

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

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

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:02 a.m. on Friday, March 8, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

COMMITTEE MEMBERS ABSENT:

Senator Justin C. Jones (Excused)

GUEST LEGISLATORS PRESENT:

Senator Donald G. Gustavson, Senatorial District No. 14

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry

Senate Committee on Judiciary
March 8, 2013
Page 2

Garrett Gordon, Olympia Companies; Olympia Management Services; Southern Highlands Community Association

Angela Rock, Olympia Companies; Olympia Management Services; Southern Highlands Community Association

Jonathan Friedrich

Robert Robey, Nevada Homeowner Alliance

Rana Goodman, Nevada Homeowner Alliance

George Crocco

John Radocha

April Minjares

Michele Mitemiller

Norman McCullough

Deane Downing Delacruz

Gary Seitz

Gene Mund

Fred Carlson

Lillian Spencer

Paul Murad

Robin Huhn

Delores Bornbach

Tim Stebbins

Chair Segerblom:

I will call the meeting of the Senate Committee on Judiciary to order. We have a presentation from Gail Anderson of the Real Estate Division.

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry:

The Real Estate Division is the agency that receives and processes complaints filed against homeowner's association (HOA) boards, board members and community managers in HOA practice who are licensees. The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels is a section of the Division created in 1997 by the Legislature to assist homeowners living within common-interest communities to resolve their HOA-related disputes and understand their rights and responsibilities.

My handout gives an overview of the Common-Interest Communities Program under *Nevada Revised Statute* (NRS) 116 ([Exhibit C](#)). Successive Legislatures have modified the scope of the Office of the Ombudsman to include the

registration of HOAs, the credentialing and formal education of community managers who are licensees and the education of HOA directors and common-interest community residents. Investigations were added in 2003 to address potential violations of NRS 116. Beginning in 2008, the Legislature adopted regulatory responsibility for condominium hotels under NRS 116B.

Beyond these primary services, the Ombudsman and the staff of the Common-Interest Communities Program answer general questions pertaining to HOAs. The staff answers questions on technical matters, governance and compliance with statute on filing a complaint or using public services. In an average month, the Office of the Ombudsman receives 25 to 30 complaints or intervention affidavits. In an average month, the staff answers 800 to 1,000 phone calls, and the Ombudsman holds three to five conferences between aggrieved parties attempting to resolve disputes.

The Common-Interest Communities Program is comprised of HOA registration, conference program, education and training, and the compliance section. Registration involves the compilation of key data as seen on pages 1 and 2 of [Exhibit C](#). The collected data, which also includes the number of foreclosures due to unpaid assessments the HOA enforces, is reported at every meeting of the Commission for Common-Interest Communities and Condominium Hotels. There are 492,674 units in 2,993 HOAs in Nevada as of January 31. Most of the HOAs are corporations that are generally nonprofits.

Each registration gives a snapshot of the financial status of the HOA, including the reserve study required by law and the documents used to govern the HOA. There is also a required \$3 per-unit annual fee, which supports the Office of the Ombudsman.

Chair Segerblom:

Is your budget around \$1.5 million?

Ms. Anderson:

Yes. It is about \$1.4 million to \$1.5 million in revenue.

Another key component in the role of the Ombudsman is the conference program, which is explained on page 2 of [Exhibit C](#). It is basically a mediation program. The strength of this system is that many issues can be resolved and

compromises can be reached more quickly and economically with the presence of the Ombudsman.

Through the conference program, a dispute may sometimes require the Ombudsman's Alternative Dispute Resolution Program under NRS 38. The Real Estate Division administers that section, found in NRS 38.300 through NRS 38.360 relating to HOAs, as seen on pages 3 and 4 of [Exhibit C](#). A party cannot file a civil action in the State without going through the Alternative Dispute Resolution process.

The goal is to resolve disputes 65 percent of the time. We have achieved 58 percent to 65 percent in the last 2 years. We are pleased with that progress since we are talking about neighbors settling disputes that may have some history. We credit the increasing percentage of resolutions and lowering of complaints to education and resolution efforts by the Office of the Ombudsman.

