

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

**Seventy-Seventh Session
April 1, 2013**

The Assembly Subcommittee on Judiciary was called to order by Chairwoman Lesley E. Cohen at 11:53 a.m. on Monday, April 1, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

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
Garrett D. Gordon, representing Olympia Companies
John Radocha, Private Citizen, Las Vegas, Nevada
Rutt Premssirut, Private Citizen, Las Vegas, Nevada
Robin Huhn, Private Citizen, Las Vegas, Nevada
Rana Goodman, representing the Nevada Homeowner Alliance PAC
Yvette Williams, Chair, Clark County Democratic Black Caucus
Terry J. Care, representing Terra West Management Services
Delores Bornbach, Private Citizen, Las Vegas, Nevada
Avece Higbee, representing the Committee on Common-Interest Communities, Real Property Law Section, State Bar of Nevada

Chairwoman Cohen:

[Roll was taken. Protocol was explained.] We have Assembly Bill 395 and Assembly Bill 397 on the agenda today. Assembly Bill 317 was pulled from the agenda by request of the sponsor. I will open the hearing on A.B. 395 and invite the sponsor, Assemblywoman Fiore, to the witness table.

Assembly Bill 395: Revises provisions regarding common-interest communities. (BDR 10-1013)

Assemblywoman Michele Fiore, Clark County Assembly District No. 4:

Assembly Bill 395 is a very simple bill that has two sections. Section 1 makes it a misdemeanor to harass, intimidate, or threaten another member of the homeowners' association (HOA), or an employee, agent, or officer of the HOA. Section 2 adds the language to section 1 of the existing statute. Basically, it is a "you have to get along or there are going to be consequences" bill for our HOAs, because we have had such a tremendous amount of—well, we have a subcommittee, and I think that says it all.

Chairwoman Cohen:

Are there any questions? [There were none.] I understand the concern with bullying. Will that protection go both ways, not only to the homeowners, but to the board members who may feel that they are being treated aggressively or bullied?

Assemblywoman Fiore:

Absolutely. It says, "To harass, intimidate, or threaten another member of the HOA, or an employee, agent, or officer of the HOA." It is literally for both parties.

Chairwoman Cohen:

I am also confused by the language on page 2, starting on line 13, "As used in this section, "bully" means to willfully act, or engage in a course of conduct which is not authorized by law" Does that mean it is illegal to do something illegal? I am concerned by that language, and I do not know if I am understanding it correctly.

Assemblywoman Fiore:

That is how I am taking this language. It is illegal to do something illegal, and it is going to be a misdemeanor now. There are going to be consequences.

Assemblyman Carrillo:

I have been a member of an HOA and sometimes people in HOAs are very passionate, and sometimes passion goes off of both sides of the table. Whenever there is an executive meeting and there are tenants or people who are members of an HOA present and in talking to other HOA members or the elected members, maybe there is a little bit of a heated exchange, and one individual may feel that that is against the law, that now you are bullying me, you are intimidating me because maybe one person gets up. The intimidation factor can definitely be there because one individual is six foot five inches on one side of the table and the other one is five foot five inches. To me, that is intimidation right there. If you are getting up, you are saying, "Hey, I have an issue with this and I am going to show you by me standing up that there is a concern here." Would that fall under intimidation in any way, shape, or form?

Assemblywoman Fiore:

When we actually look at cases that might come before us on bullying and such, I think that there will always be witnesses as well as evidence of bullying. I do not think that a person can say that they were bullied because someone stood up. I think that the evidence would outweigh a suggestion.

Assemblyman Carrillo:

It says, "willfully bully, intimidate," so it is two different things that you are referring to. Bullying to me is something that is on a consistent manner or it is one after another. It may not be all in the same time, but it could happen at different times. I just wanted a little more clarification on it. Thank you.

Chairwoman Cohen:

Are there any other questions? [There were none.] Are there any supporters in Carson City who would like to come forward?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

I would like to disclose that I am one of the commissioners on the Commission for Common-Interest Communities and Condominium Hotels. I am speaking here as a citizen and only in that capacity. I am not speaking for the Commission.

I fully support this bill, and I would like to read a very brief statement that was generated by Ms. Gail Anderson, who is the administrator of the Nevada Real Estate Division, and oversees the Office of the Ombudsman. She writes:

The Division receives calls and complaints about associations on a regular basis from people who are too afraid to file an affidavit against them. In some cases, these people can provide enough evidence to support a violation of law, but they do not want to be targeted by the board, so they refuse to file an affidavit. The Division has authority under *Nevada Administrative Code* 116A.350 to initiate an investigation or inspection for the records of any community manager. It stands to reason that the Division can also initiate an investigation of an association and a board.

I think this speaks very loud and clear. Here you have the administrator who is saying that people are afraid to come forward because they are going to be targeted. Thank you.

Chairwoman Cohen:

Are there any questions? [There were none.]

Garrett D. Gordon, representing Olympia Companies:

We stand in support of the intent of this bill. Southern Highlands actually includes language in section 1 in many of its contracts, so we are certainly aware of the issue and want to avoid this kind of conduct going forward. I appreciate Chairwoman Cohen's comment on page 2, line 14. I think it could be cleaned up regarding "course of conduct which is not authorized by law." We will certainly make ourselves available to work with the sponsor and the Legislative Counsel Bureau and get that cleaned up.

Chairwoman Cohen:

Are there any questions? [There were none.] Is there any support to A.B. 395 in Las Vegas?

John Radocha, Private Citizen, Las Vegas, Nevada:

I applied to be a member of the board in my HOA. This past Saturday, I had six political signs made by a sign maker stating my political views. Within one

hour, two were stolen from their placement in the community. Two hours later, the other four were stolen from their placement in the HOA. I want to know, how would you feel if this was done to you when you were trying to be elected? What happened to the statement, "Due process?" Do we live in a place called America or what? So I will tell you what I got in place of it. It says:

Tired of Mr. Radocha's senseless dribble being posted. Do the following. Tell him he's a crusty old codger. Tell him if he doesn't like it here in our board on the HOA, move. Don't read or analyze the crap he posts on our block walls. Note: He agreed to the CC&Rs when he bought his house. Suggestion: Move, Mr. Radocha. No one wants you or likes you here anyway. Go to Wisconsin.

That is the kind of bullying that I have been going through. I am going to tell you, I am pissed off. I am fighting these people and they do not like it because I ask questions. I found theft and fraud, and they do not like it because I go to the board and I say, "Why are you spending \$34,000? That is a capital improvement. Why can we not vote for it?" They ignore me. So this is what just happened to me. Whatever you can do to stop this kind of stuff—I am not going to move. Like I told them, I am not a milksop. I am glad somebody finally realizes there is a problem out there. Not all HOAs are like this. Go to a store, go out to eat, ask a waiter, ask the waitress, ask someone standing behind you in the checkout line and say, "I am an HOA member. Do you belong to an HOA?" See what they say. You are going to find out a heck of a lot that goes on. Thank you for your time.

