

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

**Seventy-Seventh Session
April 8, 2013**

The Committee on Judiciary Subcommittee was called to order by Chairwoman Lesley E. Cohen at 7:05 p.m. on Monday, April 8, 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 Paul Aizley, Clark County Assembly District No. 41
Assemblyman James Ohrenschall, Clark County Assembly District No. 12

STAFF MEMBERS PRESENT:

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

Minutes ID: 772



OTHERS PRESENT:

Garrett Gordon, representing Olympia Companies
Jack Mallory, representing International Union of Painters and Allied
Trades, District Council 15; and the Southern Nevada Building and
Construction Trades Council
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Michael Joe, representing the Legal Aid Center of Southern Nevada
Tim Stebbins, Private Citizen, Henderson, Nevada

Chairwoman Cohen:

[Roll was taken. Protocol was explained.] Welcome to the fourth meeting of the Assembly Subcommittee on Judiciary, including those attending at the Grant Sawyer State Office Building and listening or watching on the Internet. The Chairman of the Committee on Judiciary convened this Subcommittee to consider bills on common-interest communities and homeowners' associations.

Tonight's meeting is a work session, so we have already conducted the hearings on these bills, either as a full Committee or as the Subcommittee. The Subcommittee will consider the bills and make recommendations to the full Committee on Judiciary. We are not going to take testimony during the work session, but I may ask some individuals to come to the witness table to answer some questions or clarify certain points. Please keep in mind that the Subcommittee cannot take final action on the bill. All of our actions tonight will be recommendations to the full Committee for their consideration. Also, please be aware we will take public comment at the end of the work session.

Let us start with Assembly Bill 34.

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

Dave Ziegler, Committee Policy Analyst:

Thank you, Madam Chair. The first bill on the work session is Assembly Bill 34, and was sponsored by the Committee on Judiciary on behalf of the Real Estate Division. This bill relates to common-interest communities and homeowners' associations. [Mr. Ziegler read from the work session documents ([Exhibit C](#)).]

On the day of the hearing, which was February 22, 2013, the Real Estate Division submitted two proposed amendments. On March 25, 2013, the Administrator of the Real Estate Division submitted a revised amendment ([Exhibit D](#)). Just within the last 48 hours or so, the Real Estate Division has supplemented that revised amendment with a second amendment ([Exhibit E](#)),

which is not in the packet that we prepared for this meeting tonight, but it is posted on the Nevada Electronic Legislative Information System (NELIS). It is two pages. Mr. Jack Mallory also submitted an amendment on March 1, 2013, and copies of these various amendments are attached, but not the first two amendments submitted by the Real Estate Division. Only their consolidated, more recent amendment, and the more recent supplement.

Chairwoman Cohen:

Thank you, Mr. Ziegler. Are there any questions from the Committee? [There were none.] I will entertain any motions.

ASSEMBLYMAN MARTIN MOVED TO RECOMMEND TO AMEND
AND DO PASS ASSEMBLY BILL 34.

Chairwoman Cohen:

Do I have a second? [There was none.] Seeing none, we will recommend to the full Committee that the bill is a No Pass.

The next bill is Assembly Bill 44.

Assembly Bill 44: Requires associations of planned communities to allow the outdoor storage of trash and recycling containers under certain circumstances. (BDR 10-262)

Dave Ziegler, Committee Policy Analyst:

Thank you, Madam Chair. The next bill is Assembly Bill 44 and was sponsored by the Committee on Judiciary on behalf of the Nevada League of Cities and Municipalities. It was heard early in this session on February 11, 2013 by the full Committee. Assembly Bill 44 relates to common-interest communities and the powers of homeowners' associations (HOA). Except as provided in the bill itself, A.B. 44 prohibits an HOA from regulating the way containers for collection of solid waste or recyclables are stored on the premises of a residential unit with curbside service. [Mr. Ziegler read from the work session documents ([Exhibit F](#)).]

In the packet, the first amendment dated February 8, 2013, from the Howard Hughes Corporation is one page, and the second amendment is in the form of an email from Todd Schwartz. The actual amendment language is at the bottom of the second page of that email. The third amendment is on paper with the logo of the League of Cities and Municipalities at the top. It is labeled "Proposed Amendment A.B. 44." It is two pages.

Chairwoman Cohen:

Thank you, Mr. Ziegler. Are there any questions from the Committee? [There were none.] Seeing none, I am looking for a motion to recommend.

ASSEMBLYMAN CARRILLO MOVED TO RECOMMEND TO AMEND AND DO PASS ASSEMBLY BILL 44 WITH HOWARD HUGHES AMENDMENT AND NEVADA LEAGUE OF CITIES AND MUNICIPALITIES AMENDMENT.

ASSEMBLYMAN MARTIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN DUNCAN AND ASSEMBLYWOMAN FIORE VOTED NO.)

Chairwoman Cohen:

Would anyone like to discuss this? It was my fault to jump the gun. Is there any discussion? [There was none.] Okay, we will move forward with it.