The Office is participating in a pilot program, the Administrative Law Judge Program through the Department of Business and Industry. The administrative law judge has been used to referee some governing document issues, as explained on page 2 of [Exhibit C](#). We are attempting to expand the referee pilot program through legislation, [Assembly Bill 34](#).

[ASSEMBLY BILL 34](#): Makes various changes relating to common-interest communities. (BDR 10-354)

The Compliance Section, page 3 of [Exhibit C](#), is where unresolved matters or serious complaints are routed. I have a handout on the Compliance Section of Common-Interest Communities ([Exhibit D](#)) which illustrates its activities from fiscal year (FY) 2008 to FY 2013. This Section is busy and can eventually route unresolved matters to the Commission for an Administrative Law Judge Program hearing.

Recently, there has been news in the media about HOA fraud. I want to put on the record that when we are involved in an investigation and find evidence of criminal activity or collusion, we consult with law enforcement entities including the FBI, Las Vegas Metropolitan Police Department and the Office of the Attorney General's Bureau of Criminal Justice. The Commission has authority to sanction or remove a board member, or to sanction or revoke a licensee. The criminal aspect of the complaint is not in the Division's jurisdiction.

Education is a key component of the role of the Office of the Ombudsman, as shown on page 3 of [Exhibit C](#). We now have a full-time program training officer and an education officer. These individuals offer educational sessions in several cities and where requested. Pages 5 through 8 of our 2013 Biennial Report ([Exhibit E](#)), give more information on our education offerings, including another new program: the well-received Q&A Forum that started in November 2012. It covers general questions only, not anything specific to any particular HOA.

Senator Hutchison:

You mentioned disputes with governing documents. Are you referring to violations of Covenants, Conditions and Restrictions (CC&Rs)?

Ms. Anderson:

Correct.

Senator Hutchison:

Is there a difference between parties saying, "We have an interpretation difference over the CC&Rs," versus "I have a factual dispute with the HOA whether I violated the CC&Rs?" Would both those be covered under the Alternative Dispute Resolution process?

Ms. Anderson:

Yes. The referee program is staffed with attorneys, and we have sent disputes over interpretation to them for decision.

Senator Hutchison:

Are you self-funded?

Ms. Anderson:

Yes. The \$3 per-unit fee funds the program.

Senator Kihuen:

What is your relationship with the Real Estate Commission? Who makes the appointments? What is the Commission's role, and how is that separate from the role of the Ombudsman and the Real Estate Division?

Ms. Anderson:

The Commission is a seven-member group in the Executive Branch of State government appointed by the Governor. The Ombudsman is appointed by the

Administrator of the Division, which is my position. I oversee three commissions: the Commission for Common-Interest Communities, the Real Estate Commission, and the Commission of Appraisers of Real Estate. I administrate all those programs, and each commission acts according to statute. These commissions hear testimony that the State brings in alleged violations, and they apply statutory enforcement and discipline procedures.

Senator Kihuen:

There have been proposals in the past to set a cap on the fines within the HOAs. Usually, we have passed down the duty to the Real Estate Commission to implement this. What is the process in setting regulation when it comes to the fines? I have had calls from constituents who say they get charged excessive fines and have disputes, open cases, etc. Who makes the ultimate decision when there is a dispute? Is it the Real Estate Commission, the Ombudsman or your Office?

Ms. Anderson:

Fines are a governing document issue within a specific homeowners' association. There has to be a policy on fines; that is required by law. Every owner in the HOA must understand what action or inaction will generate a fine, and the person being fined has to have an opportunity for a hearing to contest the fine. If that procedure is not followed, that HOA member can file a complaint with the Ombudsman. Then, the Division could take this as a potential law violation to the Real Estate Commission.

Senator Kihuen:

During the last Legislative Session, there was a bill to put a cap on how much can be charged to a homeowner in fines. I think the cap was set at \$1,950. What was the rationale behind that? Did it include the attorney fees, or was it exempted from the total?

