or a hearing panel. A person who is aggrieved by an alleged violation can file a written affidavit with the Real Estate Division within a year of discovering the violation, and has to give the respondent written notice. The affidavit must be accompanied by evidence that the respondent must have been given a reasonable opportunity to correct the violation. The Commission for Common-Interest Communities and Condominium Hotels (CCICCH) may impose an administrative fine not to exceed \$1,000 for filing a false or fraudulent affidavit.

Once the Real Estate Division receives the affidavit, they have to refer it to the Ombudsman who tries to assist the parties to resolve the violation. If they cannot, the Ombudsman submits a report to the Real Estate Division, then the Real Estate Division conducts an investigation to determine if there is good cause for a hearing. If there is good cause, the Administrator of the Real Estate

Division has to file a formal complaint with the Commission and schedule a hearing, which has to be held within 90 days. After the hearing, the Commission, or a hearing panel, which the Commission has the authority to convene, must render a final decision in writing. There are many things that the Commission can do. They can issue orders, impose fines, and even apply to court for an appointment of a receiver in certain circumstances. And finally, if the Commission or the Real Estate Division has reasonable cause to believe that a person has violated, or is about to violate, a provision of NRS Chapter 116, or a regulation, or an order, the Commission can seek injunctive relief in court.

Again, there are two processes, one for CC&Rs and one for alleged violations of NRS Chapter 116 and associated regulations and orders.

**Chairwoman Cohen:**

Do we have any questions from the Committee? [There were none.]

I would like to point out that the Committee members do have laptops open. Please do not take this as a sign of disrespect. We are viewing exhibits and the like on our laptops.

We will move to the hearing on Assembly Bill 320 and invite the sponsor, Assemblyman Stewart, to the witness table.

**Assembly Bill 320: Revises provisions governing common-interest communities.  
(BDR 10-737)**

**Assemblyman Lynn D. Stewart, Clark County Assembly District No. 22:**

Thank you for hearing this bill at this late hour; we appreciate your indulgence. Assembly Bill 320 deals with the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels communities. I have invited Commissioner Jonathan Friedrich to present the nuts and bolts of the bill.

**Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:**

I disclose that I am the homeowners' representative appointed by the Governor on the Commission for Common-Interest Communities and Condominium Hotels (CCICCH).

It is a small bill with a few friendly amendments ([Exhibit C](#)). On page 3, section 1, subsection 4, paragraph (e), subparagraph (9) reads "A record of each settlement of a claim, and each judgment in an action, for a constructional defect brought by the association pursuant to NRS 40.600 to NRS 40.695, inclusive, which contains such information as the Ombudsman deems necessary

to provide relevant information concerning the settlement or judgment to the units' owners." I would like to add the words, "and shall be public information." That is transparent and everyone will be aware of it.

In section 3, subsection 1, where it calls for the intervention affidavit for the breach of one year, I am requesting that the time be extended to two years. There are many cases where the time to file the intervention affidavit may be extended to over a year due to lack of information at the time. I have a number of examples for Assembly Bill 397 indicating where the Real Estate Division has rejected intervention affidavits as being untimely, so we are asking that one year be extended to two years. There is a federal lawsuit with two gentlemen from Henderson where it clearly shows the Office of the Ombudsman would not accept the intervention affidavit because it was beyond the one-year statute.

Again, on page 3, section 3, subsection 2, lines 35 through 39, I ask for that section to be removed as it requires the complainant to notify the respondent by certified mail, return receipt requested, before filing the complaint. In reality, when the complaint is made, it is usually against the board. It is not resolved at that point. The association then turns it over to the attorney and it moves forward through the process to the Ombudsman's Office. We are also requesting this language be removed from Assemblyman Munford's bill, A.B. 397, so that the language would juxtapose.

On page 4, section 3, subsection 3, paragraph (b), we are requesting the word "that" be deleted. And again in section 3, subsection 3, paragraph (b), subparagraph (1), this should be deleted so it would correlate to the previous item on page 3 dealing with the certified letter. Then in section 3, subsection 2, paragraph (b), subparagraph (2) add the words "by the Ombudsman."

In section 1, subsection 4, paragraph (d), the word "investigate" has been added. On the same line, "When appropriate, investigate" has been deleted. We have also requested that on A.B. 397. That is not on the amendment, it is on the original bill. It is a major change where it eliminates the words, "when appropriate." The loophole will be closed.

**Chairwoman Cohen:**

Does anyone on the Committee have any questions?

**Assemblyman Duncan:**

In section 1, subsection 4, paragraph (e), subparagraph (9), how do we deal with settlement of a claim that is subject to a confidentiality agreement? Some

people do not want their lawsuits disseminated. Does this section anticipate that?

**Jonathan Friedrich:**

If a person is attempting to buy a unit or a house where there has been a construction defect, they should be made aware of that.

**Assemblyman Duncan:**

Is it more a matter of notice rather than having the content of the agreement disclosed? I want to get your legislative intent on the record.

**Jonathan Friedrich:**

If there was a problem with the plumbing, the buyers would want to know that before they bought it. I believe there is a disclosure requirement when a property is sold that if there is a construction defect, it would have to be disclosed. Does that answer your question?

**Assemblyman Stewart:**

Some groups have a concern on certain privacy issues. We may need to meet with them to hear their concerns and resolve them.

**Assemblyman Carrillo:**

With reference to the construction defects, many times these homes are bought after the fact. If they are bought in foreclosure, the disclosure is not going to be there. What is the intent of section 1, subsection 4, paragraph (e), subparagraph (9)?

**Jonathan Friedrich:**

Our intent is transparency so that the new buyer is aware.

**Assemblyman Carrillo:**

How would we know that is the case if a person bought it as a foreclosure? The disclosure is not going to be there because there would be no record of it. How would the legalities be placed?

**Jonathan Friedrich:**

That is a good point. I know of many cases where homes have been bought through the foreclosure process and they do not even get a copy of the conditions, covenants, and restrictions (CC&R). This becomes a major problem.

**Assemblyman Carrillo:**

This section is about constructional defects. For the record, I want to make sure that I understand what you were referring to is under the assumption that

this house is being bought from an individual who is selling the house outright. Or are you also referring to a house that is purchased on a foreclosure, or an investment company where someone is flipping houses? How would that disclosure come into play in that situation?

**Jonathan Friedrich:**

It presents a problem. It would be obvious if it was bought in a nonforeclosure situation. That information could be provided, but in a foreclosure situation it could be a problem.

**Assemblyman Carrillo:**

With that being said, how do we follow up on this? It seems you are leaving it hanging, and to me that does not resolve the issue of putting language into this part. How is that going to help?

**Jonathan Friedrich:**

If a copy of the settlement agreement was filed with the Real Estate Division, they would then have a record of it, and it would be able to be obtained through the Ombudsman's Office. Anybody buying a foreclosure could check with the Real Estate Division to see if there was a construction defect settlement and obtain the information. We would have to add language to that section.

**Assemblyman Carrillo:**

Why are we adding language? What is the problem that requires a change in the state law right now? I am trying to understand why this is even here and why this would be a factor for someone that buys a house sight unseen. That might be the case, and there may not be a previous owner. I need to understand the intent.

**Jonathan Friedrich:**

The intent is to let the new buyer be aware of what had transpired prior to their purchasing the house. If it is an investment and he is buying it sight unseen, it seems that the buyer needs to do his or her due diligence before buying a house by obtaining the history behind it.

**Chairwoman Cohen:**

I believe I let you go out of order. We talked about the amendments. Would you give me a quick overview of the bill in general and the intent?

**Jonathan Friedrich:**

The intent is to make it more homeowner-friendly and transparent. We also want to clarify some language.



**Assemblyman Stewart:**

One of the major parts of the bill is on page 2, section 1, subsection 4, paragraph (d) where the Ombudsman is required to make investigations on disputes. It was a more permissive thing in the past rather than a requirement.

**Chairwoman Cohen:**

As the bill stands now, are people coming forward saying they brought this to the Ombudsman, they wanted to have an investigation, and they were not getting anywhere?

**Jonathan Friedrich:**

Yes. It leaves a loophole with the words "when appropriate." What is appropriate? One of the big problems is the Division does not investigate any item currently dealing with the CC&Rs. They tell you to take it to alternative dispute resolution (ADR) because they will only deal with the state statutes, not with the governing documents. That opens a whole new series of problems with the cost of ADR, which will be addressed in the next bill.

**Chairwoman Cohen:**

Are there any other questions? [There were none.] Do we have anyone in Carson City to testify in support of the bill?

**Peter McAllester, Private Citizen, Reno, Nevada:**

I am speaking in support of A.B. 320. I was confused by some of the dialogue that transpired before I sat down. The way I read the issue about recording settlements is that it is only on an action for a construction defect that was brought by the homeowners' association (HOA) where there has been a settlement. It would make that information readily available. An investor like me often looks through the documents that are recorded at the county recorder's office to see how many mortgages are on the property, or if there is a lien from someone such as the HOA. This would just increase the transparency, so I think that would be an excellent improvement to investors, consumers, and people who intend to live in these houses. They should be aware if there has been a settlement related to expansive soils or plumbing defects or anything like that which would have an impact on the enjoyment or the value of the house.

As an investor, I have been through ADR, nonbinding arbitration, and have filed an affidavit of intervention. I have had some satisfactory experiences and some difficult ones with that. I certainly feel my affidavit of intervention was dismissed without an appropriate explanation or justification, and some increased transparency on filing an affidavit of intervention would be beneficial

to someone who feels they have been aggrieved by a violation of the *Nevada Revised Statutes* (NRS) Chapter 116.

**Chairwoman Cohen:**

Are there any questions for Mr. McAllester? [There were none.] Is there anyone else in Carson City in support of A.B. 320? [There was no one.] Is there anyone in Las Vegas in support of A.B. 320?

**Gary Seitz, Private Citizen, Henderson, Nevada:**

I am in support of A.B. 320. Assemblyman Duncan was asking about confidentiality and settlements. I think the intent of the legislation would be in relation to the construction defects. A core federal crime is an HOA scam about the core construction defects. Certain individuals ripped off \$100 million through the construction defects. I think by putting that in the bill you are at least giving a buyer, whether it is a foreclosed situation or a bona fide buyer, the ability to investigate and look up this information to determine if there was a construction defect. He could find out if there was a defect, how much was filed, how much was paid, and how much they actually did get after paying the attorneys and other fees. It gives them notice that financially they could be responsible for special assessments down the road. At least make this information available. Jonathan Friedrich said they went to the Division, so this information would be somewhere that they could look it up easily.

Regarding Assemblyman Carrillo's questions about investigating the disputes, section 1, subsection 4, paragraph (d), eliminates "when appropriate." My reading of NRS Chapter 116 is pretty clear. It says that the Division is responsible for both CC&R governing documents and state law violations. There is an opinion written by former Deputy Attorney General Savage saying this is not what is meant. She said it means the Division only handles violations of NRS Chapter 116 and not governing documents. That has created a bit of a gray area and fuzziness in the Division and they have always said they would not handle that. We will make CC&R disputes go through arbitration/mediation. Administrator Gail Anderson has already testified this session that ADR costs are out of control. By putting that in, it keeps it in the Division where it is cost-effective and fair for all parties. The unit owners are paying for this in their fees anyway; it is not anything extra. Thank you for your time this evening.

**Tim Stebbins, Private Citizen, Henderson, Nevada:**

I support A.B. 320. I wish to thank Assemblyman Stewart and the cosponsors for presenting this bill. It will be very helpful for the Ombudsman to investigate disputes which involve the governing documents, or any breach of the governing documents, with the goal to assist all parties and resolve the issues. That is not happening very well now, and it is very difficult to have those types

of investigations done. This is a very good step forward. I salute this bill and I am very happy to see it. This will be a major benefit to the homeowners who live in HOAs in this state.

**Robert Robey, Member, Nevada Homeowner Alliance, Las Vegas, Nevada:**

Thank you for everything you do during these long hours. I have a special commendation to those people on your Committee who traveled to investigate, at their own expense, the marijuana issue. It gives me faith in our legislators to see them do that.

Mr. McAllester was right on the money; Mr. Seitz and Mr. Stebbins spoke correctly. I would like to make one point: If I have to write a letter to an individual who breaks into my house and steals my computer, and tell him "Sir, you stole my computer. Would you please return it to me?" before I can go to the police and ask them to investigate. I know you are wondering where this is coming from. I get this from a lot of people until I say this. When I go to the Ombudsman and I say our HOA has stolen from us, they have fined us illegally, and I would like for you to investigate, they say, "Sorry, you have to write a letter to the person who fined you and tell them that you would like to resolve this." The crime has been committed, and I am asking the criminal to correct his crime. That is what I have to say. If I did not say this correctly, I will keep trying until I get the message across.

**Chairwoman Cohen:**

Thank you, Mr. Robey, and thank you for your kind words. We appreciate your coming out to the Grant Sawyer Building and hanging in there late with us. Are there any questions for Mr. Robey? [There were none.] Are there any others in support in Las Vegas?

**Robin Huhn, Member, Nevada Homeowner Alliance, Henderson, Nevada:**

I like the changes that are being made and I know that Commissioner Friedrich has put a lot of time and effort into this. I also want to say the Ombudsman's Office does need to be concerned with the governing documents; that is what it states in the law and on their website. I do not understand why the judgment in an action for a construction defect would have to be confidential information. I agree with section 3, subsection 1, on line 29; it should be changed to two years. Sometimes it can take a year of battling with the HOA before a homeowner realizes that the only alternative they have is to go through the Ombudsman's Office.

**John Radocha, Private Citizen, Las Vegas, Nevada:**

I have been a victim of my board of directors. They never gave me information. I sent registered, return receipt letters three times requesting some information

and they denied it to me. I then went to the Ombudsman. It took time, but he finally sent me some information. I further pursued the investigation and went back to him; it was a back-and-forth situation. A year went by. In the process I was being fined, so I went back to the Ombudsman. At the time the office was not big like it is today. Unfortunately, the Ombudsman died, and when I went back to the office, no one knew what was going on. I was worried about what was filed but they could not find the papers. There I was, hung out to dry. If I had my way, I would say let us make it three years, not two, because I suffered through this. Thank you for listening to me; I appreciate it.

**Robert Frank, Private Citizen, Henderson, Nevada:**

I am a retired Air Force senior officer. I have been a member of my board of directors on a 7,000-unit homeowners' association, I have been a previous member of the Community Associations Institute, and I am currently a member of the CCICCH, but I am representing myself tonight, saying I strongly support A.B. 320. I think it is a step in the right direction. I compliment Assemblyman Stewart for his work on this bill. I support the friendly amendment, and I urge the Subcommittee members to keep in mind that Administrator Gail Anderson of the Real Estate Division has recently said every one of the members of the Legislature this year is receiving many complaints from homeowners' association members who are very unhappy with the way they are being treated and unhappy with the way the HOA systems in NRS Chapter 116 treat them when they have troubles. They are looking forward to the members of the Legislature moving the bar more in favor with homeowners today because they feel that the business interests have gained the advantage in past years when they were not paying much attention. I encourage you to be very careful when you make these changes such as in A.B. 320 which is a good step in the right direction to pay attention to the homeowners. The situation is such that they do not feel like they are getting their constitutional rights protected, they do not have a balance of power between themselves and other non-HOA members, and they represent more than half of the homeowners in the state. Please think about that as you are making your decisions. Thank you for your time.