Assemblyman Duncan:

I have a quick question on Assembly Bill 34. Can we make recommendations that the Committee look at certain sections, or do we have to look at the whole bill?

Chairwoman Cohen:

The Subcommittee can, for lack of a better term, tease out sections. If there are sections you are interested in and would like to make a recommendation to amend and do pass based on certain sections, the Subcommittee can do that.

Assemblyman Duncan:

There were parts of A.B. 34 that we talked about—the referee program and different things like that—and I do not know if we thought that it would warrant a discussion at the full Committee level. I am curious about the dynamics of this Committee and how that works.

Chairwoman Cohen:

Yes, if any of the Subcommittee members would like to make a motion to recommend to amend and do pass and actually tease out some portions of the bill, they are welcome to make that motion. Would you like us to go back to A.B. 34?

Assemblyman Duncan:

If I could look over a couple of the provisions and see if I want to make that motion. May I wait for a few moments?

Chairwoman Cohen:

As there was no second and there was no vote, the bill is still in play. We can take a few minutes for you to do that.

Assemblyman Duncan:

Thank you.

Chairwoman Cohen:

Mr. Duncan, are you okay if we go on to Assembly Bill 98 and come back?

Assemblyman Duncan:

Yes, in fact, it would be great if we could proceed.

Chairwoman Cohen:

Thank you. Our next bill is Assembly Bill 98.

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

Dave Ziegler, Committee Policy Analyst:

Thank you, Madam Chair. Assembly Bill 98 was sponsored by Assemblyman Aizley and heard in the full Committee on February 22, 2013. It again relates to common-interest communities and homeowners' associations (HOA), and amends the statutes regarding executive board elections, HOA projects, and HOA financial statements. [Mr. Ziegler read from the work session documents ([Exhibit G](#)).]

On the day of the hearing, Assemblyman Aizley and Mr. Mallory both submitted amendments, and copies are attached. On April 1, 2013, Mr. Garrett Gordon submitted an amendment, and a copy of that is also attached. It is my understanding that the Legal Division's mock-up, which is designated Amendment 7996, which is not in the packet but is up on the Nevada Electronic Legislative Information System (NELIS), is a consolidation of Mr. Aizley's amendment and Mr. Gordon's amendment. I think that the amendments which would be in play at this point in time would be the Jack Mallory amendment and the more recent Legal mock-up Amendment 7996. I would be happy to be corrected if that is not correct.

Chairwoman Cohen:

Thank you, Mr. Ziegler. I would ask Mr. Aizley to come forward and explain the latest new amendment to make sure we are all on the same page.

Assemblyman Paul Aizley, Clark County Assembly District No. 41:

I believe the proposed amendment set in 7996 ([Exhibit H](#)) contains everything that we need. There is a section 4 that Mr. Gordon can explain. It has been discussed in other places.

Chairwoman Cohen:

Just a moment, Mr. Aizley. We are making sure that something made it onto NELIS. Please proceed.

Assemblyman Aizley:

As Mr. Ziegler explained, we are in agreement on the first three sections. The proposed Amendment 7996 has a section 4 and if you need discussion on it, Mr. Gordon can do it. That would be the final one. I think most of Mr. Mallory's corrections are included in Amendment 7996.

Chairwoman Cohen:

Thank you. Mr. Mallory, would you come forward and perhaps Mr. Gordon can explain this and you can confirm if the last amendment included his terms and his amendment as well.

Garrett Gordon, representing Olympia Companies:

I am referring to proposed Amendment 7996 ([Exhibit H](#)), which is a friendly amendment, and I worked diligently with Assemblyman Aizley on this document. Section 1 was revised, given the concerns at the first hearing that a candidate would not be in good standing if there were any pending fines. I know the concern was that if you had an unscrupulous board, who were picking on a certain candidate, they could just go and fine them arbitrarily and that person would not be able to run. It is back to the original objective standard of assessments and construction penalties.

Section 2 deals with revised bids and language that I believe is identical to the original bill but for that, the revised bid would, in fact, be open. I think if you have a second sealed bid, it adds quite a length of additional time in the process. So the first bid is sealed, and the revised bid would be open.

Section 3 is in regard to the audit process. Nothing changed in that section regarding the amended audit provisions. Section 4 deals with the associations' ability to collect collection costs which are capped in regulation upon a foreclosure. That was tied in with this bill given section 3 deals with audits, and it is an important distinction to make given the financial wherewithal of the association. I am happy to answer any questions.

Assemblyman Martin:

As to section 3, you know where I am going already with the audits once every four years for associations with budgets under \$150,000. I still think it is very awkward to switch back and forth between reviews and audits. Would you be agreeable to the concept of simply saying "review" and, should the membership decide otherwise, then they could jump to an audit. Effectively, if you do an audit for one year, you have to go back and audit the prior years' balances. It is a very awkward process, having done it too many times. How would you receive that comment?