Ms. Anderson:

That legislation was on the cost of collecting past owed assessments, which is different from the fines for violations of governing documents.

Senator Kihuen:

Does your office oversee that?

Ms. Anderson:

Yes. The Real Estate Commission adopted that regulation using the process in NRS 233B, Nevada Administrative Procedure Act, which specifies public workshop, notice, workshop, notice, adoption, Legislative Commission review and approval. That process is always followed for regulations, whether it is the Real Estate Commission or the Administrator. The ultimate approval comes back through the Legislative Commission's Subcommittee to Review Regulations.

Senator Kihuen:

I know we have several HOA bills this Session, but I wanted to open the dialogue because I do get many calls about this issue, especially in regard to the fees and fines.

Ms. Anderson:

The sale of time-shares, NRS 119A, and subdivided land registration, NRS 119, are two more areas the Division oversees. You can see information on State time-share sales on page 4 of [Exhibit C](#). As time-shares are being marketed, a Public Offering Statement must be disclosed to purchasers of a time-share interest. The Public Offering Statement is an extensive disclosure document that includes information about the developer; the developer's history; the project itself, which includes the amenities of the project; the use rights of the purchaser; current maintenance fees, etc. Time-share projects also have owner's associations, but unit owners do not live on site; they simply have an interest on the time-share site.

Time-share is a significant business in Nevada. There are single-site, time-share plans; multisite plans; specific use and nonspecific interest plans. Florida is No. 1 in the Nation in time-shares and sales, and California and Nevada are right behind. The registration, permitting and Public Offering Statement apply to projects physically in our State and projects marketed here. Both must be permitted and registered to sell with a Public Offering Statement issued by the Administrator of the Real Estate Division.

Many tourists visiting our State are enticed to attend sales presentations for time-shares. They might be offered a free show, meal, ski ticket, or a trip to Nevada for an enticing rate if they agree to attend a sales presentation. Because we are a significant destination state, we have a lot of time-share activity.

The industry has changed its market packaging significantly over the years. It has evolved from the purchase of deeded, physical property right to a right-to-use system. The former sells out, the latter rarely does since it is not a deeded interest. We are also seeing the emergence of collections, or clubs, where a large developer like Marriott, International, Inc., for example, puts hundreds of projects into a collection or club. The user can then buy the opportunity to use any and all of the seller's properties.

One issue in recent years is time-share resale scams. An owner may have a time-share and can no longer afford the maintenance costs, which may have escalated. There are television commercials promising to sell your time-share. The potential customer calls and is told to send money—maybe \$1,200 or \$1,500. That practice is illegal in Nevada. Senator David R. Parks is working on this activity with a proposed time-share bill to tighten our laws.

There are also transfer company scams that ask a customer to sign his or her time-share over to the scammer who promises to get the owner out of the obligation to keep up with the maintenance and other fees of ownership. In the scam, the paperwork is never turned in and the customer is often asked to pay money. He or she is ultimately cheated out of their money and perhaps their time-share.

We want to keep the reputation of our State strong so tourists do not come here and get scammed or pressured. Sometimes, after a long holiday weekend, we get calls from people asking how to get out of a time-share contract he or she may have signed in a weak moment. We do have a statute addressing rescission in the State, but there is no rescission specific to time-share resale, which is something we want to address in the future.

Chair Segerblom:

Do time-shares contribute to your budget?

Ms. Anderson:

Yes. My real estate administration budget account has a project section, which is a General Fund budget account with a fee-funded revenue source from time-share project registration and time-share licensees. Those fees go to the Division's General Fund budget account. Line-item direct revenues caused some problems with my General Fund budget because I have had to make significant staffing reductions due to the slowing down of the time-share market.

Senator Hutchison:

Is your only involvement in the time-share industry with marketing and the sale of time-shares? Do you handle complaints or arbitration?