**Chairwoman Cohen:**

Feel free to speak. If what you have to say has been previously stated, you may just say "ditto."

**Michele Mitemiller, Private Citizen, Las Vegas, Nevada:**

Ditto on everything that I have heard. I am definitely in favor of the amendment. I am also a local real estate agent and this would really help the homeowners to know there are construction defects prior to purchase. Thank you.

**Deane Downing-Delacruz, Private Citizen, Las Vegas, Nevada:**

I strongly support A.B. 320. I think it would be in the homeowners' interests, and I think that we need to get a handle on the associations so they can be friendlier with our homeowners. After all, they do pay the fees. Thank you.

**Chairwoman Cohen:**

Is there anyone else in Las Vegas wishing to testify in support of the bill? [There was no one.] I ask those in opposition in Carson City to come forward.

**Garrett D. Gordon, representing Olympia Companies; and Southern Highlands Community Association:**

I would like to say that I have a lot of respect for the sponsor; I have worked with him on HOA legislation in the past. I met with him earlier this week and look forward to working with him on some of the issues that I will mention tonight.

There are a couple of glaring issues that I did not hear in Mr. Friedrich's presentation. We did not hear anything about the problem; we did not hear anything about the data. Why are we moving the violations of CC&Rs to the Ombudsman? What is the data; what shows the problem? What is the policy reason for doing this? What I hear is forum shopping, and it is a consistent theme in all three bills. We have heard that some people do not like what a neutral arbitrator is saying and they go to the Ombudsman's Office. Let us have a study in the interim. Maybe it does make sense to move everything from the arbitration and mediation process to the Ombudsman, but why? Who says? Has everyone been at the table to discuss this? That would be my comment on the first section.

As far as settlement of claims for construction defects, we would very strongly object to this—not for the judgments as they are public record. Complaints are also public record. If you are going to buy a property, you can search that property and see if a complaint has been filed. Typically in every contract there is a seller disclosure; you ask the seller to disclose if there is any litigation or environmental issues. You go through the list of disclosures; that is in the contract. That is a private disclosure between seller and buyer. Insurance companies usually object to putting settlements on public record as they want those terms confidential. Can you imagine if you have subcontractors settling and their names are in the public record for the amount they settle for, the claim, and the problem? Any person can go through those files and see what companies are named, how much those companies have paid, and how much those insurance companies have paid. That is why settlement agreements are confidential. Certainly we have no objection to public judgments being part of the Real Estate Division file because those are public.

Also in section 3, going from one year to two years, the testimony said after the incident occurs, sometimes a person does not know what is going on, so he needs an extra year. If you read the law, it says it is one year after the person discovers, or reasonably should have discovered, the alleged violation. So the violation could have happened, and the person was not aware of it, but when they became aware of it, they had a year. We think that current law is more than generous and is very reasonable.

I do want to talk more about the Ombudsman and the splitting or consolidating violations of the governing documents and NRS Chapter 116 but, in the interest of time, I will reserve that testimony for the next bill.

**Chairwoman Cohen:**

Thank you, Mr. Gordon. Are there any questions?

**Assemblyman Duncan:**

With reference to the settlement of claims, do they have to turn over the actual settlement agreement, or does there have to be a record that there was a construction defect? Mr. Friedrich said that we just have to have a record of that. How do you interpret that language? Is it an actual confidential agreement, or do you have to have it somewhere on record that says there was a construction defect claim on the property in question?

**Garrett Gordon:**

As I read the language in section 1, subsection 4, paragraph (e), subparagraph (9), it says, "A record of each settlement of a claim . . ." as you go down to line 15, it says, "which contains such information as the Ombudsman deems necessary to provide relevant information concerning the settlement or judgment to the units' owners." I think that is read very broadly and the Ombudsman has the discretion to ask for any term of any settlement agreement dealing with any construction defect.

**Terry Care, representing Terra West Management Services, Las Vegas, Nevada:**

Terra West has been around since 1979. They have offices in Las Vegas, Henderson, Sparks, and Reno. It is a full-service association management company currently managing about 161 associations, which includes about 53,000 units.

Legislators are policymakers. I do have to agree with Mr. Gordon. What is the case that has been made for changing the policy? I have not heard it. There are always people who are unhappy with experiences they have in associations and common-interest communities. All we have heard is scant testimony about somebody who is unhappy about this and unhappy about that.

To some extent, the law insists on stability. Not only do unit owners expect some stability when they buy into an association, they are going to want to know if something happens there has to be a certain scheme or mechanism, and they can rest assured that if something arises 10 or 20 years from now, this is the procedure that we are going to follow. You cannot be changing the procedure every two years. Then it gets into when was this action filed, when was this affidavit submitted, which law applies, and that sort of thing.

Finally, there is one thing that has not been said. You can argue that the governing documents, the CC&Rs, really constitute a contract between the unit owner and the association itself. It has nothing to do with the Ombudsman. The Ombudsman is not a party to this contract. You have experienced mediators, arbitrators, and judges who are assigned to handle these matters. They know the case law, they have the experience, and they know the body of the law. It should be left alone. That concludes my testimony.

**Chairwoman Cohen:**

Do we have any questions? Seeing none and not seeing anyone else in opposition in Carson City, we will move to Las Vegas for opposition.

**Avece Higbee, representing the Common-Interest Communities Subcommittee, Real Property Section, State Bar of Nevada:**

I am here with Bruce Flammey and Eleissa Lavelle on behalf of the State Bar of Nevada Subcommittee for the Common-Interest Communities ([Exhibit D](#)).

We do concur with what Mr. Gordon and the gentleman from Terra West have said. I do want to point out that the way the separation exists right now is working fine because we have the Legislature that created the Office of the Ombudsman and created the statutes that the Ombudsman is enforcing and interpreting. On the other hand, we have CC&Rs and the other governing documents that were created by developers. They are contracts. The CC&Rs are contracts that the owners read before they move in, and they agree to abide by them. That is not created by the Legislature. Those are rules that govern the maintenance of the common elements and the use that the owners have in their property. That is why it is appropriate for those kinds of issues to go before the ADR process, rather than through the Ombudsman's Office.

I want to touch on interpretation of governing documents. It may sound easy to a lot of people, but it is not. There are numerous issues that are involved in interpreting CC&Rs; it is not just whether someone took their garbage can in at five o'clock or at six o'clock. There can be some significant issues, and I think it is a process. While I respect the staff members at the Real Estate Division, sometimes interpreting the CC&Rs, the bylaws, and the articles can be very

complex. Issues arise where legal research needs to be done; for instance, a comparison of some decisions of courts from another state. Sometimes it takes some investigation with the initial developer that drafted the CC&Rs. Are we going to shift all of that kind of investigative process to the Ombudsman's Office? It is rightly before arbitrators that are experienced as we have discussed.

One example that comes to mind is a few years ago an association's developer went under and was in bankruptcy, and the association determined to purchase some common elements—the club house. They went to an attorney and the attorney, well-known in southern Nevada, wrote a 20-page opinion about whether they could do that or not. The significant analysis was through statutes, through the CC&Rs, and through some case law. An individual challenged that through the Division with an Affidavit of Intervention and the Division determined that it should go through the ADR process. Under A.B. 320, that would force the Division to investigate. The Division would be analyzing and going through 28 pages of analysis. This costs a lot and uses a lot of resources. It is not right for the Division to do this. We already have a process that works where the arbitrators get to the heart of those issues, and the attorneys present those for both sides, or even *pro per* persons do, but it is not appropriate for the Real Estate Division. It should be kept the way it is. Assembly Bill 320 should not go forward.

One other point is that sections 2 through 4 of A.B. 320 seem to be just part of Assembly Bill 34 which was highly opposed a few weeks ago. I want to make certain that the Committee is aware of that. Do any of you have any questions?

**Eleissa C. Lavelle, representing the Common-Interest Communities Subcommittee, Real Property Section, State Bar of Nevada:**

I want to echo everything that has been said by Mr. Gordon, Mr. Care, and Ms. Higbee. There is a perception that I would like to clear up. When these bills first surfaced last October, I contacted the Division to find out about the statistics, and if they had anything to demonstrate what the problems were with the existing programs. While I understand that everything can be improved and nothing is perfect, there is nothing that I could determine from talking with people from the Division, and going online and getting the information, to indicate where the problem was. That is not to say that there really is not a problem but I would urge this Committee, before enacting legislation, to make sure what is being enacted specifically addresses a problem that exists, rather than just taking a meat cleaver approach where it is not necessary. These issues will be stressed later in response to A.B. 397, but I wanted to raise the issues and this point.



**Bruce Flammey, representing the Common-Interest Communities Subcommittee,  
Real Property Section, State Bar of Nevada:**

I also have the honor of having been a former community association manager in southern Nevada for three years, so I come to these issues with a slightly different perspective. On behalf of the other two attorneys here, it would be interesting for the Committee to know that we represent both homeowners individually against associations, and homeowner associations where we provide counsel to the boards. When we see legislation like this, we get curious about what exactly is the harm that these laws are going to correct? What is the poison for which this is the antidote? We have not heard that. We have heard one or two anecdotal stories, but I have been in this business since 1995 and every two years somebody stubs their toe, and you are asked to pass a law based on that. That is improper and I think that is what this looks like.

With regard to the points that have been made in earlier testimony, I think the settlement language on page 3, section 1, subsection 4, paragraph (e), subparagraph (9) is interesting because in that particular section, it says in line 16 that the information that is going to be gathered and disseminated, or at least made public, is going to be "as the Ombudsman deems necessary . . . ." As was mentioned earlier, that is certainly a lot of discretion for the Ombudsman to have. The Ombudsman now apparently has to have a degree in construction defect litigation so he can determine what is necessary for purposes of a disclosure. With regard to the disclosure, I remind the Legislature that you have already adopted statute that includes the real property disclosure document that each seller in a common-interest community is required to provide to the buyer that gives the history of the unit with regard to repairs or any defects, be they current or past. In effect, we have a redundancy being created here. While I understand some light is a good thing, sometimes it is blinding, and we cannot see the details.

Going back to page 2, section 1, subsection 4, paragraph (d), there is no discretion in line 21. The language that said "when appropriate, investigate" has been taken out in what looks like to me a zero tolerance analysis. We are not going to give the Ombudsman, or his staff, any discretion whatsoever. Every single complaint they receive is going to be investigated. That would include the ones I have seen that say the board members are all crooks. They are not all crooks. Some of them are, but not all of them. How much time is the Ombudsman's Office with its limited staff, which is not a police department, not the U.S. Attorney's Office, not the district attorney's office, and not the Federal Bureau of Investigation, going to use to investigate exclusively these complaints under what amounts to a zero tolerance policy? We have seen how the zero tolerance policy works in our grade schools when a child gets sent home when he chews a Pop-Tart into the shape of a gun. If you require the

Ombudsman's Office to investigate each and every complaint, they will do nothing else, including answering the phone. My recommendation is that you allow discretion for the Ombudsman, with regard to a complaint as the proponents of this bill deem appropriate, to have gathered construction defect information. Thank you.

**Chairwoman Cohen:**

Thank you, sir. Do we have any questions for this witness? [There were none.] Is there any other opposition in Las Vegas?

**Michael Lee Dmytro, Private Citizen, Las Vegas, Nevada:**

I am a homeowner at Pueblo at Santa Fe. My testimony is in favor of the Ombudsman participating in this process. I am sure in discussing what Ms. Higbee says about it works fine for them—yes, it works fine for them—but it does not work fine for us as homeowners. For the analogy as far as the Pop-Tart, this is not a Pop-Tart; these are our lives, these are our homes. These are important situations.

For an example, at Pueblo at Santa Fe we had a meeting at the beginning of the month where we turned to our board and asked them a question. We said, "HOA board, we have some questions." A property manager/community officer said, "Gee, I do not know the answer; I am not sure, hold on a second." He turned to Judith Fenner, the community association's person, and said, "Judy, what is the answer?" And she said, "Gee, I do not know, hold on a second." She turned to Avece Higbee and said, "Avece Higbee, what is the answer? I do not know." Then she said something, and said to Judy, "Here is the answer." Judy turned to Kent and said, "Here is the answer." Then Kent turned to the property manager and said, "There is the answer." When you involve that many people, that is crazy and out of control. When we talked about contracts and they mentioned between me, as the homeowner, and the HOA board, great; that is a contract. When you involve four property managers and community-interest people, and you bring two attorneys to a board meeting, you now have the process where those people are licensed, and those people need to be held accountable for their actions. When I make a complaint to the board, it does not go to the board. It does not get answered by the board. It gets answered by a community-interest person who goes and sends a letter, who talks to Avece Higbee and says, "Avece Higbee, I do not know what to do." Avece Higbee then advises them. Then they go to the board and say this is what you should do.

We need some help here. The arbitration process is not helping. We have 75 counts of fraud, embezzlement, knowing and willful conduct against the

Pueblo at Santa Fe situation. These are the types of things going on here. These are why we need your help.

**Chairwoman Cohen:**

Sir, so that our records are straight, I believe that you said you were actually in support of the bill, so we will record you as such.

Is there any other opposition to the bill? Seeing no one, we will move to neutral in Carson City. Seeing no one, we will move to neutral in Las Vegas. Seeing no one, I will ask Mr. Stewart to return for a brief conclusion with Mr. Friedrich.

**Jonathan Friedrich:**

This is a copy of the intervention affidavit that you have in your packet of information on exhibits for A.B. 397 ([Exhibit E](#)). It is the Ombudsman's intervention affidavit. I will read under subsection 1. "I have been aggrieved by an alleged violation of Chapter 116 of the *Nevada Revised Statutes, Nevada Administrative Code* or the governing documents of the association. The person or entity who committed the alleged violation is . . . ," and then there is a blank line. On the Real Estate Division's own official state document it says they are supposed to investigate the governing documents.

**Assemblyman Stewart:**

Thank you, Chairwoman, for listening to us tonight. We appreciate your indulgence and I pledge to work with the parties opposed to this to try to come up with some solutions.

**Chairwoman Cohen:**

Thank you, Mr. Stewart. The hearing on A.B. 320 is now closed. [Exhibit submitted but not mentioned ([Exhibit F](#)).]

We will now open the hearing on Assembly Bill 370 and invite Assemblyman Ohrenschall forward.

**Assembly Bill 370:      Revises provisions concerning common-interest communities. (BDR 3-1016)**

**Assemblyman James Ohrenschall, Clark County Assembly District No. 12:**

Chairwoman Cohen, two years ago I sat where you are sitting in the thorny brush of the *Nevada Revised Statutes* (NRS) Chapter 116 and NRS Chapter 38, and I swore I would not introduce a common-interest bill in the next session. However, I was approached by a public interest attorney for whom I have a tremendous amount of respect, who discussed this problem. Assembly Bill 370 attempts to fix it.

Currently, if someone has a dispute with their association, NRS 38.310 says the only way they can get through the courthouse door is if they have participated in either the mediation program or the arbitration program. Either of those are allowed in our statutory scheme, however, both parties must agree if they want to participate in mediation. That gives the association a veto power and, in many cases, from what I am hearing from my constituents from public interest attorneys like Michael Joe who is at the Grant Sawyer Building, and from many others, arbitration is chosen. I do not have anything against arbitration or against the arbitrators, but everything I have seen shows that the price is much too high. Rather than having what we had always hoped for with alternative dispute resolution, something that is more efficient and less costly than taking the dispute through the courtroom, we end up with something that in some cases can be more costly and more time consuming. I do not think that is a service to the homeowners or to the associations.