Chairwoman Cohen:

Are there any questions? [There were none.]

Rutt Premsrirut, Private Citizen, Las Vegas, Nevada:

I support the bill. I think it is reasonable for both sides.

Chairwoman Cohen:

Are there any questions? [There were none.]

Robin Huhn, Private Citizen, Las Vegas, Nevada:

I have a question. I am uncertain as to whether this bill is—bullying cannot happen to the HOA board, community manager, and also the unit owner. I am confused. To me, a unit owner cannot bully the board. If that is the case, I am not for it. If, in fact, it is both-sided, then yes, I am for this bill. Thank you.

Assemblywoman Fiore:

Would you like me to clarify?

Chairwoman Cohen:

Yes, please clarify.

Assemblywoman Fiore:

This bill is to make sure there is no bullying going on to any homeowner, as well as anyone in the HOA community, including their staff.

Chairwoman Cohen:

Is there anyone else in Las Vegas in support? [There was no one.] Is there anyone in Carson City in opposition to A.B. 395? [There was no one.] Is there anyone in Las Vegas in opposition to A.B. 395? [There was no one.] Is there anyone neutral to A.B. 395 in Carson City? [There was no one.] Is there anyone neutral to A.B. 395 in Las Vegas?

Rana Goodman, representing the Nevada Homeowner Alliance PAC:

Basically, I have almost the same question as Ms. Huhn. On page 2, in the very first paragraph, Assemblywoman Fiore needs to have that paragraph clarified. It really is not clear that the homeowner is protected also. That would be my only change. It is very difficult. If you would please read that again and just make sure it is clear that the homeowner is protected. In my particular homeowners' association, there was a resident who was bullied to the extent that he was banished from our association for six months because of a situation very similar to this.

Chairwoman Cohen:

Thank you. I would suggest that if anyone has a concern about the language to contact Assemblywoman Fiore directly and she will be happy to speak with you and make sure that it gets clarified if it meets her intent.

John Radocha:

Out of 156 units, I am the only person who cannot vote. They have taken my parking permit. I am the only one who they have taken a parking permit from, and then they sent me a document that I had to sign that I was going to obey the conditions, covenants, and restrictions, and then they said maybe they would give me my parking permit back. I am telling you, I have had it. I am not going to move. They want me out, but I am not going to do it. If you do not stand for something, you are going to fall for anything.

Chairwoman Cohen:

Thank you, sir. For the sake of clarity for the secretary, we are going to list your second set of comments as in support.

I invite Assemblywoman Fiore back up to summarize.

Assemblywoman Fiore:

Thank you for listening to A.B. 395, and hopefully we can consider this and get it passed.

Chairwoman Cohen:

I will close the hearing on A.B. 395, and open the hearing on Assembly Bill 397. I invite Mr. Munford forward.

Just as a reminder, last week we took testimony on the portions of the bill having to do with the process for handling alleged violations of Chapter 116 of *Nevada Revised Statutes* (NRS) and claims related to the conditions, covenants, and restrictions (CC&Rs). That hearing covered things like arbitration, mediation, hearing panels, and alternative dispute resolutions. We have already covered section 1 and sections 30 through 35. We will skip those. Since this is a long bill, I would like to break it into manageable pieces. Committee members, please hold your questions until the end of each piece. We will do sections 2 through 10, which is management of community interest, powers of the executive board, et cetera. Then we will do sections 11 through 16, which is meetings and voting. Then sections 17 through 23, which is fiscal affairs and liens, and then section 29, which is books, records, and miscellaneous provisions. Hopefully this will keep us moving through this fairly quickly while still being thorough.

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

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

[Mr. Munford submitted prepared testimony ([Exhibit C](#)).] Most of the testimony on this bill I will refer to my supporter, Jonathan Friedrich. He will go through the bill and explain it to you.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

I would like to disclose that I am one of the commissioners on the Commission for Common-Interest Communities and Condominium Hotels. I am not speaking on the Commission's behalf, but rather as a private citizen of this state and in no other capacity.

I would like to backtrack a little bit to last Wednesday night. As we all know, it was a very long day and a longer evening, and it was brought to my attention that on two of the three bills that were heard, I did not disclose that I was speaking as a private citizen. I would like the record clarified on that matter. I do not know if you can re-ring the bell for last Wednesday night, but it was an oversight on my part.

One of the issues that has been brought to my attention before we actually get into the bill is how few people who are homeowners show up to these hearings. You have to realize that most people are out working, and they cannot attend these hearings. Many of them do not even know who their legislators are. As I read in the previous statement on Assemblywoman Fiore's bill, there is no end to the complaints that are brought before the Real Estate Division, and you heard what the administrator wrote. Assemblyman Carrillo questioned some of the figures that I provided last week dealing with arbitration. As a result of that, I drove back to Las Vegas and spent the entire weekend going through the Real Estate Division's website. I have printed out all of these pages, of which I have copies for the Committee, that clearly show the claim number, the date it was opened, the date it was closed, the nature of the claim, who filed it—whether it was the homeowner or the association—whether it was settled, and a very brief synopsis of the settlement or decision of the arbitrator. I have copies of those for all the members of this Committee.

Along with that, there is a letter from the Real Estate Division dated March 25, issued by the administrator, Gail Anderson, that goes into a number of details. That letter actually deals with Assembly Bill 34, which has been reconfigured by the Division. Mr. Terry Care indicated in his testimony that the evidence was "very thin."

Chairwoman Cohen:

Sir, because we did not receive those documents until such a late time that the staff could not get them on the Nevada Electronic Legislative Information System (NELIS), they have not been accepted into the record, feel free to provide them to the Committee members. Just for your knowledge, they are not a part of the record at this time.

Jonathan Friedrich:

I realize that. This is the Real Estate Division's detailed breakdown which indicates the number of active cases, the alleged statute violation number, the type of issue, and the number of cases.

To highlight a few of them, I broke it down by north and south. This is just in the south: budget ratification and duties—38 complaints; executive boards

imposing penalties—7; executive board election and eligibility issues—5 complaints; executive board member removal—4 complaints; executive board meetings—9 complaints; unit owner's right to speak at certain meetings—21 complaints; reserve study issues—16 complaints; withdrawals of money, the number of signatures required—11 complaints; registration with the Ombudsman's office—4 complaints; assessments and liens against units—4 complaints; books, records, and other papers that a homeowner is entitled to receive upon their request—6 complaints; they have completed cases, and it goes on. Power of the board of directors to enter units for maintenance and security interests—4; election and eligibility disputes—4; executive board meetings—3; study of the reserves—3; and withdrawals—3.

It goes on into the north, and there are a number of complaints: reserve studies—5; withdrawals without signatures—9; executive board meeting disputes—2; and latest issues of completed cases where two signatures were not provided on the checks—7. It gives a very detailed analysis of what the complaints are.