Ms. Anderson:

Yes. We receive and process complaints. The most direct way to process a complaint is to make sure the buyer provides us with paperwork from the sale. Red font text on the contract specifies a right to rescind the contract within 5 days. We mandate those forms so the disclosures are included. We have had occasion to call a broker and ask him or her to look into a certain sale because what we see in the paperwork of the disputed sale may not comply with what the customer should have received. We try to work with the sellers, who usually cooperate with us. We want to protect buyers with complaints.

Senator Hutchison:

There has been massive litigation against time-share companies and condominium developers as a result of real estate value dropping in Las Vegas. Owners wanted to get out of their contracts. Were you involved with that?

Ms. Anderson:

No. That became a civil matter. We look at the sales activity of which a broker, who is a real estate licensee, has responsibility.

Chair Segerblom:

I am going to move to our presentation on medical marijuana for the Committee, starting with a 10-minute video from the CBS television show, *60 Minutes* ([Exhibit F](#)) about how the Colorado medical marijuana dispensaries operate. We hope to see a similar operation when we travel to Arizona later in the month to see firsthand how that state has implemented its medical marijuana mandate.

Chair Segerblom:

I will open the hearing on Senate Bill (S.B.) 130 with Senator Gustavson.

SENATE BILL 130: Revises provisions governing common-interest communities.
(BDR 10-428)

Senator Donald G. Gustavson (Senatorial District No. 14):

This bill is aimed at clarifying communication between homeowners' associations (HOAs) and the people who live within their jurisdictions. I have

submitted my written testimony ([Exhibit G](#)). I also have a proposed amendment that I want to submit ([Exhibit H](#)). As I go through the bill proposal, I will refer to four exhibits I have prepared ([Exhibit I](#), [Exhibit J](#), [Exhibit K](#), and [Exhibit L](#)). These exhibits illustrate how difficult it is for a homeowner to discern what the specific complaint or complaints an HOA board is making when it sends printed or emailed complaints to the owner. Senate Bill 130 directs a HOA to send only accurate, good-quality photographs and clear descriptions to homeowners when there are alleged violations of CC&Rs or HOA rules. You can see from my exhibits, which are actual documents that homeowners have received, that the violation is not clearly explained or well represented in the photographs.

My amendment, [Exhibit H](#), takes out the word “reasonable” in section 1, subsection 4, paragraph (b), subparagraph (1), sub-subparagraph (I) of the bill. I would rather have the complaint specified in detail, and using the word reasonable raises questions. I leave this up to the Committee to decide. In sub-subparagraph (II), I am adding the words “clear and detailed” to the direction to provide photographs to the homeowner. Some HOAs indicate it is difficult to do this, but with today’s technology, I find that hard to believe. I can take better photographs with my cellphone than what you see in these examples.

Senator Kihuen:

Do you know how many other HOAs are sending these photos and mailers out to their members?

Senator Gustavson:

Of the hundreds of HOAs in the State, I am aware of some that do not even send a photograph with the first notice to a member. My HOA sends out a photograph with the first notice, which I appreciate. However, I want to see something clear and legible that specifically and unquestionably defines the violation.

Senator Kihuen:

This is the first time I have seen a photo included with the complaint. The picture is small, though, and it is difficult to see specifically to what the HOA refers. Do you have a timeline for the HOAs to implement this program?

Senator Gustavson:

I do not have a specific date on the bill, but October 1 was a target.

Senator Ford:

I have a question regarding the cure period. Your amendment removes the word reasonable because it is not specific, but it does not remove the word from the cure provision, which is on lines 34 and 35 on page 3 of the bill. There, it says, "A reasonable opportunity to cure the alleged violation or to contest the alleged violation at the hearing." Should there be a time period for the cure opportunity? It is also referenced on page 4, lines 13 through 16 of the bill.

Senator Gustavson:

I had not planned to change that.

Senator Ford:

But there is a cure time period. On page 3, lines 34 and 35, the part I just read, the word reasonable is there. Should we be talking about a particular time period for the cure provision, or are you okay leaving reasonable in this specific circumstance?

Senator Gustavson:

I do not have a problem with the word reasonable there. If the Committee wants it there, I am fine with it.