You may hear testimony that this bill may open the floodgates and there will be many angry homeowners who will just go through mediation and try to get into court, but I do not believe that is accurate. I do not believe that is the case now, and I do not believe that is going to happen. We heard a cry for the study earlier—where are the statistics? Chairwoman Cohen and members of the Committee, I think that is a question you can ask. When the opponents of the bill come and speak, I think you have a right to ask the Nevada Arbitration Association what the median charge is for a homeowners' association (HOA) arbitration. What were their charges for the last few years for HOA arbitrations? In most of the cases they are going to be very high, and I do not believe that is a service to the homeowner or to the association. Assembly Bill 370 would change the statutory scheme. Mediation would be the gateway in terms of seeing if things could be settled before they end up in court. It is much cheaper. Assembly Bill 370 caps that at \$300 total, and that would be split between the unit owner and the homeowners' association.

Currently a party must submit a claim in writing to the Real Estate Division and serve the other party. The other party has 30 days to file and serve a response. If both parties agree, they can mediate their dispute. However, if they do not agree, then the dispute must go through arbitration. That is provided by NRS 38.330. Assembly Bill 370 seeks to ameliorate that process. As you will see throughout the bill, the focus is on replacing arbitration either with mediation or with a program which the Real Estate Division would establish similar to the program they proposed in Assembly Bill 34. Assembly Bill 370 defines the Division's program as one in which a referee or a hearing officer can make decisions on disputes involving conditions, covenants, and restrictions (CC&R) and other similar types of documents. If the Division does establish such a program, section 1 of the bill creates procedures for using the

program as well as deadlines for contesting and confirming decisions through the courts.

Section 5 amends the filing process to require the homeowner to specify whether they want to participate in a mediation program with a mediator from the list the Division would provide, or in the Real Estate Division's program. Section 5 sets the filing fee for mediation or for the program at \$25.

In section 6, if the homeowner does not elect to use the Division's program, then the other option would be mediation. In addition to being responsible for their own costs and attorney's fees, section 6 of A.B. 370 requires each party to pay a \$150 mediation fee to the Real Estate Division. If an association does not pay its share of the fee, then the Division must refund any fee that the homeowner has paid and issue a letter to both parties indicating that mediation has been completed. Section 6 also requires mediation to be completed no later than 60 days after the filing of a written response. Further, section 6 limits mediation to three hours and requires the mediator to issue a report to the parties and the Division within 20 days of mediation if an agreement is not reached. The mediator's report must include the efforts made to settle the dispute, a statement of nonbinding findings of fact, and a statement that an agreement was not reached by the parties, if that is the case. Within 60 days of receiving the mediator's report or the Division's letter, a party may commence a civil action based on any claim that was subject to mediation.

Section 7 makes training requirements for mediators mandatory, including four hours of training related to mediation and the resolution of disputes concerning associations. Section 7 also requires the Real Estate Division to create a document that contains a written explanation of the program's procedures.

Section 8 of the bill provides for the tolling of any statutes of limitations for claims submitted to the Division's program and clarifies that the tolling shall last until the end of mediation, issuance of a written decision and award, or receipt of a letter from the Division stating that mediation is complete.

Section 9 allows the Division to adopt any regulations necessary to administer the program. Sections 10 and 14 require the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels to assist in processing claims submitted to the Division's program. The next few sections of the bill are technical changes incorporating the statutory scheme A.B. 370 into the existing *Nevada Revised Statutes*.

Finally, section 18 deals with a different issue. There was a recent Nevada Supreme Court decision, *State, Dept. of Business and Industry v. Nevada*

*Association Services, Inc.*, 128 Nev. Adv. Op. 34,294 P.3d. 1223 (2012). It said that the Financial Institutions Division did not have the power to regulate collection agencies that seek arrears of HOA dues and assessments. That decision troubled me because of the very significant role that collection agencies play in the scheme in terms of where someone may end up with a lien and end up losing their house. I do not have a dog in the fight as to who regulates them, but I think they need to be regulated. If it is not the Subcommittee's pleasure that it would be the Financial Institutions Division, perhaps there is some other division of the state, but I do think those collection agencies that play such a significant role in whether someone is going to keep their home or not should be regulated. Section 18 is a response to that decision.

That is a very quick overview of the bill. I do believe this is something that in the end will save money for the homeowner and the association. I am happy to answer any questions.

**Assemblyman Martin:**

It looks as though we are trying to propose a \$300 maximum mediation fee. That is not much money for a little mediation. I am also a believer in alternative dispute resolution (ADR). There may indeed be problems with mediation versus arbitration, but my first reaction to this proposal would be that it would actually slow things down because it goes to the Real Estate Division if mediation fails. You do not think it would overload the system; I am thinking the opposite. If you could clarify this for me, that would be good.

**Assemblyman Ohrenschall:**

I worked on this bill with my friend, Michael Joe, the public interest attorney. The goal was to make sure the fee would not be exorbitant, that it would be reasonable, in the hope that whatever the dispute, it might be resolved quickly, efficiently, and cost-effectively. If settlement cannot be achieved, court is an option, but I am doubtful the courthouse will be flooded. If Mr. Joe is still in Las Vegas, perhaps he would like to comment on this.

**Michael Joe, representing Legal Aid Center of Southern Nevada, Las Vegas, Nevada:**

Yes, Assemblyman Ohrenschall and I have worked hard on this bill. During the last session, there were a number of bills presented, including one having to do with mediation and arbitration. We are looking to resolve some of those issues that we see with the arbitration program as it exists today.

At the Legal Aid Center of Southern Nevada we are all about giving a voice to the people. We feel homeowners are deprived of due process by the current process and we are looking to improve that. What we see now is, if you file an

intervention affidavit with the Ombudsman, there are basically five programs where they can send you: binding arbitration, nonbinding arbitration, mediation, the referee program, or the Ombudsman. The Ombudsman also has her own program where she will sit down with both parties and try to resolve the problem in her own mediation. We think that process has become confusing, onerous, and expensive. If it is supposed to be easy, fast, and economical, it is none of those. We are looking to streamline the process; we chose mediation. I know Administrator Gail Anderson has chosen the referee program, but the mediation program is more tried and true. It is patterned after the foreclosure mediation program where they charge \$400 for a four-hour mediation, which in some sense is a lot more complicated than what we are trying to do here. We felt that the \$300 for three hours of mediation seemed like a reasonable way to approach the problem.

A portion of this program is training the mediators. That is something we learned from the foreclosure mediation program because HOAs, just like foreclosures, require you to have specific knowledge. I think a well-trained mediator is important to solving this problem. Are there any questions?

**Assemblyman Duncan:**

Thank you for your testimony. Does the anticipated \$300 in this proposed bill include the preparation time for the mediators? How does that work? Do they look at the documents when they get there, and are there many mediators willing to work for essentially less than \$100 an hour?

**Michael Joe:**

Yes, this does include looking at documents in advance. There is a document exchange that is required in the other foreclosure mediation programs. The answer is that it is probably less than \$100 an hour, but an offset to that is most of those mediations do not take four hours. It is rare for those mediations to last more than two hours. In those cases, the \$400 they are being paid is a lot more than \$100 an hour.

The real question is, who are the people that will be using this program, and what is it going to require to mediate the issue? I think the vast majority of it does not take the three hours. The vast majority is for homeowners who misunderstand the CC&Rs and misunderstand the process. It is an opportunity for a well-trained mediator to educate them so they can understand where they went wrong. It is true that many homeowners rule out mediation because they did not understand, and they are probably in the wrong. When we look at what is going to happen here, most of the mediations will resolve the issue. There will be some issues that cannot be resolved in three hours. There is a provision to extend it beyond that, agreeable to by both parties, or maybe those issues

are better reserved and sent to the district courts. Assemblyman Ohrenschall and I agree that it will not flood the court system. I think we will resolve most issues here and a good mediator can do that.

**Assemblyman Carrillo:**

I see a lot of strikeout language in these sections. I know you both said you worked very hard on this. What other stakeholders were left out of this process to come up with this? Was anyone else included in this process besides you two?

**Assemblyman Ohrenschall:**

Many homeowners were included.

**Michael Joe:**

Last time we had a mediation process we tried to do it as a front-end process to the arbitration. We did that for the exact same reason we are trying to do this; to resolve many issues. Many issues and court cases do not require full-blown arbitration. We tried to pattern on that. We thought the major opposition to this would be by arbitrators, but I believe this will create more business for arbitrators and mediators because more people will avail themselves. When I talk to homeowners, they are scared of arbitration because of the costs involved. I have to counsel them that they could go and not only lose the arbitration, but be charged the attorney's fees from the other side, or be charged the full cost of the arbitration. Many people are not willing to take that chance because many of the issues are small. An issue of \$150 from their perspective they are willing to pay, but they are not willing to pay \$1,500 or \$3,000 to resolve it.

**Chairwoman Cohen:**

Did you want to add something, Mr. Ohrenschall?

**Assemblyman Ohrenschall:**

I believe Mr. Joe said it perfectly, and there is not much that I can add.

**Chairwoman Cohen:**

Are there any other questions?

**Assemblyman Carrillo:**

Is this a compilation of the homeowners you talked to in your district?

**Assemblyman Ohrenschall:**

It came from conversations with homeowners within my district, outside of my district, and with Michael Joe. Basically, Mr. Joe said it perfectly. Many people



are scared to go to arbitration because even if they win, they might end up with a \$1,500 or \$3,000 bill that can turn into a lien. It is dangerous, and we need to think about what is best for the homeowner and the association. As Mr. Joe put it, I do not think this will hurt the incomes of arbitrators or mediators. If anything, this might promote more mediation, and as Mr. Joe said, those well-trained mediators might be able to resolve disputes and they will never end up in court. From what I am seeing, it seems like a lot of this arbitration is becoming as litigious as if it were in a courtroom. It is not getting both sides together and resolving the issue. Perhaps Mr. Joe has something else to add.

**Michael Joe:**

I have nothing else to add.

**Assemblyman Carrillo:**

I must live in a good HOA. As many doors as I have knocked on in different HOAs in my district, I am not getting the same feeling that this arbitration process is a concern. I make it a point to visit HOAs in my district whenever they have open houses and that is why this is overwhelming. I did not know whether it was from you, Assemblyman Ohrenschall, or Legal Aid of Southern Nevada, where people are coming to you worried about arbitration. With redistricting, I have kept most of the HOAs that I had previously, and I wish I could honestly say that I am getting many of the same concerns in my district that you are getting in yours.

**Assemblyman Ohrenschall:**

Obviously when we walk our districts, we rarely hear from people who are happy with HOAs. We hear from those who have had to go through the arbitration process, have been burned, and have had to pay the other side's attorney fees, and that wish they had never pursued the complaint. I wish that everywhere in the county was as peaceful as your HOAs, but this is a problem I think is widespread enough that I have heard about it from homeowners and from Mr. Joe. We see a similar scheme in Assembly Bill 34 that was proposed by the Real Estate Division and was heard by the Judiciary Committee earlier in this session. I do not think this is something that is isolated. I know many opponents of this measure like to paint this as a vocal minority who are mad as hell and are not going to take it anymore. Obviously, many people are angry because of what has happened with their HOAs. I think similar issues have found their homes in two different bills, and I have heard about it from Legal Aid and from homeowners, and I do not believe this is just an isolated vocal minority.

**Assemblyman Carrillo:**

I am very lucky that I have constituents that are happy with their HOAs. I feel that there have been some issues in the past that affect maybe one individual and everyone has to pay for that. I am making sure that this is not the case. If we have a good consensus of homeowners who are having this issue, then I could understand it. As you said, you are hearing concerns from your constituents that are in HOAs and, as I said, maybe I am a very fortunate Assemblyman that does not have those same problems in his district.

**Assemblyman Ohrenschall:**

I think having to pay for it is right. That is the whole goal of this bill—to make it a lot cheaper for the people who have these disputes. Hopefully, if we can avoid the arbitration and that expense, it will be better for the homeowner and the association.

**Assemblyman Duncan:**

Currently, if a homeowner has a dispute, do they go through the Real Estate Division to begin the arbitration process? Has the Division stated whether this will create a backlog for them, or burden their offices?

**Assemblyman Ohrenschall:**

It does go through the Real Estate Division first.

**Michael Joe:**

The process is you file an intervention affidavit with the Ombudsman. With that you can request mediation, but you need to get approval from the other side. You have the absolute right to do either arbitration, binding arbitration or nonbinding arbitration. That is how the process works.

Administrator Anderson is supportive of this because they are trying to do a similar program, the referee program. In general, they believe in this type of process. They do not believe the referee program will overtax them, and this program is similar to that, so I believe they think this would not overtax the system as well.

**Assemblyman Martin:**

I still need some clarification. If this bill were to pass, they would go through the process, pay the \$300 fee, and then go through mediation. They do not participate in arbitration anymore, and it goes to the Real Estate Division. My question is do they need a lawyer to represent them at the Real Estate Division? The timing is also a concern. Are we really saving any money?

**Michael Joe:**

You would file an affidavit with the Ombudsman and then the mediation would be scheduled. Do you need a lawyer to go with you to mediation? I can tell you about our experience in the foreclosure mediation program. That program was designed so you would not need a lawyer. I also do not believe you need a lawyer here. Are you at a disadvantage? I do think you are at a disadvantage if you do not have an attorney but, at the same time, if it is mediation, it is designed for both parties to come without lawyers. You do not necessarily need lawyers for this process. Therefore, I think the process is designed to have a more friendly discussion, where you sit across the table from the people to discuss the issue and lay all of the cards out so people can understand it.

You asked the question about whether it costs money. When you say costs money, I think you mean for the state. This program is designed so that it does not cost the state any money because of that \$25 fee. The mediators are paid out of the \$300 fee, \$150 each from the homeowner and the association. It is designed to be zero cost to the state. The \$25 will be collected from both sides to run the program. That should fund trainings and managing the program.

**Chairwoman Cohen:**

In section 6, subsection 2, beginning on line 29, do I understand this correctly? The homeowner can decide they want to do mediation, and they pay the \$150, but if the association does not want mediation, the homeowner's \$150 is refunded. But what happens with their claim? Where do they go next? Are there any teeth to make the homeowners' association mediate in good faith?

**Michael Joe:**

It is nonbinding mediation. Essentially, you could go to the mediation and not do anything and, therefore, when you leave you get an opinion from the mediator that mediation was completed but no agreement was reached. At that point, since you did not get resolution, it then gives you the opportunity if you need to appeal and get resolution somewhere else, you can appeal it to the state court. This particular part is designed to say what happens if the association decides not to participate? The answer is you get your money back, you get a green light to file, and the court will resolve the issue. Did I answer that question?

**Chairwoman Cohen:**

Yes. You can go to court, but at that point, you do not have any arbitration rights. Is that what you are saying?

**Michael Joe:**

Under current law, you cannot go to court until you go through mediation or arbitration. This essentially says you have fulfilled your obligation of mediation, and now you may go to court to get it resolved since you could not resolve it in mediation. That is what it is designed to do.

**Assemblyman Ohrenschall:**

It is not putting any fault on the homeowner because the association did not participate, or vice versa.