As far as the Division's analysis of the active cases, right now there are 278 open cases: cases that are 90 days or less—30; cases that are three to six months old—78; cases that are six to nine months old—44; cases that are nine months to one year old—51; cases that are one to two years old—64; and cases that are two to three years old—11. That is a total of 278 in both the north and the south.

There was a lot of discussion with the mediation that if you did not like the results, it would go into court.

Chairwoman Cohen:

Sir, I am sorry, but for the sake of time and because we have already dealt with mediation for more than an hour, we are going to have to move into the rest of the bill right now.

Jonathan Friedrich:

I would appreciate your taking a look at the documentation. Again, this is not something that has been pulled out of the air. This is documentation that was created from the Real Estate Division, Office of the Ombudsman.

Chairwoman Cohen:

We are always willing to take documentation, and the problem is when something comes in before the close of business, the day before a hearing, it

just puts too much pressure on the staff. It would have taken hours for the staff to input those documents into NELIS.

Jonathan Friedrich:

I realize that. I have no staff. I am one person, and I spent the weekend putting all this documentation together for Assemblyman Carrillo and the other members of the Committee.

Chairwoman Cohen:

To remind everyone, we may have the staff, but I can assure you every person on this panel, including Mr. Ziegler, worked this weekend, too. Let us move on to the bill.

Jonathan Friedrich:

What I have done, and what you previously received, are about five pages of changes to the bill. The bill that the Nevada Homeowners Alliance, myself, and Assemblyman Munford had put together was not what came out, and that has created a tremendous amount of confusion. With limited time, we have tried to create the page document that refers back by page, section, and line number to changes we would like to see in the bill that was in the original conceptual request. At the top, it says, "Amendment to A.B. 397, Assemblyman Harvey Munford, Sponsor" ([Exhibit D](#)). You need to work these pages with the actual bill.

On page 5, section 1, line 12, add the words, "and have subpoena power." Right now, the Commission has subpoena power, but the Real Estate Division does not. There have been a number of instances where, when a subpoena was issued by one of the commissioners, it was objected to by the respondent, and it wound up having to go to court to get a decision on whether or not the Commission had the authority. There was a potential conflict of interest between the Commission issuing the subpoena and the Commission being the trier of facts.

On page 5, section 1, lines 20 to 21, we have asked that those two lines be deleted, and substitute in its place, "Require the office of the Ombudsman to investigate disputes dealing with governing documents." In current statute, NRS 116.625, subsection 4, it says, "In addition to any other duties set forth in this chapter, the Ombudsman shall" If you drop down to subsection (d), "When appropriate, investigate disputes involving the provisions of this chapter or Chapter 116B of NRS or the governing documents of an association" The other night, as I had indicated to you on the Division's intervention affidavit, it even states, "Investigate governing document disputes." The language is there, but the Division is not doing it for whatever reason.

They tell people, "Oh, if you have an issue with your governing documents, go to alternative dispute resolution." That is when it gets very costly.

Page 8, section 3, lines 26 to 30 deals with assessments and other documents. We are asking to cap the transfer fee. The transfer fee does not go to the HOA. It goes to the management companies. It states, "Cap the transfer fee to an association or a community manager at \$100 which includes a resale certificate and the setting up of any new files or records of a new owner." Under tab number six, there are three or four examples on the second page of each of the documents, and the documents provided are closing statements. It is a settlement statement on the Department of Housing and Urban Development's form [([Exhibit D](#)) page 21]. On the first one, it shows \$300; the second shows \$415. It is right near the bottom of the page. The third one shows \$600, and they all state the same thing—HOA transfer fee. Again, this is not going to the association. On the last page, it shows a transfer fee of \$750, and directly below that a transfer fee of \$850. We are asking that those numbers be brought back to some kind of a reality. You have to realize that these fees are being paid by the purchaser of the home. It is not going to the HOA.

On page 11, section 4, remove lines 22 through 45. On page 12, strike the entire page. This came out of Assembly Bill No. 448 of the 76th Session. On page 13, strike all the language from lines 1 through 29. This again was from the last session. [Also submitted [Exhibit E](#).]

Chairwoman Cohen:

I am not trying to tell you how to present the bill, but I am wondering if it would make more sense—you are telling us what all of the amendments are, but instead maybe you could tell us what the intention is for each section, including the amendments. I think all of us read the bill, we went through the amendments, and we have the cross-outs and the notes saying what all the amendments are.

Jonathan Friedrich:

It gets very confusing.

Chairwoman Cohen:

Okay. I feel we are missing the intent of this section, because we are focusing too much on amendments rather than the overriding purpose of each section.

Jonathan Friedrich:

I do not know how to explain it other than what we have prepared to try to amend it.

Chairwoman Cohen:

I think you are—at least with the text—leaving out big chunks of text that are not being amended to focus on the little bit of the amendment, so we are not getting your understanding of what the purpose of each section is. I believe we have all read it, we all read the amendments, so we already crossed out the things that needed to be crossed out and put notes in, so we know what the terms are. We know what the amendment is going to be, but we are still missing what the overall purposes of each section is—not just the amendment, but the whole section.

Jonathan Friedrich:

If the text has not been struck or requested by the amendment, then it remains in place.

Chairwoman Cohen:

When I say amendments, I mean all of the material that Mr. Munford has provided along with your amendments to make up one unit of how the bill should be changed, or what the proposal is that the bill be changed. So what I am looking at is almost the big picture. What are we doing to this section, when we put together Mr. Munford's text and your amendments, all together, what are we doing with each section? What is your suggestion that we do with each section?

Jonathan Friedrich:

The suggestion is what is on these eight pages. I just do not know how else to clarify other than to try to rewrite the bill the way it was intended. That is the issue.

Chairwoman Cohen:

Proceed how you wish.

Jonathan Friedrich:

On page 15, section 6, line 18, change the verbiage from \$100 a week fine to \$25. This would get into a major change in the whole concept of how fines are handled. We are asking that a homeowner who is fined is capped at \$1,000. At that point, if it is not paid, it can be taken to small claims court.

Assemblyman Carrillo:

In regard to line 18, where it says, "the fine must not exceed \$100 . . .", you are saying that that should be changed to \$25?

Jonathan Friedrich:

Correct.

Assemblyman Carrillo:

It should be covered in every intent and purpose that basically it is the maximum, so anything below that they could easily say, the fine could be \$1, it could be up to \$100, correct?

Jonathan Friedrich:

No. Right now the statute says that it cannot exceed \$100 a week to a maximum of \$1,000, and then anything over that is considered a continuing violation. I have examples of when it goes into \$10,000 or \$11,000. We are saying to cap it at \$1,000. They do not pay, they are taken to small claims court, it is adjudicated there, the association then gets \$100 plus court fees, and the balance of the money is then donated to the school district in the county in which the association is located. It stops the runaway fines. It also says that if the violation occurs again, the proceeding starts all over again.