Senator Ford:

What do you consider a reasonable opportunity to cure violations? It is probably situation-specific, but do you have a general time frame in mind?

Senator Gustavson:

I did not.

Senator Hutchison:

I applaud what you are doing here because one of the fundamental tenets of fairness is notice. You are saying, let us be fair by providing notice to homeowners. Taking a photo of a fence and saying, "Fix it," is not notice. Are you comfortable with the wording about written notice and adding the photo requirement? Your law says "...providing a photograph of the alleged violation." The examples you gave, including the poor-quality photographs, complied with this. Should you be more specific and ask for a circled photograph, or some more specific illustration of the violation?

Senator Gustavson:

I am trying to get the HOAs to provide a clear photograph with specific descriptions of the alleged violation.

Chair Segerblom:

I see that your amendment has specified a "clear and detailed" photograph of the alleged violation.

Senator Gustavson:

The main thing I am trying to do is to get the message out to HOAs that as homeowners, we move into a community because we want to be there. We do not want to get harassed the minute we move in. I am willing to work with a HOA, but some boards are good and some are bad. Some follow the rules and some do not. As a homeowner, I want a clear and precise description of violations from the HOA, not a confusing message.

Senator Hammond:

How is the violation photo taken? Does the HOA have to take it from the yard? I understand it must be taken from a car or somewhere not on the alleged violator's property. I have had the same experience, and it was not clear what was meant by, "Fix the yard."

Senator Gustavson:

Different HOAs have different processes and equipment. Generally, they cannot come on your property. I have taken photos of a corrected violation to send back to the HOA board and I tried to take it from the same location as the initial photograph. My photos were in color and much clearer than the ones the board sent to me. They can do better.

Senator Kihuen:

Is there a requirement for color versus black and white or a specific size? Looking at your examples, one of them looks like a black box; you cannot tell anything from the photograph.

Senator Gustavson:

I do not think there is a universal standard. I do not have a problem with a black-and-white photograph as long as it is clear. You can look at [Exhibit L](#), and the photographs are clear.

Chair Segerblom:

If the purpose is to give notice, the proof is in the picture.

Garrett Gordon (Olympia Companies; Olympia Management Services; Southern Highlands Community Association):

Southern Highlands Community is a master-planned community with approximately 7,000 homes and a budget of \$7 million. There are many different HOAs around the State. We are working hard to strike a balance between small, medium and big HOAs. I have submitted an example of some of the photographs we routinely use in noticing residents ([Exhibit M](#)). It is difficult implementing the software systems for the photographs. We would appreciate some additional time to get our systems up to speed. We support this bill.

Angela Rock (Olympia Companies; Olympia Management Services; Southern Highlands Community Association):

This is a good idea. We have been seeking software allowing inspectors in vehicles to photograph violations, embed them in letters, print courtesy letters and provide a photograph to homeowners. A photograph is worth a thousand words. We want to significantly improve communication between the HOAs and individuals. When I purchased the software we use, we did find the photos were not as clear as we wanted them. Sometimes the photos skew, as you can see in the example, [Exhibit M](#). It is significantly worse when working in black and white.

For the safety of the inspector and others, he or she remains in the car when taking photos. It is already uncomfortable when you pull up in front of a home and snap a picture. It is good to use a marked car. It is also important to get the violation and the address of the house in the same shot, but this can be difficult. Two photos are possible, but you have to connect the two so it is clear the violation is taken from the correct address. Some software allows embedding of global positioning system markers.

We have been working with this system for 18 months, trying to get it perfected, and implementation can be difficult. I am concerned about small HOAs with limited budgets who have not begun to implement photography with their notices. We support this bill and ask for more time to fully implement it so we can achieve reasonable detail and clarity of photos in our noticing.

Senator Hammond:

You represent a large HOA?

Ms. Rock:

Yes. The management company I work for oversees around 8,000 rooftops.