**Chairwoman Cohen:**

However, the homeowner is not getting the benefit. Before, they had the opportunity to go to arbitration or mediation because it was required. Now if the homeowners' association says they do not want to go to mediation, they either ignore their case or go to court. Do I understand that correctly?

**Assemblyman Ohrenschall:**

I believe you are correct, but the policy decision in this bill is a better route. That may be the only option for the aggrieved homeowner.

**Chairwoman Cohen:**

I come from the realm of family law. In Clark County, and I believe in Washoe County as well, if you have a custody issue, you have to go to mediation. You do not have to come up with a resolution, but you have to make a good faith effort. Is there an option in your bill for that, so we do not end up hearing from the homeowners that the mediation program is great, but they are unable to get their association to go to mediation? Maybe the homeowners' association knows that the homeowner is not going to have money to go to court and will not move forward.

**Michael Joe:**

That is an interesting question and it is something we have thought about, and we think about with the foreclosure mediation program. The answer to that is you can go to mediation and do nothing. The bill could have been written to say if you choose to not go to mediation, you lose, and then the mediator will give an opinion. In some sense, if you are a mediator, you are not there to render opinions; you are simply there to mediate between the two parties and to try to bring them together. The way I looked at it was you do not have to go to mediation, just as you do not have to do anything when you go to mediation. We were looking to give an answer to what happens if you do that. I think it is beyond the scope of this mediation program to say, "You did not show up and, therefore, the mediator is going to render an opinion that you are right, and they owe you \$3,000." I think that is beyond what is envisioned for this program.

**Chairwoman Cohen:**

Thank you, Mr. Joe. I am not looking for mediators to do that if someone does not appear, but maybe there should be some teeth to it so people must appear and try. Are there any other questions?

**Assemblyman Carrillo:**

Mr. Joe, I appreciate your time. You mentioned earlier you felt this would not really be flooding the courts but now you are contradicting yourself. I need a little clarification in regards to that.

**Michael Joe:**

I believe that homeowners' associations are going to go. I was just trying to look at that option; what would happen if they did not show up. That is a possibility, but if you were a homeowners' association, I think it is in your best interest to go to mediation and try to resolve it there. If you are sued in court, it will obviously be more expensive for you. I sat on several HOA boards and I think it is about resolving issues so that you do not have to spend money for attorneys or for other legal fees. I do not anticipate that homeowners' associations are not going to show up. That is why I do not think it will flood the courts.

**Assemblyman Carrillo:**

I just wanted clarification because earlier you stated on the record that you felt it would not flood the courts, and now you are saying that it would. I just wanted to understand for the record.

**Michael Joe:**

I am sorry if I gave the misimpression that I think it will flood the court system because I do not believe that. I do not believe that homeowners' associations are going to refuse to attend mediation.

**Chairwoman Cohen:**

Do you have anything else to add, Mr. Ohrenschall?

**Assemblyman Ohrenschall:**

No, I am finished unless there are any other questions. We do have other witnesses to testify in support of the bill.

**Chairwoman Cohen:**

I invite any witnesses in Carson City in support to please come forward.

**Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:**

I disclose I am the homeowners' representative on the Commission for Common-Interest Communities and Condominium Hotels, and I am speaking strictly as a private citizen. I am also a nonattorney American Arbitration Association arbitrator.

One of the things that the American Arbitration Association makes very clear is that the arbitrator is supposed to be a very economical source of adjudicating a dispute. I am now addressing some of the concerns of Assemblyman Carrillo and Mr. Garrett Gordon, who want to know the statistics and the problems. You should have a four-page handout that I submitted ([Exhibit G](#)). The first page is a matrix of arbitration cases. This information was obtained from the Real Estate Division's website; none of this was pulled out of the air. These are only a few of the recent cases. There are four columns. Starting on the left, the first column is the case number. The second column is the arbitrator's name, the third is the arbitrator's fee, and the fourth column is the total cost of the attorney fees. If this does not send a chill down a homeowner's back, nothing will. In the first case, the attorney's fees in that dispute were \$204,014.63. There are arbitrator's fees as high as \$19,605. There is a backup on the next page showing that particular arbitrator's billing. It is dated March 28, 2012, Leonard I. Gang, Attorney at Law, Arbitration and Mediation. At the very bottom, it shows the total of arbitrator's fees and costs as \$19,605. That seems to be the exception to the rule, but you can see by these cases how much the arbitrators charge. The lowest amount was \$900.

If you turn to the last page, it indicates Fees Charged by Attorneys Representing HOA Boards in Arbitration Cases in fiscal year (FY) 2010. There are four columns. Actually, it is doubled up as far as the case numbers on the extreme left hand side, and then you have the amount for the attorneys representing the association. The next column is again case numbers and the amount of the attorney's fees. It is all here in black and white. These are only some of the cases.

I fully support Mr. Ohrenschall's bill. In my own particular case, I had a dispute with my homeowners' association because they never held a budget ratification meeting. The attorney's fees in that case were \$90,000. In the end, the Real Estate Division agreed with me that my board had violated NRS Chapter 116.

I have a few other comments. The homeowners' associations have the deep pockets. How many homeowners have the financial wherewithal to take on an association with these kinds of numbers? This is a fault. The current ADR program is full employment for HOA attorneys. Right now if you file an ADR claim there is a form the Real Estate Division provides. There is a \$50 filing fee,

then there is a selection process of the arbitrator, and the arbitrators usually require a deposit up front, and then it goes up into the stratosphere. As Assemblyman Duncan said before, the foreclosure mediation programs were \$400, and there is no shortage of mediators in that arena. If you look at their fee schedule, most of the current arbitrators are asking \$100 an hour. I believe that is for both sides, so it is really \$200. Again, these arbitrators take a case and blow it way out of proportion. The HOA attorneys love it because there is no limitation on where these cases can go financially. Are there any questions?

**Assemblyman Carrillo:**

I am looking at the figures for the current costs of the Real Estate Division's HOA arbitration programs for disputes with attorney's fees of \$204,000. What are these cases about? You see numbers, but do not see the information behind the numbers. What is case number 10-71?

**Jonathan Friedrich:**

I am not sure because I printed this up a couple of months ago, but I believe homeowners Trudi and John Lytle complained that their board did not have any current budgets or reserve studies. I believe this was initially a violation of the CC&Rs and then became involved with the statutes because both of those items are required under statute, and it just escalated. There is a very brief synopsis on the Real Estate Division's website that will tell you about the dispute. If you are interested, I will print it and get it to you.

**Assemblyman Carrillo:**

Yes, if you could get that information that would be good because I am curious about the background of this. This seems like it is way out there. I am not saying that this is not believable, but I want to understand the background.

**Jonathan Friedrich:**

I will be more than glad to get you the information.

**Assemblyman Carrillo:**

Please feel free to send it to the rest of the Committee members as well.

**Assemblyman Martin:**

I understand what the goal of this is. Of course, I like the goal of saving homeowners' money and resolving things quickly. To be truthful, I am not really sold on this. In part one, the sponsor set up a \$300 mediation fee, which as I said earlier, seems like a very small budget. If we were to go to arbitration under the existing system, is there any way to cap the arbitration fees? As I understand the law, binding arbitration is still subject to some form of judicial review. If you are already in arbitration, let us assume we are going the

traditional way, and you end up in the Real Estate Division and bring lawyers into it anyway, aren't you spending the same amount of money in any event? There is a possibility it could end up in court. Is there a way to expand the mediation budget or cap the arbitration, as it exists?

**Jonathan Friedrich:**

To answer your first question, currently the Nevada Supreme Court's Rules Governing Alternative Dispute Resolution No. 24 caps the arbitrator in district courts at \$1,000. Also, section (C) of that rule, says each side shall pay the arbitrator's fees and each side pays their own attorney's fees. You should have it in the binder ([Exhibit E](#)) on Assembly Bill 397.

In response to your second question, unfortunately, as far as the process through the Ombudsman's Office, they have very little oversight. *Nevada Revised Statutes* 38.360 says that the Real Estate Division shall administer the process. Again, if you look in that same binder, there is an email between the Real Estate Division and myself, highlighted in yellow, saying they only facilitate the process. There is a big difference between the words facilitate and administer.

To review, yes, there is a mechanism in statute now that caps these cases at \$1,000, with each side paying half, and each side paying their own portion of the legal fees and costs. If, for any reason this bill does not fly, we have a proposal in Assemblyman Munford's bill. I hope that answers your question.

**Assemblywoman Fiore:**

I want to say thank you, Mr. Friedrich, Assemblyman Ohrenschall, and my constituents who are having issues with their HOA. I want to thank both of you for the effort and energy you put forth to protect them. I do have constituents that understand what you are doing. I want you to know that I am listening.

**Chairwoman Cohen:**

Is there anyone else in support of this bill in Carson City?

**Peter McAllester, Private Citizen, Reno, Nevada:**

I am a resident of northern Nevada and I am speaking in support of this bill.

I, and others in my family such as my mother, have been through the alternative dispute resolution (ADR) process. The ADR process in Nevada is broken. It is an HOA lawyer full employment act, as it has been referred to tonight. There has been some concern whether courts would be flooded if this bill passed. Many NRS Chapter 116 issues are headed to court even with this current ADR



process in place. In the last two years in Clark County alone, at least four judges have issued orders on NRS Chapter 116 issues, including business judges like Judge Elizabeth Gonzalez and Judge Mark R. Denton, so issues are going into the court system after going through a long ADR process that did not work.

My own family has been through the ADR process several times and we have issues in Washoe County District Court in front of Judge Elliot Sattler II and Judge Janet J. Berry at this time. I am an educated investor, and I have the courage and the resources to go through an ADR. I have the ability to go through mediation without a lawyer, to go through a nonbinding arbitration with a lawyer, but for the average homeowner, these things are very scary. They should be scary because the board of directors is going to walk in there with at least one lawyer, and sometimes three. The process is stacked against the homeowner. Lawyers who specialize in NRS Chapter 116 have hijacked it. There are not a lot of law firms that specialize in NRS Chapter 116. I know more about this than any individual homeowners I know. In northern Nevada, there are two law firms—Kern & Associates, Ltd. and Wolf Rifkin Shapiro Schulman & Rabkin, LLP—that handle this. They both know and are personal friends with many of the arbitrators. If you walk in and you have an arbitrator like Arbitrators Gang, Leavitt, or Wenzel, it is going to be very difficult to win arbitration when you are up against a law firm like Kern & Associates, Ltd.

I first met Gayle Kern at an informal mediation where she told me she had never lost a nonbinding arbitration. I thought she was just trying to scare me, but I went through the records, and she never has. She has never lost. It is a very challenging thing for an individual homeowner to go up against a law firm like Wolf Rifkin Shapiro Schulman & Rabkin, LLP, or Kern & Associates, Ltd.

In one of my cases, and I think this is confusing, if I ask in the ADR process for mediation, the board of directors does not have to agree to mediation. They can force me into a nonbinding arbitration. Both parties have the option of forcing a nonbinding arbitration, and they will, because they know that is the most expensive and difficult route for me. I have asked for mediation, and they force nonbinding arbitration. Then we get an arbitrator who, of course, is not in a hurry to get it over with, so I have spent thousands and thousands of dollars on arbitration, and it takes a long time. It can take well over a year. I have finally completed the requirement so that I can get to district court.

The average homeowner cannot do that. The process is broken. It is such that only someone like me, a wealthy investor, can get through this rigged ADR process and get in front of a neutral judge, an objective adjudicator of the issues. The process that is in place today for ADR has been hijacked. You

have heard from a lobbyist tonight, Attorney Gordon, who is sitting behind me. There is absolutely nothing that is going to prevent him from being an arbitrator a year or two from now. He is not an objective party. You heard tonight from an attorney in the Grant Sawyer Building, Attorney Lavelle. The last time I got a list of arbitrators to choose from, she was on it. She is not an objective party; she has a long history of being a lobbyist and working with collection agencies and property managers. If I have attorney Lavelle as my arbitrator, I ardently believe I am going to lose.

**Assemblywoman Cohen:**

Sir, I am sorry. I gave you some leeway, but you must avoid the personal attacks. We are getting into people's professional characters now. It is okay to have your opinion, but you are going a little too far over the line, so please stick to the bill.

**Peter McAllester:**

I appreciate the leeway you have granted me to this point. I do want to let you know it is a strategy of lawyers to drag out this process. Attorney Romero for Wolf Rifkin Shapiro Schulman & Rabkin, LLP, is demanding a jury. We can spend tens of thousands of dollars just arguing about the definition of the word, "extent." That can take a year and tens of thousands of dollars. This is how these arbitration bills get so outrageous. Thank you, that concludes my remarks.

**Chairwoman Cohen:**

Are there any questions? [There were none.] If there is anyone else in support in Carson City, please come forward.

**Lex Moser, Private Citizen, Reno, Nevada:**

I just want to say ditto to what Mr. McAllester had to say.

**David Hill, Private Citizen, Reno, Nevada:**

I am also an investor from northern Nevada. I do not expect anybody to be on my side because I am a person who buys houses out of foreclosure. We deal with issues that come up and, generally, we deal with homeowners' associations in one way or the other. There is no question that we live in weird times now.

When we buy a house, we tentatively become a member of that homeowners' association. There is really no reason for us to have an adversarial relationship at all; we are coming in after the fact. We are not the ones who did not pay the association fee. We are not the ones who chose to send it to collection or to have lawyers pursue remedies. The fact is, when we buy the house, we pay

the back association fees. The situation that we have now is oftentimes we are required to pay additional lawyer's fees that we did not incur. We pay them because sometimes that is the easy way out because arbitration is nasty and difficult. Like Mr. McAllester, I am in a position where I can do that.

The only point that I am trying to make is that homeowners' associations are made up of homeowners. When I buy a house, I am a homeowner. We do not need to make this process so broad and so wide. I agree with the lawyer down in Las Vegas who said that it is in the best interest of homeowners' associations to engage in mediation. They will engage in mediation because they have to pay their lawyers too. They may lose. In most cases, they are not going to lose, but in some cases, they do; then they put you on the hook for lawyer's fees. I want to say I am in support of this bill because I do believe mediation is the way to do it. If we can at least try it, it gets the first layer at a reasonable cost in a nonadversarial way. Thank you.

**Fahad Arif, Private Citizen, Reno, Nevada:**

I am a real estate investor. I would like to say ditto to what Mr. McAllester said. I think he did a great job explaining how scary the arbitration process is.

**Chairwoman Cohen:**

Is there anyone else in Carson City in support? [There was no one.] Let us go to Las Vegas for those in support of the bill.

**Gary Seitz, Private Citizen, Henderson, Nevada:**

Assemblyman Ohrenschall and the attorney for Southern Highlands have mentioned the cry for study of data. There is plenty in the Real Estate Division as Jonathan Friedrich has pointed out. The Real Estate Division (NRED) publishes a quarterly newsletter which lists details of how much was paid, so it is there. The most factual thing is that Gail Anderson, Administrator of NRED, has already testified numerous times that the process is out of control cost-wise. That is the administrator and this is from the person involved. Ms. Anderson herself is saying there is a problem. She has introduced her own bills to try to correct that. It is out there.

The opposition has mentioned HOA laws are too complex. In my governing documents, and in the spirit and intent of NRS Chapter 116, it leads the homeowner to believe this is an easygoing process and not to worry about it. We have heard testimony tonight that we have to have attorneys because this is so complex. This is like patent law, artificial intelligence, and intellectual property. Really, if it is in fact that way, and people testify it is, then NRS Chapter 116 and homeowners' governing documents need to say, "Warning. If you have a dispute, you may need an attorney." However, they

will not do that because that will scare everybody. They should be informed, if it is truly that complex.