Assemblyman Carrillo:

But what you were referring to, what you just said a minute ago was the amount—I am not referring to the maximum. I am referring to the fine that you were saying not to exceed \$100 to \$25 a week, correct?

Jonathan Friedrich:

Correct.

Assemblyman Carrillo:

But what you are saying is that it should be changed from \$100 to \$25?

Jonathan Friedrich:

That is correct.

Assemblyman Carrillo:

I am going to reiterate what it states here and that is, "the fine must not exceed \$100," so that covers anything from one penny all the way up to \$99 or \$100. It is not to exceed that. As long as it does not go above \$100 and one penny. Am I correct?

Jonathan Friedrich:

No, because \$100 is struck out. Deleted. That is in red with a line through it, and then next to it says \$25 in green.

Assemblyman Carrillo:

But that is the amendment that you are bringing forth.

Jonathan Friedrich:

That is the amendment, yes, sir.

Assemblyman Carrillo:

Thank you.

Jonathan Friedrich:

There is language directly below it on page 1 ([Exhibit D](#)) which is referring to line 15, section 6. Delete lines 19 through 22 and substitute the language that is in green. It says:

A fine for a continuing violation shall not exceed \$1,000. Unpaid fines shall be submitted by the association to small claims or a court having jurisdiction for adjudication and/or judgment and shall be exempt from arbitration. This shall not prevent the association from bringing another action against the unit's owner for the same violation or another violation, after the court has rendered a decision. All fines collected from a unit's owner over the sum of \$100, not including court costs, must be donated to the School District in the County in which the association is located.

Chairwoman Cohen:

We are going to take a short recess [at 12:37 p.m.].

I am calling this Committee back to order [at 12:50 p.m.]. I am sorry about any confusion or delays. The State of Nevada and the citizens have repeatedly told us, "We want you to do the Legislature in 120 days every two years," so this is what happens. We have Committee members that we need to get into different places at different times, and we want to give this bill its opportunity to be heard in the time that it is required. At some point, some of the Committee members may be leaving to go over to Health and Human Services for a work session, but we are going to try to get everything done, at least as much as possible before that. Before I turn it back over to Mr. Friedrich, I just ask you to tell us what each section means. We know what your proposed amendments to Mr. Munford's bill are, so tell us what the goal of each section is.

Jonathan Friedrich:

I will try to condense it. Section 9 deals with education and requiring three hours a year of every board member to have education. The Real Estate Division provides this free of charge. Section 10 deals with a new development where a declarant may be subsidizing the association assessments and that has to be made known to the potential buyer and, if it is a loan, it may have to be paid back in the future.

Chairwoman Cohen:

Mr. Friedrich, we were going to put a break between section 1 and 10. Do we have any questions on any section between 1 and 10 from the Committee? I know I do.

On section 2, page 6, lines 1 through 4, when we are dealing with the separate laws governing the age-restricted communities, do those laws supersede this section? Do they make this nonenforceable?

Jonathan Friedrich:

First of all, if it was an age-restricted community, there would not be children there, although there is the Housing for Older Persons Act of 1995 80/20 rule. This occurred when a homeowner's teenage son had given some grief and heartache to the association. It was a manned gate, and he would come in late at night and the attendant at the gate would call people, wake them up, even though they knew that this teenage fellow lived there. That is what this addresses.

Chairwoman Cohen:

Does this supersede the rules for the age-restricted communities? What has precedence?

Jonathan Friedrich:

There would not be teenagers in an age-restricted community. The age starts at 55.

Chairwoman Cohen:

In section 3, page 9, if you had someone whose handicapped spot was taken unlawfully—for example, there is a specific spot because someone is handicapped, and someone left their car in that spot improperly—would it now take 48 hours before that car would be towed?

Jonathan Friedrich:

There was an individual who was handicapped—an amputee. The placard fell, his car was towed, and he was unable to have transportation. This becomes a major problem. I can understand why it is giving you some grief and heartache because it is designated for a handicapped person. In this particular case, he had a sign that fell, his car was towed, and he was in trouble. That was the reason for this. He was left without transportation. He had to call someone to pick him up to get the car.

Chairwoman Cohen:

What if someone parked in that space illegally? Reverse the scenario. The handicapped person cannot use their spot because it is being abused, and that person now knows they have 48 hours to park there before their car is going to be towed. Is that the case?

Jonathan Friedrich:

It is a double-edged sword.

Chairwoman Cohen:

Okay. Are there any other questions?

Assemblyman Martin:

I have problems with section 6, subsections 1 and 2, about the lifetime cap and prohibiting another association from imposing fines based on a previous one's acts. Just to be conciliatory, I think if we do manage to change the mediation and the arbitration situation—and that is more reasonable and fair—maybe this section is not applicable. I think it is the right and the responsibility of an HOA to enforce its rules and we can discuss it off line about what those rules should be. If you think that we are going to have better mediation and arbitration, then maybe this is not necessary. I think it is unduly restrictive.

Jonathan Friedrich:

The lifetime cap was struck. This was left over from two years ago. That is what adds to the confusion in this bill. It goes to the cap of \$1,000, and if it is not paid, then it is taken to small claims court and adjudicated there. If it is a continuing violation after it is adjudicated, then the process starts again, and the association is entitled to all their court costs and fees.

Chairwoman Cohen:

There are a few different places where I was concerned that you are taking the teeth out of regulations. For instance, at the top of page 17, the paragraph beginning at line 3 and ending at line 10 is being removed. It feels like you are taking teeth out of the ability to enforce these rules. I think there are a few other places throughout the bill in different sections, such as section 8, that I have the question mark again about teeth. I would like you to keep that in mind as you go or address that in general. It feels like you are taking out the ability to—when you have continuing violations and saying, "Okay, well, you cannot continue to violate," and you are getting rid of the ability to—the 7 days, the 14 days—it feels like it is toothless.

Jonathan Friedrich:

That goes back to section 6, page 15, which substitutes the language—which is on page 1 of the amendment—which says, "A fine for a continuing violation shall not exceed \$1,000. Unpaid fines shall be submitted by the association to small claims or a court having jurisdiction for adjudication and/or judgment and shall be exempt from arbitration." So they can take it to small claims court, and once it is resolved there, if it happens again, then the process starts all over again. It is not as though we are taking the teeth out, we are just changing the process.

On the other section on page 20 from lines 13 to 32, that has all been struck from the bill.

Chairwoman Cohen:

But have you not taken out the ability to have a continuing violation?

Jonathan Friedrich:

It is continuing up to \$1,000. At that point, if it is not paid, you now take the person to small claims court. Something else to realize is that once this goes to small claims court, the judge can put a judgment on the individual and garnish their wages or their bank accounts. Currently, if a fine is unpaid and it does not deal with health and safety, it stays like a lien on a house and it stays on there, and the HOA never collects. This process allows the HOA to collect through the small claims or court of jurisdiction. In reality, it gives the association a lot more power to collect the fine.