Senator Hammond:

I can understand that if you send out a large volume of letters a month to homeowners, it would cost money to implement a good system of getting the photos and letters to them with clear information. I do not understand the concern for the smaller HOAs, though, because if they only oversee 100 to 200 houses, it seems like it would be easy to just pull out an iPhone, take a photograph and then send it. That seems reasonable.

Ms. Rock:

I cannot speak to what the cost would be to a management company or HOA that I do not run. It would definitely involve increased staff time. It is important for the organization to make sure the photo goes electronically through databases embedded in a letter, so it is not just snapping a photo and sending it. Most HOAs provide photographic evidence at hearings, which precede the fines.

Senator Hammond:

You referenced needing the number of the house in the photo that shows the violation. When a homeowner is told there is a violation, that is such a broad concept. Why not take a close-up of the violation, then zoom out and get the address? Is it cost-prohibitive to include more than one photograph?

Ms. Rock:

I agree. One of our examples in [Exhibit M](#) on page 3 shows a photo that went on to the second page. I agree that adding more photos can be very helpful. The timely implementation is my concern.

Senator Ford mentioned the cure period. A provision in NRS 116.31031 is on page 4 of the bill, starting on line 8. After the courtesy notice or first initial notice, the homeowner is given a reasonable time to prepare for a hearing. The fine cannot be imposed until after the hearing, at which time one fine is permitted. There is a 14-day cure period to correct the violation before additional fines can be imposed.

Chair Segerblom:

Then Senator Gustavson is adding a cure period before the first fine?

Ms. Rock:

I believe so. There is a cure period after the hearing, but adding the date between the courtesy notice and the hearing may not be a bad idea.

Senator Kihuen:

Did you have a proposed amendment?

Mr. Gordon:

We are working with the sponsor on possibly extending the effective date, which is now October 1. We are trying to extend the implementation time. We do support the bill.

Senator Kihuen:

How much time do you need?

Mr. Gordon:

We originally thought we needed another 12 months, but we are now looking at January 2014 instead of October 1.

Senator Hammond:

We are talking about two different things—photographs and a detailed explanation of a violation. Many times, people will get a letter saying their yard needs repair or there are weeds on the west side of their yard, for example. It seems like that would be an easy fix.

Ms. Rock:

I cannot answer for the industry, but it depends on what detailed explanation actually means. Some HOAs may think their form letters are already detailed enough, so they would not need the time extension. I am talking about software programs that have form language pulled from the CC&Rs, so having the software programmers come in and make those changes might take time.

Jonathan Friedrich:

I am a Commissioner with the Commission for Common-Interest Communities but am speaking here as a private citizen. I support this bill. I offered a friendly amendment ([Exhibit N](#)) that is nearly identical to Senator Gustavson's. The

amendment would prevent HOA attorneys from twisting the intent of this bill, which is to be fair and stop bogus violations being hurled at homeowners for the purpose of harassing homeowners, increasing budget revenues or bullying.

Chair Segerblom:

Looking at your amendment, you are eliminating the words reasonable and reasonably, correct?

Mr. Friedrich:

Correct. Also, I have specified a clear and detailed photograph must be submitted so the homeowner can see the violation.

Chair Segerblom:

It looks like your amendment is the same as Senator Gustavson's.

Mr. Friedrich:

Yes. We have discussed it.

Chair Segerblom:

Thank you. I know you want to talk more about HOAs and HOA management, but we want to talk about this bill.

Mr. Friedrich:

When a homeowner's association accuses someone of a violation, he or she is brought before a board. These boards are the judge, jury and executioner. There is no due process.

Chair Segerblom:

We understand this, but it is not relevant to S.B. 130, which we are talking about today. This bill is about giving clear notice of a violation at the time the person is informed.

Robert Robey (Nevada Homeowner Alliance):

I am in favor of this bill. I live in Sun City Summerlin, and we had a situation where we had to call in the City of Las Vegas. We had a hoarder, and the City finally cleaned it up. Having inspectors be afraid to take a picture and stay in their car is ridiculous. I have included a written statement and a copy of the Nevada Transportation Authority Regulation R075-08 for clarification ([Exhibit O](#)).