As for the Division not being able to handle these kinds of things, they have the services of the Attorney General's Office. In fact, the senior deputy, Michelle Briggs, has an office right in the Division, so there is all the free legal counsel you can have regarding issues that are too complex for the Division. Regarding too much work for the Division, if it were too much work for them having everything flow through there, Ms. Anderson would be there. I know that if anything affects another governmental agency, they send their representatives to say that is enough. If it were going to flood the gates of the district court, perhaps a district court representative or court administrator would be here to oppose the law because they would have a flood of litigation. So once again, I want to summarize, unless someone is working for that state entity, they cannot really comment if it is going to open the floodgates.

I mentioned the construction defect fraud case earlier. One of the ancillary cases in the course of this HOA scam is manipulation of the arbitration/ mediation process by the attorneys with the board. If they were already misusing the system criminally, if you put a cap on it, there would be less reason for that.

One last thing regarding Assemblyman Carrillo. I wish all HOAs were just like his, then we would not be this late tonight. Thank you.

**Chairwoman Cohen:**

Thank you, sir. Do we have any questions? Seeing none, let us go to the next person in Las Vegas.

**Rana Goodman, Member, Nevada Homeowner Alliance, Henderson, Nevada:**

First, I would like to direct something to Mr. Gordon from Olympia Management. He asked what the problem is. The problem is arbitration. He asked, "Why go to the Ombudsman?" We go to the Ombudsman because we pay for the Ombudsman. That is where we are supposed to go.

**Chairwoman Cohen:**

I am going to have to interrupt you. Please just stick to the bill. There is a chance at the end for public comment if there is something that you want to say. Right now, we are discussing the bill.

**Rana Goodman:**

I am addressing the bill now. The bill is on arbitration. I am 100 percent for this bill. If I were up in Carson City right now, I would hug Assemblyman Ohrenschall for this bill; it has been a long time coming.

We pay for the ombudsman per rooftop. That is where we are supposed to go; they are our first line of defense. I am hoping that it has not escaped any of your attention that the people speaking against this bill are all of the people who our homeowners' associations pay. They are not the homeowners in the association, those are the people speaking for the bill. It is the attorneys and the management companies that the homeowners' association pays that earn money off our backs that are speaking against these bills, each and every one of them. Thank you.

**Robin Huhn, Member, Nevada Homeowner Alliance, Henderson, Nevada:**

I have a response to the three attorneys who were up here.

**Chairwoman Cohen:**

Those attorneys were not speaking on this bill. We have not gotten to opposition on this bill yet, so if you could keep your responses in support of this bill, please.

**Robin Huhn:**

Okay. I do support the bill. One of the things I do want to say is my solution is that we get rid of HOAs altogether.

**Chairwoman Cohen:**

I am sorry I am going to have to cut you off. The bill is not about getting rid of HOAs. As I have said, we do have an opportunity for public comment. Please stick to the bill.

**Robin Huhn:**

I want to congratulate Assemblyman Ohrenschall for what he did. He did express what the problem was. That was very good. I am on the HOA board and the attorney for the board has convinced the board members that they cannot make decisions without the attorney being involved.

One thing that I do like about this bill is that the fees are very reasonable. Another thing is that it allows a homeowner to go to court. *Nevada Revised Statutes* says the homeowner can go to small claims, but even though that is the law, once the homeowner goes to small claims court, they are sent back to the Ombudsman's Office. I also agree regarding the ADR. It would be nice not to have that at all, it costs the homeowner a lot of money and the arbitrator

makes lots of money on that. I have known many cases where that has been dragged out. Assemblyman Carrillo, I would encourage you to attend a CCICCH meeting and hear the administrative problems relating to the arbitration program. Thank you.

**Chairwoman Cohen:**

Do we have any questions? I see none. We will go to the next person in support in Las Vegas.

**Paul Murad, Private Citizen, Las Vegas, Nevada:**

As a disclosure, I served as a commissioner on Nevada's Real Estate Commission, but I am not here in that capacity tonight. I am here in the capacity of a real estate professional for the last ten years in Las Vegas. I have my own brokerage company representing hundreds of homeowners in southern Nevada. My comments are based on my personal experiences through the arbitration process and through the ADR process. I am not sure how many members of the Committee have gone through that process. Has anyone personally gone through the ADR process?

**Chairwoman Cohen:**

Please continue with your testimony. We are not going to poll the Committee.

**Paul Murad:**

I have gone through that process and it took me two months. I have a real estate education and take continuing education on an ongoing basis, and it took me two months of reading through it, going to the Real Estate Division's office, calling some of the staff, and finding out exactly how the process works, until I was finally able to complete the package. In addition, to obtain the information to go through the ADR process was very expensive because you had to submit copies of CC&Rs, and the only way many of the HOAs provide the CC&Rs is they sell them to you, even though as a homeowner you are entitled to a paid document's additional format at no charge. They do not like to disclose this to you, and they make every possible effort to make sure you pay for those documents. Therefore, for the average homeowner, this process is going to cost hundreds of dollars and take a long period of time. Again, as a real estate professional, it took me an extremely long time, a couple of months, to be able to complete the ADR application.

When I went to the ADR process, because I had a bad experience with arbitrators, I had limited choices. I petitioned to have other choices, and I was not allowed that. The Real Estate Division could have other choices of arbitrators. We had three cases at the same time, and all were assigned to the same arbitrator. Again, that did not seem fair, so I asked for three different

arbitrators because I did not want to have one arbitrator deciding in exactly the same way in three separate cases. That was not allowed either. Then the arbitrator announced he was hearing the three cases separately, and decided he was going to multitask and hear three cases at exactly the same time, and charge not one fee for his time, but actually charge triple the fee. He tripled his earnings for exactly the same time he was hearing three cases while I was there with my attorney. I wanted to do this by myself as I consider myself a savvy real estate professional, but the process was so overwhelming I had to hire an attorney who came with me to the arbitration. As to the notion by Assemblyman Martin that the ADR process is wonderful, given my personal experience, that process is broken and is not something that an average homeowner with average resources is able to afford. Those are my comments on the ADR process. This mediation program is an answer to those problems. We must have this program as soon as possible and, hopefully, once this bill passes, I am hoping the sponsor will have it be effective on July 1, and not October 1, or January 1, as some of the members of the HOA management companies might want to encourage.

To address Assemblyman Carrillo, I was very curious about your status as the Assemblyman for the happiest HOAs in the world. I got the map of your district. You said that you never met an unhappy homeowner. A gentleman who sat in my chair here asked to live in your district because of these phenomena. I tell you, you have problems in your district. I have owned two properties in your district. Are you familiar with 5710 East Tropicana, Canyon Willows East?

**Assemblyman Carrillo:**

Yes, I am.

**Paul Murad:**

Are you also familiar with Nevada Ranch right next to it? Some of the worst HOA experiences I have had as a real estate professional were with Nevada Ranch. I have attended the board meetings of both of those HOAs in order to help a homeowner I had worked with on negotiating there. There are exorbitant collection fees, which were disallowed by statute multiple times.

With regard to Nevada Ranch, an HOA management company conducted the board meetings in their offices, not a neutral ground by the way, when I was presenting our case and asking the board to consider reducing the fees. Let us say the fees were \$1,800; they wanted us to pay \$5,000 or \$6,000. There is a subassociation and a master association so they double up and gain on every homeowner, and they charge the same fees twice: transfer fee twice, account set up fee twice, document resale packages twice. This is an extreme burden

on the homeowners in that association. I would encourage you to look at that. Basically, my comment to you, as far as the wonderful HOAs in your district, is that particular HOA management company actually, when I was presenting my case to the board and was still talking to them, told me to basically shut up, stop, and if I did not stop and leave, they were going to call the police on me. That is what is happening in your district. It is the same thing at 5710 East Tropicana. If I had more time to look at this and talk with fellow associates in the real estate business, I could bring you many more. I encourage you to change the comments that you made about never hearing any HOA problems in your district at all.

**Assemblyman Carrillo:**

Feel free to give them my phone number and address. I will be more than happy to talk with them because these are people who do not realize they have an Assemblyman who represents them, and represents their issues that are concerns. Feel free to give them my phone number; I would love to hear from them.

**Paul Murad:**

You will hear from me because I, as well as my associates, have owned homes in this neighborhood. I will give you names and forward some of the correspondence, and send you some of the egregious bills that far exceed what is allowed by statute. You will see that, and maybe there is something you can do about that particular association. Nevada Ranch has several hundred homes and I want to share with you one of their little tricks.

**Chairwoman Cohen:**

We want everyone to have a chance to discuss the bill itself and not talk about specific homeowner associations, but feel free to contact Mr. Carrillo at his office, and I am sure he will be happy to discuss this with you or any of his other constituents.

**Paul Murad:**

Again, I support this bill based on my personal experiences and experiences of hundreds of my clients. This bill is something that homeowners need. It is necessary to be implemented as soon as possible.

**John Radocha, Private Citizen, Las Vegas, Nevada:**

I am on a fixed income, and if you have ever visited an orchard and you see that one nice apple you want, you pick it. I feel that way. I feel that I am ripe for these arbitrators and lawyers. If you have ever stood outside or gone in a line at an Albertsons, or Vons, or Smith's, you talk to people and ask, "What do you



think about your HOA?" I have conducted a little study, 80 percent of them do not like them.

**Chairwoman Cohen:**

I am sorry, sir, we need to concentrate on the bill. Again, there will be time for public comment for anyone who wants to add other issues after the bills are heard.

**John Radocha:**

Let us go to arbitration. Nevada's Real Estate Division put out a document that said rulings were 85 percent in favor of associations and 15 percent against associations. Let me ask, who in their right mind would gamble on odds like that except the man who has the finances to do it? When you are on a fixed income, and they badger and bully you, you are not going to do it because you cannot. My suggestion is to ask Ms. Anderson how her pilot program is working. I think that should be investigated. Then they say that the Real Estate Division is understaffed and all that. The Legislature could say, "Give them a dollar a door more." Then we will get the problems solved a lot quicker or sooner. One question I have is the motive or the lures of the arbitrator. My answer is it is always about the money. Thank you.

**Rutt Premsrirut, Private Citizen, Las Vegas, Nevada:**

I support this bill. I think it provides common sense solutions to the problem. We all know the system is broken.

I have numerous litigations, as many of you may know. I sued for \$2,000 in one of them. The HOA knew they were going to lose, but the HOA attorney decided to milk it so he could earn his fees. I won, and they ended up paying my attorney's fees of \$15,000, paid the HOA lawyer \$15,000, and me back \$2,000. In addition to the arbitration fees, this amounted to about \$35,000 on a \$2,000 dispute. Ironically, this is an HOA that my family invested in. We actually created it, and now it is a monster.

I support the bill and many of these arguments are for \$500 or \$1,000, very small amounts, but the HOA attorneys will not settle. They want to fight because they want to milk HOAs for \$10,000, \$20,000, \$30,000 against a dispute of a \$2,000 argument.

**Delores Bornbach, Private Citizen, Las Vegas, Nevada:**

I support the bill.

**Deane Downing-Delacruz, Private Citizen, Las Vegas, Nevada:**

I strongly support A.B. 370. I want to add to Mr. McAllester's statement. We do need to eliminate deep pockets. These are our homes. We do not live here to have disputes to worry about; we live here because we want to be safe. I am so sad that southern Nevada is getting a reputation for being the worst place to live with homeowners' associations. I find myself having to defend why I live in a homeowners' association. It is rather distressing. Thank you.

**Tim Stebbins, Private Citizen, Henderson, Nevada:**

I am very much in favor of A.B. 370. In fact, I wish to thank Assemblyman Ohrenschall for presenting this bill. When it comes to ADR, it is my understanding that NRS Chapter 38 was put in to alleviate pressure and float on the courts, and they had many good intentions. I think it was probably a wise thing to happen. However, in practice, the ADR process has been distorted and corrupted by certain attorneys and abusive boards. They force the homeowner into nonbinding arbitration and they have turned NRS Chapter 38 into a weapon intended to inflict harm and financial pain on a homeowner who dares to challenge the board. That is why the homeowners are afraid to do this process. They are even afraid to take advantage of their own due process rights because of the horrible threats that are there. It is important to recognize it and, as was said before, most homeowners have limited financial resources. Boards have virtually boundless financial resources to fight. That needs to be addressed. How can we make this more fair? I think this bill goes a long way and is a good first step to doing that. Thank you very much.

**Robert Frank, Private Citizen, Henderson, Nevada:**

For the record, I am mentioning the fact I have been a board of directors member in the second largest association in the state, and I am currently a member of the CCICCH, but I am representing my own interest tonight. The Commission has not taken a position on this bill at this point.

I would like to make things simple and support the bill and support all of the comments up until now. This is an amazing situation for me where every comment in favor of the bill seemed to be right on target with the issue: that this is a war going on between the homeowners, the attorneys, and the management companies. I will bring your attention to a book I am showing you right now. It is called *Neighbors at War*, by Ward Lucas. This document, by an award-winning journalist from Denver, is what is going on in Nevada in spades right now.

**Chairwoman Cohen:**

Sir, I am sorry, but I am going to have to ask you to keep to the bill.

**Robert Frank:**

This ADR process is the main cause of this war that is going on. This bill will help cut through the stuff that is really causing the homeowners in this state most of the problems. They are frightened to death from trying to take on the lawyers and the management companies, and that is why you do not hear nearly as many complaints as you might. If you walk the neighborhoods as I have, and listen to people, you will know that this is a very significant member backlash. I do not have any idea whether it is 80 percent, 90 percent, 10 percent, or 15 percent, because those surveys are never done on homeowners' associations to find out how much disconnect there is. This ADR process is at the heart of all the complaints, and I encourage you to pass this bill as soon as possible, and I agree with the person who said, "Please put it in place by July, if at all possible." Thank you.

**Assemblyman Duncan:**

Good evening, Colonel Frank. I have not read the book that you referenced. Has this proposed legislation been tried or mirrored in any other states? Are other states not following the ADR model, or are they doing mediation?

**Robert Frank:**

I think it is fair to say that the ADR process is frequently done throughout the states. In NRS Chapter 116, I am told by the administrator and others involved in what is going on throughout the country, we may be leading the country in certain areas in terms of centralized control through NRS Chapter 116, more than other states. California and Florida have been doing this for a long time. There are many problems in North Carolina. To be honest with you, this particular bill may have more benefit to Nevada citizens living in HOAs than if something similar was tried in other states. I have a rare opportunity here. The simple answer to your question is, I do not know, and I am not sure anybody else knows.

**Robert Robey, Member, Nevada Homeowner Alliance, Las Vegas, Nevada:**

I am Vice Chairman of the Nevada Homeowner Alliance and past board member of the largest association in Las Vegas, Sun City Summerlin. I am a retired teacher. I do not have the money for ADR. I have a website called <[www.hoacorruption.com](http://www.hoacorruption.com)>. People find it, they call me, and I refer them to Mr. Joe. He then advises them of the perils of ADR. We have many of the reports from the Real Estate Division on that website, and we do refer people to that. The Real Estate Division itself has many reports on their website. I would like to add, Mr. Friedrich did mention that the Nevada Supreme Court mediation or arbitration program has a \$1,000 cap. This would be a \$300 cap. We need it. I thank you for your time. I will return for closing comments.