Assemblyman Carrillo:

Section 1, line 12, you add, ". . . have subpoena powers." Is the Real Estate Division asking for this?

Jonathan Friedrich:

Yes, they are, in Assembly Bill 34. The problem is that when the Division needs to subpoena records, they have to go to the Commission—which is not a problem—and one of the commissioners, normally the chairman, signs the subpoena. It has been challenged a few times in court, according to Ms. Gail Anderson. They then had to go to court and defend it to be able to get the records they wanted. The claim by the respondent was that there was a conflict of interest and that the Commission, who was hearing the case, was now asking to subpoena the records.

Assemblyman Carrillo:

So we are duplicating something that is already being proposed in A.B. 34?

Jonathan Friedrich:

Yes, but we do not know the status of A.B. 34. Assembly Bill 34 has been rewritten, but I do not know what the status of it is yet. To my knowledge, it has not come back up for a rehearing.

Assemblyman Carrillo:

But you are duplicating something that is already in A.B. 34.

Jonathan Friedrich:

Correct.

Assemblyman Carrillo:

If it does not work out in A.B. 34, it will work out in this bill?

Jonathan Friedrich:

Correct.

Chairwoman Cohen:

Let us move on to sections 11 through 16.

Jonathan Friedrich:

It is very cumbersome to work from two separate documents.

Chairwoman Cohen:

I think everyone on the Committee agrees.

Jonathan Friedrich:

There were no changes in section 11. Section 12, page 32, lines 19 and 20 reads, "A copy of the information described in paragraphs (a) to (f), inclusive, must be made available in paper format." That was the change. Just inserting the words "in paper format at no charge to each person present at the meeting." Many times when you go to a meeting, they will have the financial documentation and people just cannot follow along without written information in front of them. That was the only insertion.

Section 13, page 34, lines 37 to 40 deals with hearings where a homeowner who has been called to the hearing can be represented by a person of their choice and also the ability to make audio or video recordings of the hearing. Those were the only changes there.

Section 14 on page 35 deals with services by inserting the words "professional services", which was actually left out when they moved language from *Nevada Administrative Code* (NAC) and codified and put into NAC 116. There are at

least three bids when practicable, and the bids must be opened and read aloud at a meeting. There have been instances where a board has opened the bids at a public meeting, looked at them, and shoved them right back in the envelope and never disclosed the prices to the owners.

Section 17 on page 36, lines 34 to 44 were deleted. On page 37, delete lines 1 and 2.

Chairwoman Cohen:

Are there any questions for sections 11 through 16?

Assemblyman Carrillo:

Section 11, subsection 6, page 29, lines 38 through 39 says, "A guest of a unit's owner must be allowed to attend any meetings of the unit's owner." What is the purpose of having a guest, and who is the guest? Is the guest their lawyer? Who are we looking at as a guest? There is no definition of a guest. Is it a 12-year-old child, a pet, what is it?

Jonathan Friedrich:

There are three types of meetings that go on in associations. There is the executive board meeting, the executive session, which is closed to the owners unless they are called before the meeting for a violation, and then there is the annual units' owners meeting. That is usually held once a year. It deals with elections, the ratification of the budget, and any other matters, complaints, or issues that a homeowner brings before the people in attendance, including the board members. This is actually in statute. It is a units' owners meeting. If a unit owner wants to bring a guest, they would be allowed to. It could be an attorney, an interpreter, or a potential buyer. Before they move into the association, they might want to see what goes on in these associations, which would give them a feeling of whether they wanted to buy in or not.

Assemblyman Carrillo:

To me, it is rather vague and seems like a guest is not specific enough. You are opening it up to basically anyone and everyone. There is a reason why it would be the unit owner and not open it up to anyone that is off the streets.

Jonathan Friedrich:

The whole idea is transparency. Let people know what is going on. If there are abuses going on in the association, if there is embezzlement, it has to be aired and known. How many people want to subject themselves to sitting at a homeowners' association meeting?

Assemblyman Carrillo:

Is the open meeting law not already applied to HOA meetings?

Jonathan Friedrich:

Unfortunately, no. It does not. Senate Bill 222 addresses that. These are corporations. The open meeting law at this point does not apply.

Assemblyman Carrillo:

But they are also taped. What about access to taped meetings?

Jonathan Friedrich:

Audiotaped. I am sorry; I did not understand the question.

Assemblyman Carrillo:

You would still have access to the audiotapes, correct?

Jonathan Friedrich:

If the audiotape is working. There have been instances where tapes have been recorded and there is nothing on the tape, or it has been erased or lost.

Chairwoman Cohen:

Please proceed.

Jonathan Friedrich:

Page 39 deals with capital improvements. This has been kicked around quite a bit. It would require that any capital improvement that would exceed 5 percent of the annual budget would have to be voted on. Subsection 9 reads, "The association shall provide written notice to each unit's owner of a meeting at which an assessment or expenditure for a capital improvement in an amount of" and the \$500 or more is struck and substituted with "five percent of the annual budget."

On page 40, remove lines 10 to 30. On page 40, which is not in the amendment, line 1, where it says, "less than 500 units," strike that. Page 42, strike the word, "fine" wherever it occurred, because fines would not be submitted to a collection company. It would be submitted to a small claims court, so it ties that language together.

On page 45, lines 12 through 36, we restore the entire section to the original language. On page 47, remove lines 15 to 32. Page 49 deals with the records of the association.

Chairwoman Cohen:

Are there questions for sections 17 through 23 or anything else already covered?

Assemblyman Carrillo:

On page 10, line 40, it talks about making copies ". . . without limitation, records, invoices, contracts, agreements, letters of instruction issued by the Division," Who is going to foot the bill for this? Are the HOAs going to have to foot the bill for this?

Jonathan Friedrich:

In the past legislative session, it was in electronic format and there was no charge. In paper format it was \$.25 for the first ten pages, and then \$.10 per page thereafter, which was paid by the person requesting it.

Assemblyman Carrillo:

Is this going to be done by a person, or is it done by machine? Someone still has to gather all this information, and basically pay the labor to have that person create these documents electronically. Who is going to be footing the bill for this? Does this mean all the homeowners are going to be burdened with more and possibly even higher monthly assessments? Is that what we are looking at to do with this?

Jonathan Friedrich:

Indirectly, yes. Current statute requires that this information be provided at no charge to the homeowner. You asked about the records.

Assemblyman Carrillo:

I understand that. But what I am saying is that at the end of the day, who is going to have to end up paying more for the assessment? Even if it is no extra charge, again, at the end of the day, who is going to pay for it?

Jonathan Friedrich:

The homeowners' association. The alternative is embezzlement, and that is going on right now. When two board members requested the association's documents, they were refused, and when they finally got to the point where they could get the records, \$306,000 was missing. It is a cheap price to pay to have the records made available to even board members, let alone homeowners.