Chairwoman Cohen:

Mr. Martin, would you mind a very quick run-through of the difference between a review and audit as to the technical terms?

Assemblyman Martin:

There are three basic types of reporting. Compilation, which is irrelevant here, is the lowest level of reporting. Basically, the certified public accountant (CPA) comes in, slaps together the financial statements, and whatever they say, they say. A review is substantially more in scope than the compilation and includes an analysis of internal controls, analytical reviews, and puts together financial statements with notes in accordance to generally accepted auditing standards. If there are any problems that turn up, usually at that point—especially in that size of an entity—it would be readily apparent. An audit transfers the liability for the report to the CPA. It does pretty much the same thing as a review, but what will happen is that with an audit there are confirmations. It is a verification process. The auditors may send out confirmations to people who owe the association money or payable confirmations to vendors. By signing their name, the opinion letter says, "In our opinion," essentially, "the above statement presents fairly. . ." or not. There is a transfer of liability from the association's management or the management company over to the CPA. With that responsibility comes a very hefty price tag. When I did reviews and audits, the audits could easily cost three to four times as much. You are essentially getting the same thing—there are a couple of extra procedures in an audit that are not in a review. The confirmation is the most notable, and then the transferring of responsibility. I think that probably covers it.

Assemblyman Aizley:

I would be happy with that. I thought that the reason for the review was to make it less burdensome to do the audit when it was called for. As long as the association can call for an audit at some time, then I am happy with the change.

Assemblyman Martin:

The process of doing a review is almost independent of the process of doing an audit. It is easier if the books have been reviewed; that is true. But what will happen, let us say, if you are auditing for 2013. You have to go back into 2012 and effectively audit everything to make sure the ending balances in 2012 are up to the auditing standards. It is a yes and a no.

Assemblyman Aizley:

I am okay with the yes and the no.

Chairwoman Cohen:

Are there any other questions? [There were none.] Mr. Mallory, do you feel that the final amendment includes your amendment?

Jack Mallory, representing International Union of Painters and Allied Trades, District Council 15; and the Southern Nevada Building and Construction Trades Council:

It incorporates the principles of all but one of the concepts that I had submitted the amendment on. I had actually submitted a revised amendment on March 19, 2013, but I do not see it in the work packet. It was related to the issue of membership of the board of an association or master association, and it was based on one issue that we have had in Las Vegas for an extended period of time where a husband and wife team have effectively ruled an association by fiat for a number of years. The proposed amendment was intended to address that situation.

Assemblyman Carrillo:

Mr. Aizley, I know you had two different revised amendments. The one that you are looking at now was 7594 and now it is 7996. Am I correct?

Assemblyman Aizley:

The last one is Amendment 7996.

Assemblyman Carrillo:

I see Mr. Mallory's amendment and would like to see where this would fit. If there is an issue of conflict, at the end of the day, it is your bill. If you do not mind, would you comment on the proposed amendment by Mr. Mallory?

Assemblyman Aizley:

We are willing to work with Mr. Mallory on his amendment. I thought it was taken care of at first, but if not, we will be happy to work with him.

Garrett Gordon:

As Mr. Mallory indicated, we incorporated his concepts except for the new amendment that I have not seen. I would suggest that, if it is the pleasure of the Subcommittee to move forward with this amendment, I will work with Mr. Mallory on the Senate side on his language if need be, if that is acceptable with Mr. Mallory.

Jack Mallory:

Absolutely. There is no reason at this point to hold the bill up on my account.

Chairwoman Cohen:

Do I have a motion?

ASSEMBLYMAN CARRILLO MOVED TO RECOMMEND TO AMEND
AND DO PASS ASSEMBLY BILL 98 WITH AMENDMENT 7996.

ASSEMBLYMAN MARTIN SECONDED THE MOTION.

Assemblyman Martin:

I would like to request that Assemblyman Carrillo modify his motion to accept my proposed amendment regarding the reviews as previously discussed, as \$150,000 or less would only require reviews and not an audit, unless the other provisions of the subsection apply, most notably the membership voting in favor at whatever rate it reads currently for an audit.

Chairwoman Cohen:

Mr. Martin, which section is that?

Assemblyman Martin:

Section 3.

Assemblyman Carrillo:

I want to add Assemblyman Martin's recommendation to A.B. 98 with the Amendment 7996 as proposed.

ASSEMBLYMAN CARRILLO MOVED TO RECOMMEND TO AMEND
AND DO PASS ASSEMBLY BILL 98 WITH AMENDMENT 7996
AND ASSEMBLYMAN MARTIN'S AMENDMENT.

ASSEMBLYMAN MARTIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN DUNCAN AND
ASSEMBLYWOMAN FIORE VOTED NO.)

Garrett Gordon:

I just wanted to note that on Assembly Bill 370, I have been working with Mr. Ohrenschall on a compromise on mediation and arbitration that may address Mr. Duncan's concerns about keeping A.B. 34. You might want to talk about A.B. 370 before we deal with A.B. 34, but it is a suggestion.