**Chairwoman Cohen:**

Is there anyone else in Las Vegas wishing to testify in support of A.B. 370? I see no one. Is there anyone in opposition in Carson City? Please come forward.

**Garrett D. Gordon, representing Olympia Companies; and Southern Highlands Community Association:**

To clarify the record, I have never attended a mediation, arbitration, or NRS Chapter 116 dispute. I handle government affairs and transactions. This legislation will not personally benefit me whatsoever. The bill has two parts. One is the repeal of the arbitration process. Frankly, maybe that is the right thing to do, we just do not know. Is it going to be more cost effective? Is it going to be timelier? Yes, maybe. I went back and looked at the legislative history, and I certainly know it is a late hour and I will not read it as I had planned, but I encourage you to look at it. It is interesting how this legislation came about. It was actually introduced by Senator Schneider who was very pro-homeowner throughout his tenure here in this building. It was done through representatives of the Community Associations Institute and other stakeholders to come up with a process that worked. My suggestion is maybe we try to do the same here. I have certainly worked with Mr. Ohrenschall and his HOA bills in the past. At least we could look at the number of claims, the number of violations, and what other states are doing, as Assemblyman Duncan mentioned. Florida has a number of HOAs in their state. Maybe they handle ADRs differently than we do, and it will work. Many times existing laws seem to be adequate, but if there are some loopholes or bumps in the road we need to fix, I am certainly willing to look at it. I would suggest it is time to take a comprehensive look at this process with stakeholders from every industry to see, do we need to fix the system and if we do, how do we do it. Certainly, I will work with the sponsor as I always have on his HOA legislation, and see if we can provide any meaningful input.

The second piece is on the last page of the bill, section 18. As the sponsor mentioned, that language is in response to a Nevada Supreme Court case. The cite was given to you [*State, Dept. of Business and Industry v. Nevada Association Services, Inc.*, 128 Nev. Adv. Op. 34, 294 P.3d. 1223 (2012)]. We have to strongly object to section 18, and say that the Nevada Supreme Court has ruled on this issue and we think that decision should be upheld. What the case said was, "the provisions of Chapter 116 must and should be administered by the Real Estate Division." That is from NRS Chapter 116. That, in fact, is the law, and we think the Real Estate Division should continue to monitor, enforce, and have jurisdiction over NRS Chapter 116. And, in fact, as the Nevada Supreme Court case stated very clearly, the Financial Institutions Division, which does not handle NRS Chapter 116 issues on a day-to-day basis,

should not be granted that jurisdiction. I know that case has been cited to you and we have to sit down with the sponsor and work on those issues as well. Thank you.

**Assemblyman Carrillo:**

Are you in real estate investing at all?

**Garrett Gordon:**

Unfortunately, I went to law school and incurred law school debt and I have not had the benefit of being a real estate investor.

**Assemblyman Carrillo:**

It seems like this bill is pushing towards real estate investments. I know there are many homeowners feeling the perils of this, but many investors are feeling the pinch as well.

**Garrett Gordon:**

That is a very good point. I think many different people, businesses, and professions could be impacted by this legislation. Thus, I would suggest a stakeholder group get together, if not in the next couple of weeks or months before session, at least in the interim. We need to get real estate investors, the banking industry, homeowners, management companies, board members, members of the Legislature, and arbitrators together. Let us hear from the arbitrators and see what the average attorney's fees are. Are these anomalies being presented to you today, or is that the normal course of what is going on out there? In response to your question, Mr. Carrillo, I do think there are many parties involved that this will affect and I think we should all come together and see if this is the right solution. If it is, great. If not, maybe we can improve it some other way. Thank you.

**Jennifer J. DiMarzio, representing Associa:**

Associa is North America's largest community association management firm, including three companies serving the needs of hundreds of communities here in Nevada.

I would like you to know we do have a lot of respect for the bill's sponsor, Assemblyman Ohrenschall. We do welcome some of the ideas proposed by this bill, including the requirement that mediators receive training in governance of community associations. However, we must oppose the bill as written for the reasons included in our written testimony ([Exhibit H](#)) which, for the sake of time, I will not go into at this point. I will let the written record stand. I would like to note that the written testimony does reflect a misunderstanding on Associa's part regarding the definition of commissioner in section 18. We now

understand that refers to the Commissioner of Financial Institutions under NRS Chapter 649. However, this does not alleviate, but simply changes, our areas of concern as noted by Mr. Gordon.

I would like to end with Associa admits that, while there are some good suggestions in this bill, we see this as the beginning of the conversation, and it is a conversation in which we would like to participate. We support the suggestions of Mr. Gordon for some kind of working group, and we would like to submit that because Associa does operate in states all across the country as well as Canada and Mexico, we could bring a lot of experience to the table as to what other states are doing that might be helpful to the working group. We would like you to know the intention of this bill to streamline processes and increase transparency and resident access to resolution of disputes is very welcome, and we want to ensure that each proposed change is thoroughly vetted to create solid policy that will truly benefit all of the residents of these communities. Thank you.

**Terry Care, representing Terra West Management Services, Las Vegas, Nevada:**  
I want to echo the comments made by the two preceding witnesses, especially as to section 18. We have the same concerns.

I appreciate what the bill's sponsor is trying to do, and maybe I can continue to work with him on something here. My client did not say anything about suggesting an interim study, but I would be glad to talk to him about it. For the sake of Mr. Carrillo, I am not a real estate investor, I own one house, which my wife and I bought years ago, and it is still worth less than what we paid for it. You do not want me to be an investor. I do not practice in the area of anything in the scope of NRS Chapter 38 or NRS Chapter 116, and I have never been an arbitrator for any matters.

One thing I want to point out, this bill would do away with nonbinding arbitration, which I think would be a mistake. As you know, Madam Chairwoman, in the Eighth Judicial District, Clark County, and Second Judicial District, Washoe County, we have a court annexed arbitration program where some cases, depending on the nature of the causes of action and for damages at stake, are automatically referred to a nonbinding arbitration program. The benefit of that is a party goes through nonbinding arbitration and then, whether that party prevails but does not get as much money as she or he had hoped, or they lose, now they have to decide if they want to carry this any further by going to a trial de novo. Or now maybe to use this, now that they know what one arbitrator has thought, it may give them an incentive to try to get this matter resolved. That is something we have not discussed. I just point that

out. We need to keep nonbinding arbitration as an option. Thank you, Madam Chairwoman.

**Assemblyman Duncan:**

Can you respond to the argument that arbitration and the arbitration process is basically being used as a weapon against homeowners in that they are worried if they do enter into the arbitration process, it takes months because the lawyers are nitpicking and drawing things out. How do you respond to the argument that the arbitration process is broken? What is your experience? Do these homeowner associations often use other means, or do they jump to arbitration like we are hearing in all of this testimony?

**Terry Care:**

I do not practice in this area and I am not an arbitrator; however, I have been practicing law for more than 20 years and I have represented parties in dozens of arbitrations unrelated to NRS Chapter 116 and NRS Chapter 38. I have had a professional relationship with arbitrators going in, and I have still lost. I have had arbitrators that I knew, and based on the merits, my party prevailed. It is difficult for me, Mr. Duncan, to address that specifically as to NRS Chapter 116 and NRS Chapter 38. I have never been through the experience.

I will point out, even though Mr. Friedrich gave us an exhibit with all these cases, the amount of attorney fees, and the arbitration award, there had to be a loser for every one of these cases. To my knowledge, none of these people appeared here tonight. I heard the same testimony you did. I cannot directly respond. I am sorry.

**Assemblyman Duncan:**

Do you have any idea what other states are doing? I know we talked about doing a study. I am trying to focus on the problem and figure out if there is a solution. Are we talking about a small number of cases, or is this a huge problem? Certainly, the advocates who come and are very vocal about this seem to be asserting that there is a real problem, and this is broken. I am trying to grasp if there is a problem or not.

**Terry Care:**

I do not want to sound avuncular here, but I have been in this building a long time. We have had HOA legislation virtually every session. You would hear about problems in Nevada. I remember when Senator Schneider carried many of these bills. In some cases, he was able to generate national interest—I think *Time* magazine and *Newsweek*, and at one point ABC. You have HOAs exactly where you think you would find them. You have a large number of seniors and retirees in the Sunbelt area of Arizona, Florida, and Nevada. I do not think you

would find this in Iowa. I do not know. Sure, I mentioned that my client represents 161 associations that include 53,000 units. That is a large number, but that is only part of what we have in Nevada. You are going to hear stories during the course of this legislative session and subsequent legislative sessions, I am sure, that are going to be repetitive, but it does not mean that there is not something to them. I hope you can get your arms around it. We always tried to, and we came up with what has been on the books. In the 2009 Session we had what we thought were the definitive two bills that addressed every issue that would ever come up. Of course, as you were saying, they do not go away.

**Chairwoman Cohen:**

Thank you. Are there any other questions? Is there anyone else in opposition in Carson City? I see no one. Is there anyone in opposition in Las Vegas?

**Bruce Flammey, representing the Common-Interest Communities Subcommittee, Real Property Section, State Bar of Nevada:**

I am briefly going to change the discussion; it is on the same bill. I want to talk about section 18. I am not going to regale you with counter-stories concerning arbitrations and mediations. As Mr. Gordon pointed out earlier, the Supreme Court of Nevada has ruled on this issue. I want to get the case in context.

It was stated earlier during the introduction that the Supreme Court ruled the Financial Institutions Division was not allowed to regulate collection companies. That is not accurate. The Supreme Court told them, Mr. Burns in particular, they did not have the authority to regulate within NRS Chapter 116 on their own. In other words, they do not have the authority to write a regulation interpreting NRS Chapter 116, and then seek to enforce it. In effect, they stopped a power grab. What you see in section 18 is coming in the back door what was denied in the front door. The balance of the opinion clearly says that the CCICCH will craft the regulations interpreting NRS Chapter 116, and then the Financial Institutions Division people will go ahead and regulate those people who are seeking to enforce collections. That is clear, and it is the law of the state right now. There is no reason why the Financial Institutions Division should wade into NRS Chapter 116.

As Mr. Care pointed out earlier, these legislative sessions have been dealing with this issue since approximately 1993, which was the first year after the law went into effect. To expect, at this late date, that the Financial Institutions Division is going to suddenly come in and solve the riddle is not realistic. The experts that are on the CCICCH, two of whom are in this area, it should fall to them with the other commission members to draft the appropriate regulations. Once that is done, the Financial Institutions Division can go ahead and regulate all of the collection companies they would like. This power grab should be



stopped; there is no purpose for it. Now I will pass the microphone to my other counsel.

**Eleissa C. Lavelle, representing the Common-Interest Communities Subcommittee, Real Property Section, State Bar of Nevada:**

I am representing the State Bar of Nevada. I did submit written testimony ([Exhibit I](#)), but just for the purposes of this evening's testimony, I want to make sure the Committee is aware of the fact. I have been an attorney in Nevada since 1977. I have been involved in representing associations, individual homeowners, developers, and lenders. I have been on every single side of this issue since 1988. I have been an arbitrator and a mediator with the Real Estate Division for more than five years. I am currently a full-time neutral with Judicial Arbitration and Mediation Services, Inc. All I do is mediate and arbitrate.

I participated in drafting and lobbying the original NRS 38.300, so I am familiar with the legislative history of this, the genesis of it, and what it was designed to do. For clarification purposes, this statute was drafted at a point prior to the Ombudsman's Office, investigation process, and the intervention process. Since this statute was created, there have been layers, upon layers, upon layers of appropriate and necessary kinds of investigative tools. But when this was created, none of that existed. I think it has been successful, but it can always be helped.

I agree with Mr. Ohrenschall. One of those things that can help it is a mediation program that is appropriate and necessary. It is the first line in homeowners' association high conflict disputes to resolve these kinds of issues. A piece of legislation proposed in the last legislative session, Senate Bill No. 254 of the 76th Session, would have done that. I support that part of it, just the fact that these cases should be going to mediation initially.

The problem, however, is the way this bill operates. I believe the comments were made earlier that three hours is almost a guarantee of not being able to complete this process. I conducted a mediation through the Real Estate Division process last week. It took five hours to mediate successfully. There were approximately three hours of study time. I had briefs from each side that were probably three inches thick. To expect a mediator to handle all of that in three hours for a fee of \$300, in my view, is unreasonable. I have a master of law (LLM) in dispute resolution from Strauss Institute at Pepperdine University. I am pleased and proud of that, and I think it helps me to understand the process and deliver good service. I can tell you from my own experience that to try to mediate these cases in three hours—I would love to try and many times it can be done—but frequently it is just impossible. I think to impose that kind of cap will create problems.

There seems to be a fundamental disconnect regarding section 6, subsection 1, lines 43 through 45 with the suggested findings of fact and conclusions of law. The mediation process is a facilitated negotiation. It is to be confidential. It is to help the parties reach an agreement. Mediators do not do findings of fact, and if findings of fact are required, it destroys the process. People are intended to speak frankly to mediators. That is how cases get resolved. If they are afraid of having findings of fact going through an investigative body, as is suggested here, it is going to squelch any possibility of resolution, in my opinion.

Finally, with respect to the training, I have also been a volunteer mediator at the Neighborhood Justice Center in Las Vegas. I can tell you even their training involves more than four hours per mediator, and those mediators run two at a time. To suppose that four hours of mediation training in this process is going to be sufficient with the complex laws, the complex CC&Rs, and the high emotion involved is unrealistic in my opinion. It is a good start, but I do not believe we are there yet.

I have had a lot of training in this. I am committed to the mediation process. I think that arbitration is an excellent option. We had discussions earlier with some of the people in the audience, Mr. Joe and others, who have testified in favor of the bill, that perhaps more work needs to be done in terms of discussing possible resolutions. I submit that arbitrators and mediators, in this program and out of the program, are stakeholders and have a lot to offer. By discussing these issues with a number of stakeholders, including many who have spoken here this evening, perhaps we can craft a process that will more properly, appropriately, and economically address the issues of everyone. Thank you.

**Avece Higbee, representing the Common-Interest Communities Subcommittee,  
Real Property Section, State Bar of Nevada:**

Simply getting rid of the ADR process would not work for a couple of reasons. I do not think it has any foresight as to where that would leave us. Clearly, not every case is going to be mediated. Some would successfully be resolved through mediation, but you still have those disputes that are going to go forward. If they go forward to court, it will not be less expensive, it will be more expensive. It will not be any less time-consuming, it will be more time-consuming. This is not all about attorneys making money, because if it were, the attorneys are going to make more money going to court than they are through an ADR process. This is about trying to have homeowners and the associations and their boards get along and live together in the neighborhood. There are going to be disputes, there is going to be some kind of dispute process to resolve those issues, and there are going to be attorneys involved

along the way. Getting rid of ADR is not going to stop that. I agree we need to look at the process, and there are other solutions that could be had, but striking it and putting in a program that has some problems is not going to be sufficient. Thank you.

**Chairwoman Cohen:**

Is there anyone else to testify in southern Nevada? I see no one. We will move to neutral in Carson City. I see no one. We will move to neutral in Las Vegas. I see no one. I invite Mr. Ohrenschall back.