Assemblyman Carrillo:

That is all I needed to hear. Thank you.

Chairwoman Cohen:

Apparently we are losing the feed to Las Vegas. I am sorry for the folks who are there. If you have any written testimony, we will take it. I think we are going to get it back. If anyone wants to make public comment or comment on these bills at three o'clock, we will be here for a short while before the next committee meeting. For now, we may lose you, and I want to give you a heads-up about it. We appreciate your coming down and taking your time. Mr. Carrillo, you can continue with your questions.

Assemblyman Carrillo:

I wanted it for clarification. I understand that at the end of the day, it is important, but I do not feel that the association should be burdened with this, as they are going to pass it on to the people in the association. I am a member of an association, and I know how much I pay on a monthly assessment, and for someone who feels they need to have copies of every document out there, as you know, through the process, it still requires someone who has to do it. That is just a burden on the homeowners of that association. If that individual wants all those copies, I feel that they should pay for it. The only reason why is because every individual in that HOA will have to pay for it, and that is money out of my pocket for one individual who wants to have copies of every document and every invoice. I have a big issue with it. At the end of the day, that is money coming out of my pocket, and anyone else who is a member of the HOA.

Jonathan Friedrich:

To address Mr. Carrillo's concern, I would like to read you an affidavit. It is very short.

Ms. Linda Lang is the board member whom I believe to be honest and without fault in the theft of the funds from this plaintiff. These defendants serially and repeatedly stole money from the plaintiff to the point where the plaintiff has significant negative cash flow and the remaining board members are being compelled to assess a special assessment of approximately \$1,100 per homeowner to generate sufficient funds to pay the existing obligations of the plaintiff. I will testify that I was never given adequate access to the books and records of the plaintiff, even though I repeatedly asked for same. Further, I was never asked to approve large expenditures except for a couple of contracts such as landscaping and smaller matters. I was never asked to ratify the course and security company arrangements.

There is \$306,000 missing from that association. The result of not getting those books and records is now costing each of those homeowners \$1,100 plus an increase in the monthly assessments. So that is the flipside of a couple of bucks a month that would possibly cost more.

Chairwoman Cohen:

Instead of copies, is there a way to have an open library where people can come in on certain days if it is a homeowners' association that has a convenient location or even at their meeting place that once a month they are going to bring out all the books and everyone can go through them. That way, if they just want to see and make sure that everything is okay, they can see it, but if they really feel that they need copies, then they can go ahead and pay the \$.25 for the copy.

Jonathan Friedrich:

That would be fine, but I think that would be an even harder burden on the management company to start dragging all the books and records to a board meeting. Normally, the smaller associations meet four times per year. The larger ones usually meet monthly. The whole idea is just to have transparency.

Chairwoman Cohen:

Please proceed.

Jonathan Friedrich:

I believe we were talking about the custodian of records, which was on page 49. This language was put into statute in the last session, and right now, if the books and records are not turned over within 21 days, a fine of \$25 is assessed. It is just some cleanup language where all the other requirements are 14 days rather than this which currently says 21 days. Also, change the language to "the custodian of records", because many times it might be the management companies or if it is a self-management association, then they might have the records. This was just a clarification.

Page 50, section 25, line 33 is striking out lines.

Chairwoman Cohen:

I think this is the Ombudsman section that we already covered last week.

Jonathan Friedrich:

This also deals with retaliation. Just to expand, the definition of retaliation says that will cause any financial impact or harm to a unit's owner, or harm or malign the reputation or deny the right to run for election to the board of the

association due to sexual orientation, race, religion, or disability, filing against a unit's owner a false or fraudulent affidavit with the Division pursuant to NRS 116.760 and NRS 38.320. A violation of this provision is actionable per NRS 116.745 and NRS 116.795. I was just expanding the definition of existing law.

Page 53, section 28 adds new language on line 27. "The association shall reimburse the owner the full costs incurred by an illegal towing of a vehicle and any damage caused to the vehicle."

Chairwoman Cohen:

Please do not read the amendments to us. Just tell us what it is about.

Jonathan Friedrich:

Assemblyman Munford is a perfect example. His stepdaughter was parked in an HOA, and her car was towed away illegally. She had to pay a fee to retrieve it. It was not parked in a red zone or a handicapped zone.

Assemblyman Carrillo:

On that particular incident, were there any other cases that you have a history? I know you are really good at creating a lot of paperwork for our committee secretaries. Do you have any documentation other than Mr. Munford's stepdaughter? Is this an ongoing thing, or is it one isolated incident?

Jonathan Friedrich:

No.

Assemblyman Carrillo:

If you have an ongoing list, that would be great. Thank you.

Jonathan Friedrich:

Yes, I have heard of other cases. In this particular case, the final cost was about \$12,000 or \$14,000. This gentleman's car was towed illegally, he was at his daughter's association, and he then took a small claims summons out against the tow company, was thrown out of small claims, and went through the arbitration process. I believe it was \$10,000 or \$12,000 in fees. He represented himself, and it eventually went to district court. I can get you that information; I do not have it with me today.

Chairwoman Cohen:

Please proceed.

Jonathan Friedrich:

Page 56 deals with filing of intervention affidavits. Currently, it is a one-year window and we would like to see it extended to two years. There have been many cases where it takes a long time to get all the documentation and for whatever reasons, it drags on. I have an example for you in the packet. When the intervention affidavit was filed, it was kicked, and that was over 12 months, even though the statute says, ". . . or when it became known." So this makes it very clear. You have two years.

Page 56, section 32, line 36 adds some language that says, "An intervention affidavit can be submitted without prior notification to the management." Well, it would be the statement of fact if it was a management company, or intervention affidavit against a board. Someone steals something from you. Do you send them a notice first, "Please give it back?"

Chairwoman Cohen:

Now I know we are getting into items we have already covered. That is exactly what you said last week. Please make sure you do not cover the items we have already covered.

Jonathan Friedrich:

Page 56, section 32 is cleanup language about not disclosing any information while an investigation is going on. Page 58, lines 7 through 30 gives the individual the option of going to mediation, arbitration, or to court. You would no longer need lines 31 and 32. Page 59 deals with mediation and arbitration. If the mediation is not successful—and again, through the Legislature, we are asking that a cap of \$1,000 be put on the arbitrator, and that is going to where we were last week.

Page 60 says that the Division must administer NRS 38.360. Even though it is in statute right now, the Division says they only facilitate it. Page 60, section 35 adds the word "mediator" and page 61, section 35, line 14 through 16 adds the word "mediation."

Chairwoman Cohen:

Are there any questions? [There were none.] Is there anyone in Carson City in support of A.B. 397?