Chairwoman Cohen:

I was going to swing back around to that one last anyway.

Let us move on to Assembly Bill 137.

Assembly Bill 137: Revises provisions relating to landscaping within common-interest communities. (BDR 10-215)

Dave Ziegler, Committee Policy Analyst:

Thank you, Madam Chair. Assembly Bill 137 was sponsored by Assemblywoman Neal and heard in the Subcommittee on March 12, 2013. Assembly Bill 137 relates to common-interest communities and their executive boards and governing documents. [Mr. Ziegler read from the work session documents ([Exhibit I](#)).]

I think both amendments are brief and self-explanatory.

Chairwoman Cohen:

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

Assemblyman Martin:

Is there any provision in there concerning backyards? We were talking about dust balls and dirt and having some minimal landscaping. I do not see anything in either of these amendments that relate to it.

Dave Ziegler:

I agree. I do not see anything in either of these two amendments that addresses the concept of minimal landscaping.

Chairwoman Cohen:

Mr. Martin, I believe Ms. Neal's amendment does have the size of a backyard, which I believe the intent of the provision had to do with helping to resolve dust issues.

Are there any other questions? [There were none.] Do I have a motion to make a recommendation to the full Judiciary Committee? [There was none.]

We will move on with Assembly Bill 320.

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

Dave Ziegler, Committee Policy Analyst:

Thank you, Madam Chair. Assembly Bill 320 was sponsored by Assemblyman Stewart and heard on March 27, 2013, in the Subcommittee. Assembly Bill 320 relates to common-interest communities, the duties of the ombudsman, and the procedure for resolving alleged breaches of the governing documents of a homeowners' association. [Mr. Ziegler read from the work session documents ([Exhibit J](#)).]

On the day of the hearing, Mr. Jonathan Friedrich submitted an amendment, which is attached. It is one page. We also have an amendment submitted by Garrett Gordon, which is three pages. It is essentially unlabeled, but it says at the top in large bold letters, "Amendment to A.B. 320." I do not know the date on it, but it is in our files on this bill.

Chairwoman Cohen:

Thank you, Mr. Ziegler. Are there any questions? I believe Mr. Friedrich is in Las Vegas, so if anyone has any questions, he is available. Mr. Gordon is also available.

Assemblyman Carrillo:

I was hoping Mr. Gordon could come up and discuss the amendment to clarify.

Garrett Gordon, representing Olympia Companies:

My amendment is certainly a friendly amendment with Mr. Stewart. I worked with Mr. Stewart to come up with a compromise on our concerns along with Mr. Friedrich's intentions. I would just note in section 1—I understand that this may have caused a fiscal note to go on, because instead of saying "when appropriate, investigate," which is the current law, it was proposed to say "investigate disputes." I spoke with Mr. Stewart. He left, but he gave me authority to remove that change and go back to the original language of "when appropriate, investigate" in order to avoid a possible fiscal note. With that said, everything else is a friendly amendment and I think a good compromise. Mr. Stewart asked me to request that, hopefully, the bill gets a positive recommendation.

Chairwoman Cohen:

Mr. Friedrich, are you there?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

Yes, Madam Chair.

Chairwoman Cohen:

Is it your understanding that the amendment as discussed includes the intent of your amendment?

Jonathan Friedrich:

My disclosure first. I am a member of the Commission for Common-Interest Communities and Condominium Hotels, but I am speaking as a private citizen and not on behalf of the Commission. I spoke with Assemblyman Stewart earlier today, and a compromise had been reached which I was agreeable with on the time frame in which to file an intervention affidavit. We had originally asked for two years, and the compromise was 18 months, which I am happy with. Assemblyman Stewart had indicated that on the first page of the amendment, line 21, that the words, "when appropriate, investigate" would be struck and that it would be "investigate disputes" which he was happy with, and I am very pleased with that also. I would hope that that would remain in the amendment on A.B. 320.

Chairwoman Cohen:

Is it your understanding that Mr. Stewart has agreed to that?

Jonathan Friedrich:

We spoke a couple of hours ago, and he indicated that the language would be "investigate disputes." He did not indicate to me anything other than that. So he was happy with it, I am happy with it, and a lot of other people will be very pleased.

Garrett Gordon:

Might I suggest that the word—go to the language—reads "investigate." However, in the event that there is a fiscal note, then it reverts back to "when appropriate, investigate." We certainly have time between tonight and the full Committee to confirm whether or not that one word adds a fiscal note. If it does not, we stay with "investigate." If it does, we go back to the original language. That would be my suggestion.

Chairwoman Cohen:

Mr. Friedrich, do you have a response to that?

Jonathan Friedrich:

It is Assemblyman Stewart's bill. I think he would have the last word on it. I would not want to speak for him other than to repeat what he had told me and what I have just disclosed to you.