Rana Goodman (Nevada Homeowner Alliance):

I want to stress the importance of photographs. Maybe management companies should consider being low tech rather than high tech. I have several rental properties in HOAs and last year got a violation letter for one of the rental properties. The letter directed me to clean up the debris in front of the house. I did not receive a photo with the letter, so I went to the house and could not see a problem. I took my own photo and delivered it to the management company, asking them to show me the violation so I could correct it. It turned out company personnel sent the violation letter to the wrong address. If there had been a photo, I could have proved it was not my house. This happened more than once. A photo should be mandatory, but I do not think it has to be done with the latest technology. I support this bill.

George Crocco:

I live in a condominium complex of 133 units. I had flowers in front of my window, and the HOA board told me to get rid of them after the flowers had been there for 2 years. The board said the flowers were a health and safety hazard. I took pictures and told them they were not a health and safety hazard. I also told the board my neighbors were fine with the flowers. The board did not take a photo, and I got called in without counsel before the board. I pulled out the flowers.

Also, I have a friend who had a neighbor's garbage can blow down the street to his home. It was not his garbage can, but he got a two-day violation. A photo would have shown the truth. I support this bill.

John Radocha:

I have been a victim of HOA bullying and abuse and an \$8,200 bogus fine. The statute of limitations is missing for fines and liens. I would ask Senator Gustavson for a friendly amendment to that end. There are no constitutional rights in an HOA. I support this bill.

April Minjares:

I have included a budget called Ansedonia Budget ([Exhibit P](#)). On page 7, you can see the income of assessments of \$4,530 for 160 homes. On page 8, you can see the total expenses of \$4,692. On page 4, the income now includes assessed fines and penalties, guaranteeing the income of at least \$700 in fines and penalties to cover expenses. If you look lower, they have added a security company. I was part of exposing a fraud where an HOA board was intentionally

fining people to cover expenses in Southern Highlands and Ansedonia in Las Vegas. We need this bill to make sure people are fined for actual violations, not because an HOA wants to cover its budget. I support this bill.

Michele Mittemiller:

I live in a HOA and am for this bill.

Norman McCullough:

I support this bill and have submitted my written statement ([Exhibit Q](#)).

Deane Downing Delacruz:

I support S.B. 130. Nevada homeowners living in HOAs need protection from overzealous management companies and HOA boards. I have observed many HOA boards and management companies create bogus violations to generate income through fines. Some of these fines are used as retaliation against homeowners. Hopefully, this bill will stop these abuses. Please, listen to your constituents asking for help.

Gary Seitz:

I support this bill. I would like to add a fine for HOA boards if they do not follow their own rules.

Gene Mund:

I am the president of Autumn Chase Homeowners Association. We have gone through 10 years of disaster with our former board. There were needless fines. The State stepped in and eliminated the last board because it was stealing money. I think the law should be tougher. The State should enforce the laws already on the books. It took a television station here in Las Vegas, Channel 13, with reporter Darcy Spears, to bring it to light. We support this bill.

Fred Carlson:

I support S.B. 130. I am the past president of an HOA board. We used a low-tech approach and it worked well for us.

Lillian Spencer:

I am a board member of an HOA and a homeowner. I have observed many board members and the management company using violations and fines to retaliate against homeowners. This bill will help stop that. I support this bill.

Paul Murad:

I am on the Real Estate Commission, but do not speak for them on this bill. I have also served on the board of an HOA, so I can understand both sides of this issue. I support this bill.

I have some suggested amendments. I find the amount of a fine at \$100 for each violation with the total up to \$1,000 excessive. Instead, I suggest \$25 for each violation with a maximum of \$500. Fines have gone into thousands and tens of thousands of dollars, which is excessive. Also, there should be fines issued to HOAs that do not follow the law and this process. Echoing the comment by Senator Ford, the word reasonable is too vague and too open to interpretation. I also think 30 days is more reasonable than 14 days for a homeowner to correct a violation. A significant number of our owners are from out of state, so that extra time would be helpful.