Yvette Williams, Chair, Clark County Democratic Black Caucus:

We are in support of this legislation, as well as the one that was before you earlier. We are particularly interested in this piece of legislation. Many of our members suffer under what I believe to be unlawful policies and procedures by homeowners' associations. I previously lived in a homeowners' association

twice, and purposely picked a home in the county so that I did not have to deal any further with HOAs. Many of our members do live in HOA communities and have expressed many, many times with Assemblyman Munford the challenges and problems they are having, and have sought his help along with their own individual legislator to try to get resolution or help. Oftentimes, they are referred to the Ombudsman or some other process that is in place, and more often than not it is of no help to them. It is recommended that they hire an attorney and many in our community cannot afford to hire an attorney. When we refer them down to Legal Aid, Legal Aid says, "We do not take on those kinds of cases." There is no recourse for the member other than to just—and I say member of the community—be subject to continued harassment and unfairness of a lot of the policies that are going on.

On a personal note, one of our members was Patricia Grimes Davis. We are very grateful for Assemblyman Munford referring to this bill as the Patricia Grimes Davis bill because we lost her in November of last year. She was a board member of ours, and a very active member of our organization. We watched her for years victimized by her association. I do not want to go into all the details of all the specifics, but it just was not right. Anything you can do to help people like her. We lost her to a heart attack. It is a lot of pressure when you are threatened—especially when you are a senior—of losing the only thing you have, which is your home. She sought help everywhere, and I tried to help, but our hands were tied. I am speaking for Pat today because she is no longer with us physically, and someone has to speak up for the Pat Grimes Davises that are in the community. I know the bill is very large and can be quite confusing, but whatever help you can give us this legislative session in dealing with the things that are going on to homeowners who do not have a resource, we ask and implore you to please, please help your constituents. People are afraid, and they are being victimized. I wish that more people would come out and tell their story, but oftentimes they are afraid because they are already being targeted in their community.

Chairwoman Cohen:

Are there any questions? [There were none.] Is there anyone else in support of A.B. 397 in Carson City? [There was no one.] Since we lost our feed to Las Vegas, we will move to opposition in Carson City.

Garrett D. Gordon, representing Olympia Companies:

This is certainly not the first time we have seen this bill. It has come the last two sessions. Our testimony has been very specific and detailed the last two sessions why many of these sections unfortunately do not work. It is our belief that the testimony from the prior two sessions and this session are really based on isolated incidents. Some of the figures and numbers and changes are pretty

arbitrary, and a lot of it is based on opinion. I have always said, the last two sessions and this session again, that I have a lot of respect for Mr. Munford and I am willing to sit down with him and Mr. Friedrich and try to tackle two or three of these issues. But a bill with 40 sections in it, each could have dramatic impacts to this state as a whole as far as HOAs. It is going to take a lot of work. I am willing to go forward with that work, but would also suggest that I talk with Mr. Munford about a study. There was language in Senate Bill No. 174 of the 76th Session, which was Senator Copening's bill, that dealt with an interim study on HOAs. I have given that language to Mr. Munford and he is considering it.

Perhaps we could try to work out a lot of the concerns Mr. Friedrich has during the interim. Maybe some of them are true. Maybe some of them do need change. At this point, given the late hour of the Legislature and given this Committee's time, I am not going to go through it section by section. I will pull my testimony from the last two years, and incorporate it in this record that really shows the problems, issues, the arbitrariness, and frankly, opinion, of why it should be changed for the record to give consideration to this Committee's time. Before this Committee's deadline, I will sit down with Mr. Munford and Mr. Friedrich and see if we could deal with two or three of their biggest issues. I am certainly willing to do that and try to get something coming out moving positively. Please note our strenuous objection to this bill as written at this time.

Chairwoman Cohen:

Are there any questions? [There were none.]

Assemblyman Carrillo:

I appreciate Yvette Williams coming up. We know that Ms. Grimes did a lot of good work for the HOA movement of trying to protect homeowners, and that is much appreciated. I sat on the subcommittee the last go-round, and we spent many hours on it as we did just the other night. Sometimes when these bills are so big, it can be a little hectic. At the end of the day, we want to make sure that we pass good policy in this Committee, and it is not just a matter of passing a bill that we feel is good for the homeowner. It has to go both ways. That is why I appreciate your comment, Mr. Gordon. I want to say thank you for bringing that up and at least have some kind of thing that we can all work together on to get good policy out there. I know that Mr. Friedrich is putting a lot of his personal time into this but, again, at the end of the day we need to make sure we pass good policy out of this Committee.

Terry J. Care, representing Terra West Management Services:

We are opposed to the bill as written. The opposition in no way reflects Terra West taking somehow in a light manner those folks who have related stories of a specific instance involving them in which they came out on the short end. There are 500,000 people, more or less, in the state who live in HOAs. I would like to be a part of the conversations that Mr. Gordon has with Mr. Munford and Mr. Friedrich. As Mr. Carrillo pointed out, we seem to see these issues session after session after session, and as much as we liked in prior sessions, we thought we were putting everything to rest and it just never seems to work out. We must have at least 12 or 15 bills this session. We are opposed to the bill. I am not going to take my time and go through it section by section. I think the Committee has better things to do at this point.

Assemblyman Martin:

This is a large bill and there are a lot of confusing and moving parts to it. I appreciate your comments about the 500,000 people who are involved in HOAs. I own property in multiple HOAs. Certainly there are some instances, whether they are isolated or prevalent, of abuses by HOAs. What is your understanding of the grievance procedures that now exist? Obviously, there must be some procedure that is either working or not working, but what is your impression of it? Before we go amending the law for this, I would like some feedback on it.

Terry Care:

In my experience—and I can certainly speak for Angela Rock on behalf of Olympia Companies—for the most part, the laws on the books are sufficient to deal with many of these incidents and issues. I can tell you numerous times in the last two sessions we have sat down with Assembly members who have constituents who have an issue and who are suggesting a change to the law. We pulled out NRS Chapter 116, pointed to the provision where their board is already violating civil or criminal law, and here is how to move forward in getting some resolution. I certainly know that dealing with Mr. Ohrenschall's bill with arbitration and mediation—I am going to work with him on fixing the process of getting through if there is a dispute—but at least in my experience, Ms. Rock and myself have made ourselves available to constituents, Assembly members, and Senators throughout the session, even in the interim, of trying to show where the existing laws are either not being enforced or the folks are not aware of them. I hope that answers your question.

Chairwoman Cohen:

Are there any questions? [There were none.] Is there any other opposition in Carson City? [There was no one.] Is there anyone who is neutral in Carson City? [There was no one.] I would like to remind everyone that

Chairman Frierson's woodshed is open and always available for the bill sponsors and the stakeholders to meet and try to resolve something and come to an agreement.

[Lost video feed from Las Vegas, and waited until an audio feed was established. The meeting was not in recess.]

Chairwoman Cohen:

We will continue the meeting on A.B. 397. I believe the two people in Las Vegas are going to be speaking in support of the bill, is that correct?

John Radocha, Private Citizen, Las Vegas, Nevada:

I want to go to section 2, page 6, line 1. It says, "Restrict, prohibit or otherwise impede the lawful rights of a unit's owner" I would like to see this more defined, if that could be done.