Garrett Gordon:

I spoke with him outside. I feel comfortable going on the record saying he would be fine with this.

Chairwoman Cohen:

Are there any questions?

ASSEMBLYMAN CARRILLO MOVED TO RECOMMEND TO AMEND
AND DO PASS ASSEMBLY BILL 320.

ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Cohen:

All right. That will be the recommendation.

Our next bill is Assembly Bill 370.

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

Dave Ziegler, Committee Policy Analyst:

Assembly Bill 370 was sponsored by Assemblyman Ohrenschall and heard in Subcommittee on March 27, 2013. Assembly Bill 370 relates to common-interest communities and the procedures for resolving disputes over alleged violations of the governing documents of a homeowners' association. [Mr. Ziegler read from the work session documents ([Exhibit K](#)).] I do not have any amendments, Madam Chair. Thank you.

Chairwoman Cohen:

Thank you, Mr. Ziegler. I understand that there has been some recent movement on this bill, so I will invite Assemblyman Ohrenschall to discuss any recent action.

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

May I invite Mr. Gordon to come up, too? He has been kind enough to work with me and involve the other stakeholders. We have really been trying to

come to an agreement and we are very close. There are certain points that we do agree on, and certain points that we are not too far apart on, but we are still a little bit apart. I think it is fair to say that we both agree that we think mediation should be mandatory, because there is a high possibility that the dispute might be resolved. That is something we would like to see should this bill move forward.

We both heard Mr. Martin's comments that he was fearful that the \$300 for mediation might not be high enough. I propose to make it equal to what the Nevada Supreme Court's foreclosure mediation program charges, which is \$400, that would be equally divided among the two parties. I would also propose something akin to a penalty if the association or the homeowner does not participate. I propose something to the effect that the mediator could prepare a report indicating that the party had failed to attend and award something like a default judgment to the attending party.

In the effort to compromise, we have decided that we want to leave arbitration as a choice, but it would be a choice that both parties would have to agree to. It would not be the way our current system is, where one party can say "I want to do arbitration and not do mediation," because the arbitration is much more costly. I think that is where we break on it. I proposed a cap of \$200 an hour on arbitrator's fees with a maximum of \$1,000 for the arbitration, which could be waived if both parties agree that this is going to be a more expensive arbitration and they both decide they want to do it. Otherwise, one party would be able to veto the arbitration and they could go to court.

Mr. Gordon proposed a \$300-an-hour cap on arbitrations. He has done a lot of research, and says that is what folks in the industry tell him a good arbitrator charges. I do not deny that, but I also do not believe we will have difficulty finding good arbitrators who are still willing to work, even at a capped fee. I want to remind the Committee that there is a cap under Nevada Supreme Court Rule 24.

The other change that I wanted to make was to change the filing fee from \$25 and leave it at the \$50 fee that is currently in statute. If I misstated anything, please correct me.

Garrett Gordon, representing Olympia Companies:

I would like to thank Mr. Ohrenschall. We continue to try to work through compromises every session. I think he elaborated correctly. We are not there, but I think this is what the proposal is. These provisions would replace the provisions of the bill. There are three steps. First, mandatory mediation or the referee program if all parties agree on the referee program. There has been

some concern by associations about the pilot program or the referee program, so both parties would have to agree. It could be, as the bill stated, a three-hour mediation subject to approval by all parties. There would have to be a decision within 60 days, which gives certainty to the process and to both parties, and that both parties would need to file a written statement articulating their sides. I think that will expedite the process. Certainly it has been the concern of associations when a homeowner files a complaint with not much detail, so you waste about an hour or two hours in mediation figuring out what you are arguing over in the first place. Both parties would have to file some kind of written brief or statement five days before the mediation. We suggested an hourly rate of \$200 an hour for mediation.

The next step would be arbitration if mediation did not work out. Both parties would have to agree. We suggested \$300-an-hour fee. I said on the record before that I do not represent the mediators, I do not represent the arbitrators, and I have not been either one. I think picking these numbers is becoming somewhat arbitrary at this point, but where I came up with them was talking with my clients who have talked to folks in the industry to say, "How do we get a good mediator or an arbitrator at a respectable price?" That is what I am hearing.

If both parties do not agree to arbitration, then they make the decision of either party to take their issue to court. That is where we are. I do not think we are there yet, but I know we both have been trying in good faith to come up with a compromise.

Assemblyman Ohrenschall:

What we have agreed on goes a long way, because I think it definitely makes sure that the homeowner, if he or she chooses to go into arbitration, is going in with eyes wide open and knowing that whether you set a \$200 cap, a \$300 cap, or a \$1,000 cap, that it can be a costly proceeding. It has been a concern that a lot of homeowners have ended up in arbitration over a dispute and not realized how costly it could be. I think that what we have been able to agree on in terms of making mediation mandatory, and hopefully being able to cure many of these disputes, goes a long way.