**Assemblyman Ohrenschall:**

I know the hour is late, and I appreciate the generosity of time you have given to this bill. I would like to clarify the question Assemblyman Martin posed about capping the arbitrator's fees. I believe Mr. Friedrich pointed out Supreme Court Rule Governing Alternative Dispute Resolution No. 24 which, in those cases, does cap an arbitrator's fees at \$1,000. As I understand it, that is not applicable to these common-interest disputes. That is an issue; there is no cap for arbitrator's fees. That is one reason Mr. Joe and I and the others I was working with felt that Assembly Bill 370 provided a quick and economical ADR process. I do not believe we are abandoning the ADR process. We are just picking the more affordable, quick, economical process over the more costly and lengthy process.

Concerning the comments made on the last section of the bill, I certainly have no interest in any alleged power grab by the Financial Institutions Division. My only concern was that these collection agencies would be regulated.

I appreciate the Committee's indulgence. I am happy to work with all the parties who are interested to see if there is any common ground. Thank you.

**Chairwoman Cohen:**

Thank you, Mr. Ohrenschall.

[Exhibits not mentioned previously include ([Exhibit J](#)) and ([Exhibit K](#)).]

We will now close the hearing on A.B. 370 and open the hearing on Assembly Bill 397 and invite Assemblyman Munford to the table.

As I mentioned, I would appreciate it if you would confine your testimony tonight to the sections dealing with breaches of the conditions, covenants, and restrictions (CC&R) and violations of NRS Chapter 116 and reserve testimony for other parts of this bill for a later hearing. Mr. Munford, please go ahead.

**Assembly Bill 397: Revises provisions relating to real property. (BDR 10-511)**

**Assemblyman Harvey J. Munford, Clark County Assembly District No. 6:**

The bill I am presenting today is in the memory of one of my constituents, Pat Grimes. Pat Grimes was a committed and strong advocate of homeowners' rights. Over a long period of time, she had many issues and challenges with homeowners' association (HOA) boards. She was always calling me to come to her assistance, support, and rescue. On several occasions, she also called Jonathan Friedrich who is sitting next to me. I am presenting this bill in her memory and honor because she passed away about two months ago.

I am here today to present Assembly Bill 397 to the Assembly Subcommittee on Judiciary. This bill is similar to legislation I have introduced in the past sessions to address complaints of people living in homeowners' associations. I have continued to sponsor this legislation because I continue to hear some of the complaints and grievances of some of the desperate homeowners who have come to my house in such pain, misery, and despair. I know, as a representative and as an elected official, I am here to present their problems. I think that is my official duty. I think the Committee also feels that you are here for the benefit of your constituents and those that vote for you.

As you know, in my community today, especially in southern Nevada, it is nearly impossible to buy a new home that is not an HOA. In today's economy, the homeowner who is unhappy with an HOA cannot just sell his or her home and move on. I believe Nevada laws on HOAs should recognize homeowners' rights to a peaceful and enjoyable experience on their property. This bill, including some amendments I am proposing today, strives for fairness, justice, and equality in the due process for these homeowners.

Jonathan Friedrich has worked with me on this bill for many months. I am going to let him go over the bill and details with you. Personally, I think it is an umbrella of many of the bills that preceded me because it touches on and covers everything that might be associated with HOAs, and some of the many problems that homeowners experience. I will pass it over to Mr. Friedrich at this time.

**Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:**

For the record, I am disclosing that I am a commissioner on the Commission for Common-Interest Communities and Condominium Hotels appointed by the Governor.

Assembly Bill 397 as was introduced in this session was not the intended bill. The Nevada Homeowner Alliance worked for several months on a similar, but

different bill with Assemblyman Munford. An amendment was submitted to you yesterday eliminating many sections of the current bill ([Exhibit L](#)). It adds new language and it is five pages long. You should have received a packet similar to this one ([Exhibit E](#)) along with exhibits to substantiate some of the problems.

**Chairwoman Cohen:**

Mr. Friedrich, there is a question.

**Assemblyman Carrillo:**

I know you are going to go through this. For a bill that was well thought out, there sure seems to be many amendments. Are more amendments going to follow after we finalize this bill? It is a lot of reading. I went through this during the last session.

**Jonathan Friedrich:**

The bill that came out of the Legislative Counsel Bureau (LCB), A.B. 397, was identical to the bill that was introduced as Assembly Bill No. 448 of the 76th Session. Assemblyman Munford did not receive it until Monday afternoon a few hours before the deadline. When it was issued, it was not in the normal format with each line numbered; it was in a bill draft request format. We did not receive it until Wednesday and a number of us, including the Nevada Homeowner Alliance, then had the task of trying to put what was originally requested into the bill Assemblyman Munford was given back at the end of August. It was the equivalent of putting a round peg in a square hole. We went through the current A.B. 397 and tried to amend it to include what had originally been requested in September. We did it in such a way as to make it easy for everybody to follow. It starts with a page number, a section number, and a line number.

**Chairwoman Cohen:**

Mr. Friedrich, I want to make sure, I do not think it was your intent to disparage LCB, but I want to put it on the record that they work extremely hard and get out hundreds of bills within a matter of days to meet all of the legislative deadlines.

**Jonathan Friedrich:**

That is what I was told. It was pretty frantic and chaotic from what I heard.

**Chairwoman Cohen:**

It always is, but they work extremely hard to get all of those bills out, work all sorts of late hours and weekends, and do not see their families very much.

**Jonathan Friedrich:**

The same is true for the Alliance. The entire weekend was spent going through this and getting the exhibits together to substantiate what the problems were. The exhibits do not address every single item in here, but the major ones are included. Would you like me to go through the bill now?

**Chairwoman Cohen:**

Yes, but only with respect to the alternative dispute resolution (ADR) aspects and the mediation and arbitration aspects.

**Jonathan Friedrich:**

That is going to be difficult because it was not prepared in that format.

**Chairwoman Cohen:**

I can direct you to the sections.

**Jonathan Friedrich:**

Please do.

**Chairwoman Cohen:**

I believe we should start at section 29.

**Jonathan Friedrich:**

Obviously, you read it; thank you, Madam Chairwoman. In our exhibit ([Exhibit L](#)), you will find some of the same documents that were in Mr. Ohrenschall's bill along with Rules Governing Alternative Dispute Resolution adopted by the Supreme Court of Nevada.

I am now referring to the bill as written. In section 34, subsection 2, on lines 7 through 30, the bill addresses changes to the arbitration statute. It says that you may go to arbitration or to court. It addresses that on line 28, and on line 18. Beginning on line 18, it says, "the unit's owner or tenant may submit the civil action to mediation or arbitration pursuant to the provisions of NRS 38.300 to 38.360 inclusive, or commence the civil action in a court of competent jurisdiction without complying with the provisions of NRS 38.300 to 38.360 inclusive." It duplicates the language on lines 27 to 28 where it says, "to mediation or arbitration . . . or commence the civil action in a court of competent jurisdiction . . . ."

In section 35, subsection 1, page 59, lines 3-6, it says, "If a party commences a civil action based upon any claim which was the subject of mediation, the findings of the mediator are not admissible in that action." If you go down the same page to section 35, subsection 4, it calls for, "The fees for a mediator or

an arbitrator selected or appointed pursuant to this section must not exceed . . ." and we struck \$750 and put in \$1,000, "except as otherwise provided in subsection 3, each party to the mediation or arbitration must pay an equal percentage of the fees for the mediator or arbitrator."

There is another request to add in section 35, subsection 6, at the end of line 15 that the Real Estate Division must administer the program and facilitate it. If you go to NRS 38.360, it says that the Division must administer the program. There is a letter addressed to me that says they only facilitate the process. In that particular case, there was an issue of a biased arbitrator. When it was brought to the Division's attention, they would not remove the arbitrator, and they issued this letter instead.

I would also like to address the architectural review committee fees that are charged by some homeowners' associations. These people are all volunteers on their board. In this particular exhibit ([Exhibit E](#)) on page 19 of 57, there is a document from Olympia Management Services where they are charging a homeowner \$50. Siena charges \$25. Montreux here in the north charges \$1,000. We would like to see that go away.

**Chairwoman Cohen:**

I am sorry, Mr. Friedrich, is that related to ADR?

**Jonathan Friedrich:**

It could be because if somebody objects to it, the fight is on, and off to arbitration we go.

**Chairwoman Cohen:**

Well, under that reasoning, pretty much anything could be related to ADRs.

**Jonathan Friedrich:**

Exactly.

**Chairwoman Cohen:**

Well, let us try to stay with the things that are directly related to ADR, please.

**Jonathan Friedrich:**

The original bill did not zero in on ADR. I know the hour is late and we have all been here since early this morning, but this bill addresses a lot of the issues and the problems that were mentioned earlier. For instance, with transfer fees we are asking for a cap. If you look on pages 20 through 26 ([Exhibit E](#)), these are closing statements of the U.S. Department of Housing and Urban Development. There is a \$300 cap. On one set, pages 22 and 23, \$415 is marked as HOA

Transfer Fee. Then another is \$600, pages 24 and 25. On the last page, there are two of them—a transfer fee of \$750 and an FC transfer fee of another \$750. These do not go to the association, they go to the management company. These are excessive fees and we would like to see a cap put on them.

Let us return to arbitration. With reference to the Intervention Affidavit that is on page 9 of 57 ([Exhibit E](#)), it says that the governing documents are subject to the Office of the Ombudsman to be investigated. Again, the Ombudsman is sending those people with these complaints off to ADR. Many of them have no idea what is involved. If they go down the road and the arbitrator finds against them and awards the fees that you have seen before, and the homeowner does not pay for them, they can now put a lien on the house, and they can foreclose. It is just that ugly.

The Division responded to a question from Assemblywoman Spiegel where the Division is asking for subpoena power. Currently they do not have it. The Commission only issues it. It says that the Division finds this to be a conflict of interest given the separation of powers between the Division and the Commission. The administrator issuing subpoenas relating to investigations avoids this conflict. The Real Estate Division has asked for this.

Assemblyman Munford talked about Pat Grimes. She came to me at his request before I was a commissioner. I explained to her that I am not an attorney; all I could do was give her guidance where to go. The board took retaliation measures against her. They poisoned her dog, and they slashed four tires on her vehicle. She installed a surveillance camera and they ripped it down. These are the issues.

There is another request dealing with fines. That is on page 27 of 57 ([Exhibit E](#)) titled Summary of Recent Homeowner Complaints. As far as collection costs, on page 2 ([Exhibit L](#)), the cost of collections must not exceed \$500 for each association. There are examples of the outrageous fees that are being charged now. The Commission did pass a regulation in December 2010 that theoretically capped it at \$1,950 plus reasonable attorney's fees. That opened the floodgates for the attorneys and we are asking that a \$500 cap be put on these collection fees. There is one firm that handles this exclusively and they ask for a little more than that. That was in testimony while this was being discussed.

Another item that Mr. Gordon said he agreed with was that three hours of instruction for all board members must be completed. Now the Real Estate Division has hired a training officer.



**Chairwoman Cohen:**

I am going to cut you off because I feel we are straying from the ADR sections again.

**Jonathan Friedrich:**

I thought we were here to discuss the bill, not just ADR.

**Chairwoman Cohen:**

Actually, according to the agenda, we specifically are here to address ADR. We put together the sections of this bill with two bills that had to do with ADR because we thought it would be helpful to have all of this heard together.

**Jonathan Friedrich:**

Will we have another opportunity to discuss the rest of the bill?

**Chairwoman Cohen:**

Yes, we will.

**Jonathan Friedrich:**

Would you consider a combination of testimony and work session, or would they have to be separate?

**Chairwoman Cohen:**

Right now, we are looking at a separate hearing on the rest of the bill. We are going to try to divide it because it is big and cumbersome as you are aware.

**Jonathan Friedrich:**

Oh yes, very cumbersome, Madam Chairwoman. If you are not going to let me proceed any further, there is not much more that I can say on the bill. I am sure you will hear support, and a lot of opposition, to the little bit we discussed tonight.

**Chairwoman Cohen:**

Do you have anything else to say about the ADR sections?

**Jonathan Friedrich:**

That completes my testimony.

**Assemblywoman Fiore:**

Thank you so much.

**Jonathan Friedrich:**

Assemblyman Carrillo, we have tied our record from two years ago. It was 11:30 p.m. that night too.

**Chairwoman Cohen:**

Mr. Munford, did you have anything to add or do you want to wait until your summary?

**Assemblyman Munford:**

I do not have anything further to say. I know southern Nevada wants to be heard.

**Chairwoman Cohen:**

We will allow them to be heard and we appreciate everyone coming and staying so late.

**Jonathan Friedrich:**

There was a question about what is happening to homeowners' associations. I do not know how many of you in the south have seen this *Las Vegas Review-Journal*.

**Chairwoman Cohen:**

If you would like to discuss that during the public comment section, we would be happy to hear it then.

We will start with support in Carson City. For those of you in support in Las Vegas, you might start to make your way down. We are not ready for you yet, but you can get started.

**Peter McAllester, Private Citizen, Reno, Nevada:**

I am a resident of northern Nevada. I want to speak in support of A.B. 397. I want to thank everybody for working so hard on this and staying so late.

I know this is anecdotal and we have not made an extensive study of this, but I would like to make a prediction that you are not going to hear an individual homeowner who has been a claimant in ADR speak against this bill. I have been a claimant in ADR and I have requested arbitration and mediation. I think that every individual homeowner you are going to hear from tonight that has been a claimant in ADR is going to speak in support of this bill. The only people who are going to speak against it are those that are paid lobbyists, attorneys, and arbitrators. I know that is not a scientific study, it is just anecdotal, but I think it speaks volumes. I wish you would consider that every individual

homeowner that has been through ADR and who has spoken tonight has supported these bills including A.B. 397. Thank you.

**Chairwoman Cohen:**

Are there any questions? There are none. Is there anyone else in support in Carson City? Those in support of the bill in Las Vegas, please go ahead.

**Robert Robey, Member, Nevada Homeowner Alliance, Las Vegas, Nevada:**

Thank you for staying so late, and thank you for everything you do. Thank you, Mr. Munford; it is very nice of you to come out for the little people. I also knew Mrs. Grimes and, yes, her homeowners' association abused her. I want to tell you I support this bill and the new concepts of ADR, the referee program, whatever we can do to help the homeowner get some rights. Thank you.

**Rutt Premsrirut, Private Citizen, Las Vegas, Nevada:**

I am a homeowner and investor. I support this bill. I think it provides a lot of common sense to everyday homeowners' association problems, specifically on the collection cap proposed by Mr. Friedrich. I know that you will hear a much higher limit from the opponents.

**Chairwoman Cohen:**

Sir, we are only addressing the ADR section right now. On our agenda, we posted that we were only doing the ADR section because it is such a large bill and we had two other bills related to ADR. We will have public comment when we are done, if you would like to comment at that point and we will hear the rest of the bill.

**Rutt Premsrirut:**

I thought we were finished with ADR. You go ahead. I will be back for public comment.

**Delores Bornbach, Private Citizen, Las Vegas, Nevada:**

I want to say that I support this bill and thank the person who summarized A.B. 397. Please do that for all of the bills, it saves on lots of paper. Thank you.

**Robert Frank, Private Citizen, Henderson, Nevada:**

I simply want to summarize by saying that all the measures of this bill will reduce the requirement for ADR in my experience and judgment. I would like to see some references made as you are going through your ADR bill to say that these are the kind of issues that cause ADR to be required. Thank you.