Chairwoman Cohen:

We will consider you in opposition, but you can still tell us what you like about the bill and what you do not like about it. I would ask that you speak to Mr. Munford after we are done with the hearing. If there is something that you think you want to change, or you would like to see a change made, let Mr. Munford know, since he is the sponsor of the bill.

John Radocha:

Okay. Also, in section 12 of this bill, starting on page 30, line 44 it says, "A meeting of the executive board must be held . . . at a time other than during standard business hours and not before 6 p.m. . . ." I am confused because I want this because for me to go to a budget meeting, it is 80 miles round trip, and they hold it on a day that they choose, and it is at twelve noon.

The part I would really like to see changed is on page 24, starting on line 43. "An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in the candidate's campaign for election as a member of the executive board" I would like to know why it cannot be for a homeowner also. Before I close, I would also like to say that A.B. 397, whether the Legislature realizes it or not, helps us folks on a fixed income. It is about the money. Thank you for your time, and I appreciate your hearing me.

Chairwoman Cohen:

Are there any questions? [There were none.]

Delores Bornbach, Private Citizen, Las Vegas, Nevada:

I had thought about buying a home, so I have been going to the homeowners' meetings with my friend to find out what they were all about. A friend should be allowed to go with the homeowner. Also, after attending these legislative sessions and attending classes, I realized that snow, blizzards, and ice are heaven compared to the fear of the fines and fear of a lien being put on your house. You should also have more commonsense rules in the CC&Rs, because we are supposed to save energy. I know this has been brought up before. Out here clothes dry in five minutes, and the neighbors would not even have a chance to see them. Make one rule. Treat others as you wish to be treated yourself. Thank you.

Chairwoman Cohen:

Should we list you in support of the bill?

Delores Bornbach:

Yes, I am in support of the bill.

Chairwoman Cohen:

Is there anyone else in Las Vegas to speak to the bill? [There was no one.] With that being said, I am closing the hearing on A.B. 397, and open it up for public comment. Is there anyone for public comment in Carson City?

Jonathan Friedrich:

The last time Assembly Bill No. 448 of the 76th Session was introduced, it was amended. Eventually, after a couple of very late night sessions with Assemblyman Carrillo, Assemblyman Ohrenschall, and former Assemblyman McArthur, the bill was passed through the Subcommittee and it went to the full Assembly. It was passed 42 to 0. Unfortunately, for whatever reasons unbeknownst to me, it never made it into the Senate.

There are approximately one million people living in homeowners' associations in this state. I know it is well over 400,000—I believe it is 406,000—units in associations. That includes individual private home, high-rise units, and low-rise condominiums. People are being abused now. We need to stop it. This article appeared in the *Las Vegas Sun*, June 3, 2012. How did it get to this point? Lack of transparency. These associations have a lot of money in them, and there are some very dishonest people. There are endless numbers of cases. Last week I spoke to Ms. Sharon Jackson, who is a supervisory investigator at the Nevada Real Estate Division, and she says that currently the biggest problem they have is embezzlement. There are people who are stealing homeowners' monies. In some cases it is the management companies, and

many cases it is the board members. We need to stop this. The fact that a homeowner can request the books and records can help stop it.

I apologize for the cumbersome way in which we represented the bill. Thank you.

Chairwoman Cohen:

Are there any questions? [There were none.]

Garrett Gordon:

Just to make the record clear, the bill that was passed last year and went through the Assembly was severely amended. It looked nothing like what you heard today. There was implication in Mr. Friedrich's testimony that this bill as written passed the Assembly last session. That is absolutely untrue, as Mr. Carrillo can attest to being on the subcommittee.

Chairwoman Cohen:

Are there any questions? [There were none.] Is there anyone else in Carson City for public comment? [There was no one.] Is there anyone in Las Vegas wishing to provide public comment? [There was no one.]

Assemblyman Munford:

I want to say that I became involved in the HOA you can say almost like a struggle or a battle. The HOA—I always thought it was something easy to fight for and defend, because the HOA boards are an elected body. When you elect a body by the homeowners or the people, you are supposed to follow what is known as democratic principles, and basically following constitutional law the way this country is set up. The purpose is there to protect the rights and welfare of the residents. It seems as though in many of the complaints that I have received from constituents and even people who were not my constituents that lived outside of my district, it was something that to me I just could not believe what is happening to them. I said, "This should be easy to give them all the assistance and help that I can," because this is something that follows what the law of the land is. The State of Nevada should agree totally with it, too. I do not know. Sometimes I have been up here—this is my third session where I presented bills on HOAs, and it seems like we are always confronting and battling the same things and repeating the same things over and over and over again, and not coming to any type of resolution. I probably will not give up again if I come back the next session. I do not know if we will be back on the battle line again. Maybe over the interim this time we can sit down and talk with Garrett Gordon, former Senator Terry Care, and even Jonathan Friedrich. Maybe we can sit down and have an extended deep study on all the different sides and how things really work, and see if we can come to

some kind of an agreement or compromise. This seems like it is going on and on and on, and I know you, as a Committee, listened when Mr. Friedrich was speaking. You cut him off. He has an extensive list of things. I want to say that I hope you, as a Committee, understand what we are trying to do and what we are trying to reach. I think Yvette Williams said it pretty good in a condensed way. She did not say anything specific, but she put it in a condensed way to know what we are up against here. You know where your conscience is. Do the best you can. I have a lot of faith in you. You are very astute and wise.

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

Because of the interruption of the feed, I did not go in the order that I am supposed to. I want it to be on record that our Committee on Common-Interest Communities opposes A.B. 397 for a couple of reasons. From what I saw earlier today, it leaves no accountability for the actual owners in violation or those responsible for those costs. There are also conflicts in other laws with some of the provisions of A.B. 397. With that, I want to make sure that the Committee was aware that the State Bar opposes A.B. 397. Thank you.

Chairwoman Cohen:

Thank you, Ms. Higbee. I recommend that you speak with the sponsor, Mr. Munford. I believe he is going to be speaking with Mr. Care and Mr. Gordon, and hopefully all of you can come to a resolution.

[Also submitted but not discussed were ([Exhibit F](#)), ([Exhibit G](#)), and ([Exhibit H](#)).]

Are there any questions? [There were none.] We will bring the hearing on A.B. 397 to a close. This Assembly Judiciary Subcommittee is adjourned [at 2:11 p.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblywoman Lesley E. Cohen, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 1, 2013

Time of Meeting: 11:53 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 397	C	Assemblyman Munford	Testimony
A.B. 397	D	Jonathan Friedrich	Proposed Amendment
A.B. 397	E	Jonathan Friedrich	Proposed Amendments
A.B. 397	F	Jay Bloom	Proposed Amendments
A.B. 397	G	Gayle Kern	Testimony
A.B. 397	H	Melinda Murphy	Testimony