Chairwoman Cohen:

Are there any questions for Assemblyman Ohrenschall, Mr. Gordon, and probably Mr. Joe in Las Vegas?

Assemblyman Duncan:

Where is the main sticking point? Where do you guys deviate? I know we have the mandatory mediation on the table. Where is it that we are not congruent?

Assemblyman Ohrenschall:

It is just the numbers we are sticking on. Basically, I was proposing increasing the cost of the mediation to \$400 from \$300 for the total three-hour mediation, which would mirror what the Nevada Supreme Court does. Mr. Gordon was proposing \$200 an hour for a mediator and capped at three hours, but both parties could agree to an extension of that.

Garrett Gordon:

I was suggesting an hourly rate be given even if you are capping a mediation at three hours. You have a mediator's time to review the documents, to get up to speed, to have the mediation, and then all parties would have to agree if it went beyond three hours. I think you have a built-in cap with the three-hour time limit unless all the parties agree. I think we are getting a little bit arbitrary in these numbers, but what I am hearing is in order to get good mediators, you have to be able to spend a little bit of money. We would prefer an hourly rate versus a capped cost, because you have that three-hour maximum, but four if all the parties agree.

Assemblyman Duncan:

So in that scenario, if it is three hours at \$200 an hour, are both parties going to split the cost? Is that the intent of it? So we are looking at \$600 versus \$400 right now?

Assemblyman Ohrenschall:

That is how I understand our compromise. It would be \$300 each unless both parties agree that the mediation is so complex that it requires more time. Of course, what we are trying to do is cut down costs, save people money, and resolve these disputes so they do not get into arbitrator trials and do not go into court.

Garrett Gordon:

I would see a little bit of preparation time built in as well. We were suggesting that both parties submit a statement. That has not been done before. My understanding is that both parties get there, it takes a while to tell the mediator the facts and have the mediator understand what the issue is, and then he actually starts mediating. So both parties submit some kind of written statement or brief, the mediator spends a little bit of time reading it at an hourly rate, and, hopefully, when all parties get there it is a very productive three hours.

Assemblyman Duncan:

So it will still be capped at \$600? Just the actual mediator himself would be capped at three hours, but the preparation time could take an hour or two?

Could we get some input maybe from Mr. Joe down in Las Vegas; I think he testified on this, but just from a practice sense. Are these really complex issues or is this going to take over three hours? I am trying to get some practical feedback.

Michael Joe, representing the Legal Aid Center of Southern Nevada:

I think most of the issues are not that complicated. The key to making it work is training your mediators, so they understand homeowners' association (HOA) law, because HOAs are a special type of practice for a lot of attorneys, and I think you have to understand the rules and regulations. Experience has shown that a lot of those issues are civil issues that are misunderstood by a lot of homeowners, so I do not think it takes that long.

One reason we chose \$400 as a flat fee is because we really did not expect that mediation should take three hours for a simple case. For those cases that run a full three hours, maybe at the end of three hours there would be the ability to go on and do some other form of alternative dispute resolution or go to court may be appropriate. I think that the vast majority of the cases will be resolved in less than three hours, and that is why we thought \$400 was appropriate.

Assemblyman Duncan:

What do you see happening in terms of the preparation time? Will they split the cost for the preparation time and then split the cost for the mediation? Is that what you are envisioning?

Garrett Gordon:

Yes.

Chairwoman Cohen:

Are there any other questions? [There were none.]

Mr. Ohrenschall, do you believe that you and the other stakeholders are capable of getting a full agreement tonight?

Assemblyman Ohrenschall:

We are very close. Am I your last bill?

Chairwoman Cohen:

You are not. There are two more, and I told Mr. Duncan that we could go back and talk about Assembly Bill 34. So you have some time.

Assemblyman Ohrenschall:

Well, if you do not mind recalling it, maybe I can try to get on the phone with different stakeholders.

Chairwoman Cohen:

Since all of you put in such hard work, I want to make sure that your work is not for naught. I do not want the bill to get lost in the shuffle.

Assemblyman Ohrenschall:

Thank you.

Assemblyman Duncan:

If you cannot come to some sort of an agreement with the stakeholders, would you mind putting your proposal down, Mr. Gordon, and putting your proposal down, Mr. Ohrenschall, so that the Committee can look at the merits of both of those and then make a motion on it? I think the parties agree that the mediation part is important, so I think we will just have to weigh the merits if you cannot come to an agreement.

Chairwoman Cohen:

Our next bill is Assembly Bill 395.

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

Dave Ziegler, Committee Policy Analyst:

Assembly Bill 395 was sponsored by Assemblywoman Fiore and heard in this Subcommittee on April 1, 2013. Assembly Bill 395 relates to common-interest communities and nuisances. [Mr. Ziegler read from the work session documents ([Exhibit L](#)).] There were no amendments. Thank you.

Chairwoman Cohen:

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

ASSEMBLYMAN CARRILLO MOVED TO RECOMMEND TO DO
PASS ASSEMBLY BILL 395.