**Paul Murad, Private Citizen, Las Vegas, Nevada:**

I will be referring to three separate documents, which are collection statements. This refers to ADR because we ended up taking this issue of unlawful collections to the ADR process. I did about eight in the last year. The first item is a collection bill of \$6,600 total, when the HOA is only supposed to be getting \$1,900. Another one is a \$23,000 collection bill. I want to point out that if you look at the address of the property, that property is worth about \$65,000. Therefore, we have a \$65,000 listing price and a \$23,000 collection bill from Nevada Association Services. The third document is 11 pages, which is about \$54,000 on a property which was worth and sold for \$125,000. Those things end up in ADR. In our case in particular, and in others, and in a number of cases we just settled, the association ended up paying us back everything they unlawfully collected and the cost that was paid to the collection company as well. I want to make sure that you, and especially Assemblyman Carrillo, looked at this.

**Chairwoman Cohen:**

Thank you, sir. When did you provide those documents?

**Paul Murad:**

They were provided earlier today.

**Chairwoman Cohen:**

I do not believe that we have them, but when we get them, we will look at them. They are not on our system.

**Robin Huhn, Member, Nevada Homeowner Alliance, Henderson, Nevada:**

I am from Henderson and a board member. I am in agreement with everything in this bill. I realize we are only doing the arbitration, it is extremely late, and I do not think that I will last. I do want to go on record saying that I support everything. I am saddened that this bill has been heard so late because it is an extremely important bill. I know there were many people who wanted to comment on it. Thank you very much, Mr. Munford and Mr. Friedrich.

**Chairwoman Cohen:**

Are there any questions? Seeing none, let us go to the next witness in Las Vegas. I see no one. We will come back to Carson City for opposition.

**Garrett D. Gordon, representing Olympia Companies; and Southern Highlands Community Association:**

In the interest of time, we are just talking about ADR. I will incorporate my testimony for the last two bills onto this bill. We are opposed as written. As always, we will work with the sponsor. I talked with them earlier today, not

only on the ADR provisions, but on a number of the other provisions as well. I look forward to working with them. Thank you.

**Jennifer J. DiMarzio, representing Associa:**

We understand that the hearing tonight is limited to the ADR sections of the bill. Associa's issues of concern as reflected in written testimony ([Exhibit M](#)) lie mainly in the other sections of the bill, so we will not comment about these concerns at this time. Please note our general opposition, and we look forward to further conversation on all provisions of this bill. Thank you.

**Chairwoman Cohen:**

Are there any questions? I see none. Please proceed, Mr. Care.

**Terry Care, representing Terra West Management, Las Vegas, Nevada:**

I ask that my comments as to sections 30 through 35 as they relate to ADR arbitration/mediation on the two bills, A.B. 320 and A.B. 370 be incorporated by reference into this bill. We are also opposed to the provision that would allow a tenant or an invitee to step into the shoes of the unit owner for any civil action, mediation, or arbitration. Thank you.

**Chairwoman Cohen:**

Are there any questions? I see none. Is there any other opposition in Carson City? I see none so we will go to opposition in Las Vegas.

**Eleissa C. Lavelle, representing the Common-Interest Communities Subcommittee, Real Property Section, State Bar of Nevada:**

I would also like to incorporate my reference from my previous testimony. I do have one comment on section 35, subsection 6, dealing with the issue of bias. While I agree that a biased mediator/arbitrator should not be sitting, typically the rules in the American Arbitration Association, Judicial Arbitration and Mediation Services, and Federal Rules of Arbitration all require that the opposition to the arbitrator/mediator be voiced within a certain period. This particular statute has no time frame limitation on it. Conceivably, if an arbitrator/mediator gets to the end of a lengthy hearing and someone claims bias and they are removed, all of the fees are disgorged. I would simply suggest that in conformance with other rules, a reasonable time limitation be placed on when a claimant's bias can be asserted. Thank you very much.

**Bruce Flammey, representing the Common-Interest Communities Subcommittee, Real Property Section, State Bar of Nevada:**

I believe you offered a ditto option earlier in the evening. I would like to exercise that option at this point and say, ditto.

**Chairwoman Cohen:**

Thank you, we appreciate that. I see no questions, and no one else in Las Vegas. We will go to those in Carson City in the neutral position. I see no one. Is there anyone in the neutral position in Las Vegas? I see no one. We will invite Mr. Munford back for his concluding statement.

**Assemblyman Munford:**

Thank you for your indulgence at this late hour to listen to this bill. I want to invite Garrett Gordon, Terry Care, and the woman that came and spoke in opposition, to sit down and work out some things. I know Terry Care has always been fair and I have served with him on many occasions. I have also known Garrett Gordon a long time. Maybe we can work together on some of these issues. I think our ultimate goal is to try to make it as easy on the homeowner as possible because this entire HOA board is all about the homeowner because they elect the members of the board, and the board is there to serve them and take care of their concerns and problems. I know all of the elected officials appearing on this Committee know the procedure and process because we are all elected officials and we have to answer to all the ones that vote for us. Therefore, in turn, I think we should look out for the homeowner because it is the same thing in terms of democratic process. Thank you.

**Assemblyman Carrillo:**

Mr. Munford, I want to thank you for bringing this bill forward and thank you for staying up this late.

**Assemblyman Munford:**

I also appreciate that you and the entire Committee stayed up this late.

**Chairwoman Cohen:**

I am going to close the hearing on A.B. 397. As we said, we will agendaize the bill again later to address the remaining matters. I will now provide opportunity for public comment. If there is anyone in Carson City or Las Vegas who wishes to be recognized at this time, please come forward.

**Chairwoman Cohen:**

Thank you. We will move on to public comment in Las Vegas so those good people can go home.

**John Radocha, Private Citizen, Las Vegas, Nevada:**

We all should be Army recruits at this time of the night; we can handle it. Madam Chairwoman and Committee members, the three bills before you should not be looked at as Democratic, Republican, or Libertarian, or whatever. They

should be viewed as who voted me into the Legislature; it was the people; the homeowner. The homeowner put the legislators in. The cartel has the money to lobby you day in and day out. That is not easy, as I can understand. The most important question to answer when you run for reelection is to say to your voters, "I had the guts to be a General Patton and I did not fold like a cheap suit to the cartel and become patent leather." Thank you for hearing me.

**Chairwoman Cohen:**

Thank you, sir, and I can assure you we all do our best to represent our constituents and make good laws.

**Rutt Premsrirut, Private Citizen, Las Vegas, Nevada:**

I am a homeowner investor. I want to say something on the collection problem. Part of that problem is the process of these collection companies in that they will run the process of foreclosing on a home all the way to the end, and then they do not foreclose. They will postpone and keep running it until it reaches \$3,000, \$4,000, or \$5,000. Mr. Friedrich proposed \$500 as reasonable because you then need to file a lien and notice of default. If you do not intend to foreclose, why are you taking the next step, unless your intention is to rack up the fees? Secondly, if you are actually going to foreclose, you get the house. You are either going to get your fees back from somebody bidding on the property, or you are going to get the property. You should do some due diligence if there is equity in the home or not. If there is no equity, stop churning the fees and stop foreclosing. That is just common sense. Thank you.

**Robert Robey, Member, Nevada Homeowner Alliance, Las Vegas, Nevada:**

I heard something outrageous today. The last time I was at an Assembly hearing, I heard there were 1,000 letters a month. I thought that was outrageous. Now I heard when I read my CC&Rs, when I bought into my HOA, my college degree was worthless. My study of language was worthless. In order for me to understand my CC&Rs, I had to go to a lawyer for the interpretation of the governing documents. Then we had to do complex legal research, go through the state courts, and then go back to the initial author to find out what it was that they wanted to say. I honestly read my CC&Rs before I bought into my HOA. They violated them, which they do not do any more. I love my HOA now; it is very open and very nice. It was a little battle there. When I hear that, I have to have interpretation of my governing documents because of the complex legal research required, I have to go through the state court decisions, and then go back to the initial writer, and attorneys testified that tonight, because that is what the ADR person has to do. I apologize and I am looking forward to eating dinner tonight, too. Thank you very much, and thank you for your time.

**Chairwoman Cohen:**

Thank you, sir, and thank you for sticking it out with us.

**Michael Lee Dmytro, Private Citizen, Las Vegas, Nevada:**

I am a homeowner at Pueblo West Santa Fe Condominiums. I want to echo the comments Mr. Robey and Colonel Frank made earlier. I want to clarify that in any comments that I made previously, the contract that I have with the board with the CC&Rs is no longer valid. When the board brings in community agents who are licensed by the Real Estate Division, other advisors or attorneys, three other community managers in my situations, and when they bring in those other licensed individuals, they skew that resolution process. We the people need your help. I appreciate your time tonight, thank you.

**Joe Nascimento, Private Citizen, Las Vegas, Nevada:**

I am coming to you as a private citizen and as a board member of Monument at Lone Mountain. I was elected to the board in April 2011. We have a small problem. If you look at the books, it said we had approximately \$360,000 in cash on hand. We had a new board and a new treasurer, and the treasurer came over and said that we had no money. The vice president and I went to U.S. Bank and found there were no accounts open. We decided to fire our management company and our attorney. Next thing, up pops up an attorney that we never knew, and the former board members voted themselves back on the board, reshuffled the board, and used physical intimidation to stop people from coming onto the board. They chased everybody off the board, except me. They tried to fine me \$20,000 when I would not resign, and now they have a bogus \$200 fee that they made up. We had seven complaints filed by the board with the Real Estate Division, and we have been waiting 16 months. We have no resolution; it is a joke.

There is so much violence in our HOA, that the YMCA (the Y) on Durango Hills will not allow us to hold meetings there, so the people who took over the board hold it at their house. You have to be an idiot to go there because they were kicked out of the Y for bringing weapons.

I think our HOA is insolvent, and to get around that, RMI Management, LLC, transferred \$126,000 from California into our account. Since I have no access to the records, I do not know whether that is a loan, money being laundered from out of state, or what is going on.

We have major problems, and the Real Estate Division is very slow. It is cumbersome and very expensive to fight these people. Assemblyman Carrillo, if you go to our HOA meeting, no one is going to show up there except the people who took over the board and their wives. It looks like something out of "The



Sopranos." One person claims to be a capo with the Gambino crime family. He is 80 years old, so I doubt it. I taped everything and turned it over to the Real Estate Division in case you do not believe me. I have these people saying, "You take care of her, you take care of him." They are lunatics. We get no help. The Federal Bureau of Investigation says that they are overwhelmed, the Real Estate Division seems like they are not doing anything, and in the meantime, everyone who elected you is getting taken advantage of.

If you want to reach me, I will be willing to give you any documents you want. I even have a timeline of emails of them resigning. What they did is this. If I said I wanted to be the chairperson, I could take a vote, the audience could tell the chairperson to get out of her seat. They come in and flash guns. We have serious problems. We had a construction defect settlement of either \$860,000, \$830,000, or \$880,000. When I became president, we did not have a dime. That is what is going on, and hopefully you can please help us. Thank you.

**Assemblywoman Fiore:**

Who is your assemblyperson?

**Joe Nascimento:**

I think it could be you.

**Assemblywoman Fiore:**

I need an email from you. I would like you to invite me to your next HOA meeting, and I will show up. Firearms do not intimidate me.

**Joe Nascimento:**

You will have to go to someone's house. That will be good; you will have to bring your own.

**Chairwoman Cohen:**

To speak for Ms. Fiore, I will remind you that we are in session and you will not be going to his meeting. She can attend after session, or on a weekend.

**Mike Randolph, representing Homeowner Association Services, Las Vegas, Nevada:**

I am the manager for Homeowner Association Services, a licensed collection agency in Nevada. I have been a licensed collection manager for 25 years, specializing in homeowners' associations for the last 13 years. I am now serving my eleventh year as a member of my three-member board for my 19-unit single-family gated community.

I definitely believe we need to do something about the ADR process. It became quite apparent over last year that I could go through nonjudicial foreclosure, sell somebody's home, and have him or her evicted without having to go through ADR, but I was not allowed to take him or her into small claims court for a money judgment without going through ADR first. Alternative dispute resolution does not require that you have an attorney, so I did it without an attorney. I took a number of cases through. The average case that went through took five months and cost \$1,700 in filing fees with the Real Estate Division's arbitrator's fees, because an arbitrator will not give you a decision until you have paid both fees if the other party does not respond or pay their fees. I had to pay both sides in order to get the decision. All of this was for nonpayment of assessment. I believe we need a faster track method that we can go through. I think \$1,700 in five months is an awful long time when the homeowner never responded either to the nonjudicial foreclosure process, or responded to the ADR process. I am in favor of a referee program or a fast track program that we can use because I think it is too expensive, and I would like to see within A.B 370 where either party can file for mediation instead of just the unit owner. There are many times the association would like to take the cheaper method as well. I am open to any questions. Thank you.

**Chairwoman Cohen:**

Is there anyone else for public comment? I think that is it.

**Assemblyman Munford:**

I want to say one thing, Madam Chairwoman. I want to extend appreciation and thank you for the support I received in Las Vegas.

**Chairwoman Cohen:**

Thank you. I am sure they appreciate your working on this with them.

Thank you, everyone, for your participation. This meeting is adjourned [at 11:58 p.m.].

[Exhibits not mentioned previously include ([Exhibit N](#)), ([Exhibit O](#)), and ([Exhibit P](#)).]

RESPECTFULLY SUBMITTED:

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Linda Whimple  
Recording Secretary

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Dianne Harvey  
Transcribing Secretary

APPROVED BY:

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Assemblywoman Lesley E. Cohen, Chairwoman

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

## EXHIBITS

**Committee Name:** Committee on Judiciary

**Date:** March 27, 2013

**Time of Meeting:** 8:05 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 320	C	Jonathan Friedrich	Proposed Amendment
A.B. 320 A.B. 370 A.B. 397	D	Avece Higbee; Common-Interest Communities Subcommittee, Real Property Section, State Bar of Nevada	Testimony in Opposition
A.B. 320 A.B. 397	E	Jonathan Friedrich	Packet of various documents on various bills
A.B. 320	F	Gail Anderson, State of Nevada, Department of Business and Industry, Real Estate Division	Written testimony for A.B. 320
A.B. 370	G	Jonathan Friedrich	Cost of Nevada Real Estate Division Arbitration
A.B. 370	H	Jennifer J. DiMarzio, Associa,	Written statement by Andrew S. Fortin, Associa
A.B. 320 A.B. 370 A.B. 397	I	Eleissa Lavelle, Common-Interest Communities Subcommittee, Real Property Section, State Bar of Nevada	Written testimony
A.B. 370	J	State of Nevada, Real Estate Division	Testimony of Gail Anderson
A.B. 370	K	Community Association Institute of Nevada, Legislative Action Committee	Testimony of John Leach

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A.B. 397	L	Jonathan Friedrich	Amendments to A.B. 397
A.B. 397	M	Jennifer J. DiMarzio, Associa	Written statement by Andrew S. Fortin, Associa
A.B. 397	N	State of Nevada, Real Estate Division	Written testimony of Gail Anderson
A.B. 320 A.B. 370 A.B. 397	O	Howard Hughes Corporation, Pamela Scott	Testimony of the Howard Hughes Corporation
A.B. 397	P	Community Association Institute of Nevada, Legislative Action Committee	Letter from Gayle Kern