ASSEMBLYMAN MARTIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Cohen:

We will make that recommendation.

We will move on to Assembly Bill 397.

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

Dave Ziegler, Committee Policy Analyst:

Assembly Bill 397 was sponsored by Assemblyman Munford and heard in this Committee on March 27, 2013 and April 1, 2013. Assembly Bill 397 makes various amendments to the statutes relating to common-interest communities in the following subject areas. [Mr. Ziegler read from the work session documents ([Exhibit M](#)).]

Chairwoman Cohen:

Thank you, Mr. Ziegler. I will remind the Subcommittee that Mr. Friedrich is in Las Vegas if anyone has any questions. Are there any questions? [There were none.] Are there any motions? [There were none.]

We will go back to Assembly Bill 34.

Assemblyman Duncan:

I am not sure of the mechanics of doing this, but I recommend that the full Committee take a look at section 2 and section 20 of A.B. 34 in terms of the definition and meaning.

ASSEMBLYMAN DUNCAN MOVED TO RECOMMEND THAT THE
FULL COMMITTEE CONSIDER ASSEMBLY BILL 34, SECTIONS 2
AND 20.

ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

Chairwoman Cohen:

I would like to take a moment to look at those two sections. Are there any comments? [There were none.]

THE MOTION FAILED. (ASSEMBLYMEN CARRILLO, COHEN,
FIORE, AND MARTIN VOTED NO.)

Chairwoman Cohen:

That is the end of the bills, except for the one that is still being worked on. We are going to take a short recess [at 8:17 p.m.].

I am calling this meeting back to order [at 8:25 p.m.]. Mr. Ohrenschall and Mr. Gordon, I understand you have an agreement on your bill?

Assemblyman Ohrenschall:
Assembly Bill 370.

Chairwoman Cohen:
Do you have an agreement?

Assemblyman Ohrenschall:

I believe we do. To paraphrase Glen Campbell, there has been a load of compromise on the road to this bill's horizon. I am going to let Mr. Gordon go through the agreement, and Mr. Joe is in Las Vegas if there is anything he would like to add.

Garrett Gordon, representing Olympia Companies:

I guess the old saying goes, if both parties are not extremely happy, it is probably a good compromise. Assembly Bill 370 would be replaced with the following terms. There would be a mandatory mediation for disputes over the governing documents or the parties could go to their referee program if all parties agree to go to the referee program. The mediation would be capped at three hours unless both parties agree to extend the length of the mediation. The mediation would have to take place within 60 days of the homeowner-filed claim. The mediation would be capped at \$500, which would include preparation time and include the three-hour mediation. In the event both parties agreed to extend the mediation longer than three hours, the mediator fee would be \$200 per hour. Both parties are required to file a written statement articulating the issue within five days before the mediation. That should cover the mediation portion of the bill.

The next phase of the alternative dispute resolution would be arbitration. The change in law would be rather than only one party agreeing to go to arbitration, now both parties would need to agree to go to arbitration, either binding or nonbinding. The arbitration fee would be \$300 per hour.

Assemblyman Ohrenschall:
A cap of \$300.

Garrett Gordon:

Both the \$200-an-hour fee in the event the mediation went beyond three hours would be up to \$200 per hour, and the arbitration fee would be up to \$300 per hour. So a homeowner and an association, if they were unable to resolve a dispute at the mediation level, would need to both agree to go to arbitration. If one party did not agree, then the next step would be court. I believe that covers all of our issues.

Assemblyman Ohrenschall:

One thing the bill did do was that it lowered the filing fee from \$50 to \$25, and we do not want to change it. We want to leave the filing fee as it is. We were told by the Real Estate Division that that could cause a fiscal impact on them.

Garrett Gordon:

I did not mention that because the terms I went through was replacing the existing bill. So that filing fee would remain status quo as would the other provisions of the bill but for this new, hopefully modified and better process for alternative dispute resolutions regarding governing documents.

Assemblyman Ohrenschall:

Madam Chair, with your permission, if Mr. Joe has any comments, would you be open to letting him have the floor?

Chairwoman Cohen:

Of course. I know Mr. Friedrich was also a supporter of this bill, so if he has anything he would like to add, he can.

Michael Joe, representing the Legal Aid Center of Southern Nevada:

From my perspective and the perspective of homeowners and Legal Aid, we think that a change from the current arbitration bill to a bill that has a mandatory mediation that is capped at \$500 is a step forward, and we think that it will give homeowners an opportunity to come forward and have their issues resolved. Although we may have chosen some different numbers, I guess we are okay with these numbers and it would be beneficial to homeowners. Thank you.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

I am speaking solely as an individual citizen and not on behalf of the Commission. I believe this will stop the runaway train and make it a lot fairer for the homeowner. You have all the statistics that I provided. You have seen where the arbitration can go financially, and I think this is a major step forward. Thank you.

Chairwoman Cohen:

Are there any questions? [There were none.] Do I have any motions?

ASSEMBLYWOMAN FIORE MOVED TO RECOMMEND TO DO
PASS ASSEMBLY BILL 370 WITH ALL THE AGREEMENTS.

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Cohen:

Thank all of you for your hard work.

Assemblyman Ohrenschall:

Thank you, Madam Chair and Committee, for staying late. Thank you, Mr. Gordon, Mr. Joe, all stakeholders, Ms. Rock, and Senator Care. I appreciate everyone working with me on this bill.

Chairwoman Cohen:

In case we missed it on any of the bills, we are not moving to amend and do pass. We are moving to recommend we amend and do pass. No action was taken.

I will now provide the opportunity for public comment. If there is anyone in Carson City or Las Vegas who wishes to be recognized, please come forward.

Jonathan Friedrich:

I am speaking as a private citizen. We could not hear on section 2 and section 20 of Assembly Bill 34. What was the Committee's recommendation?

Chairwoman Cohen:

The motion was not recommended. There was a motion made and it failed.

Jonathan Friedrich:

Thank you.

Chairwoman Cohen:

Is there anyone else in Las Vegas wishing to give public comment?

Tim Stebbins, Private Citizen, Henderson, Nevada:

I would like to comment as a private citizen getting a little more observation on how this legislative process works. I want to comment that my little mind has a hard time handling some of the stuff that I have observed over the past several weeks as this Subcommittee and the other committees have been reviewing bills. I have seen testimony and comments made by one legislator in one assembly district. There are no complaints, and multiple homeowners'

associations and everything is kind of a utopia in that part of the Las Vegas Valley, yet we have had comments where, in a neighboring part of the valley, we have a single association that has a thousand complaints a month or 12,000 a year. That is 40 to 50 a day, and my little mind has a hard time understanding how one part of the valley can have no problems and everything runs wonderfully under the current law, and in another part of the valley with just one association is total chaos. I just want to comment that us out here in the public are struggling trying to figure out what that means. I am a homeowner advocate, and I would like to see as much help given to homeowners as we can. If there is something in that utopian Assembly district, hopefully that can be shared with the other parts of the state. Thank you.

Michael Joe:

I noticed that Assembly Bill 98 was passed with amendments. I guess I was disappointed that one of the amendments basically was a way to pass into law an amendment that changes the way we handle the super-priority lien in the collection costs. From Legal Aid, we have always opposed codifying collection costs as part of the process. We think that this will harm homeowners and we are opposed to that. Thank you.

Chairwoman Cohen:

I will remind you and anyone else who is interested in these bills, the Subcommittee is making recommendations to the Judiciary Committee. You are welcome to contact the full Judiciary Committee and also your legislators and let them know your thoughts on that bill or any other bill going before them.

Jonathan Friedrich:

I am speaking as a private citizen. The new section 4 to A.B. 98 would fly in the face of what the U.S. Department of Housing and Urban Development (HUD) had written in a letter to the Real Estate Division on August 29, 2012 and September 20, 2012. I would be opposed. I am not an investor, but it is hurtful to the purchasers, because someone is going to have to absorb those costs if section 4 in A.B. 98 were to go into law. I can email you a copy of the letter that was received from HUD addressing this situation. Thank you.

Chairwoman Cohen:

Is there anyone else for public comment in Las Vegas? [There was no one.]

Assemblyman Ohrenschall:

I want to clarify one thing, and I think it probably is already clear because Mr. Gordon mentioned that our proposed amendment would be replacing the current language of Assembly Bill 370. Section 18, having to do with the Financial Institutions Division, would not be part of any compromise. I do not

believe that was part of any amendment, but Mr. Gordon asked that I make it clear that that was being removed from your recommendation to the full Committee.

[Also submitted but not discussed was ([Exhibit N](#)).]

Chairwoman Cohen:

Thank you. I believe everyone who has wanted to has had an opportunity to speak. Thank you, everyone. This meeting is adjourned [at 8:39 p.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblywoman Lesley E. Cohen, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 8, 2013

Time of Meeting: 7:05 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 34	C	Dave Ziegler	Work Session Document
A.B. 34	D	Gail Anderson, Real Estate Division	Proposed Amendment
A.B. 34	E	Gail Anderson, Real Estate Division	Proposed Amendment
A.B. 44	F	Dave Ziegler	Work Session Document
A.B. 98	G	Dave Ziegler	Work Session Document
A.B. 98	H	Assemblyman Paul Aizley	Proposed Amendment
A.B. 137	I	Dave Ziegler	Work Session Document
A.B. 320	J	Dave Ziegler	Work Session Document
A.B. 370	K	Dave Ziegler	Work Session Document
A.B. 395	L	Dave Ziegler	Work Session Document
A.B. 397	M	Dave Ziegler	Work Session Document
A.B. 397	N	Jay Bloom	Proposed Amendment