Regarding the comments on the time to implement this bill, the changes are needed now to help past and current abuses. These abuses are costing homeowners thousands and maybe tens of thousands of dollars. We should not delay implementing the bill and instead should start sooner, by July 1.

I have been a victim of retaliation by an HOA manager in a community where I owned a property. When I raised some questions about something in statute that cannot be retaliated against, I had to start a complaint process with the Real Estate Division.

Robin Huhn:

I am a HOA board member with The Calico Ridge Owners Association. I support this bill and think "reasonable" needs to be better defined. The HOA boards, management companies and attorneys have historically taken advantage of the word reasonable. I like that the word "alleged" is used, because in my experience, homeowners are found guilty before proven innocent. I agree the photos can be low tech, so HOAs do not need to spend more money. I am concerned that this bill will complicate things, though, since HOAs are already so complicated.

Delores Bornbach:

I support this bill. On this very day, our neighbor's home is being auctioned off because of these fines. It is obscene, immoral and disgraceful. It is all about

greed and money. Instead of using the word “fine,” be honest and call it what it is: stealing from homeowners.

Tim Stebbins:

I support this bill. On page 3, line 27 of the bill, I would like to see more specific instructions given to the homeowner rather than simply, “Fix it.” You could insert the word “specific” into “proposed action” to make it more specific. The clear photo specified in the bill should also help this.

Senator Gustavson:

I did discuss the amendment with Mr. Friedrich, and I would like to give the HOAs a little more time on the bill and change the implementation date to January 1, 2014.

Chair Segerblom:

The more notice people have of the defect and what it takes to cure it, the better. I will close the hearing on S.B. 130 and open up for public comment.

Mr. Friedrich:

I provided the budget for Summerlin West Community Association, its Statement of Revenues and Expenses, and Balance Sheet ([Exhibit R](#)). Built into the budget is \$8,400 in fines and penalties. The budget also indicates \$6,720 for uncollectable fines. My association and I got into a dispute, and it retaliated. The bottom line was \$90,000 in legal fees by both sides. This dispute was over the fact that the board had violated NRS 116.31151. How many people can afford to pay that?

Mr. Radocha:

I am a plain, ordinary homeowner. I am not a lawyer or an arbitrator or a member of an HOA board, and I do not have interest in a collection company or an HOA management company. I am a bullied and abused homeowner. I have a request for the Senators—have the guts to say no to the pressure, and do not fold like a cheap suit when you get pressure put on you.

Mr. Murad:

I reiterate that the time to implement this bill should be sooner rather than later. If the State’s police departments were able to start implementing the no cell phone use by drivers by October 1 after passage in the last Session, there is no

reason the HOA industry cannot implement this before October 1 and maybe sooner so we can protect consumers.

Ms. Spencer:

I wanted to say thank you to Gail Anderson and the Office of the Ombudsman for leading us in this fight to protect homeowners.

Mr. Mund:

I am concerned that we need to do this because there is so much abuse from management companies. They just rob the people. Now that I am on the board of my HOA, I will not allow the management company to do this. They want to make money, and it is sad because the consumers are suffering. So many boards are in cahoots with the management companies, and it is terrible. If we could enforce the laws we have, it would be better. We need more consumer rights in this State.

Senate Committee on Judiciary
March 8, 2013
Page 22

Chair Segerblom:

I am closing the hearing of the Senate Committee on Judiciary at 10:57 a.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

EXHIBITS				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	8		Attendance Roster
	C	5	Gail J. Anderson	Real Estate Division overview of the Common-Interest Communities Program
	D	1	Gail J. Anderson	Common-Interest Communities Compliance Section
	E	13	Gail J. Anderson	Office of the Ombudsman Real Estate Division 2013 Biennial Report
	F	N/A	CBS 60 Minutes	Presentation on Medical Marijuana in Colorado
S.B. 130	G	6	Senator Donald G. Gustavson	Written Testimony
S.B. 130	H	1	Senator Donald G. Gustavson	Proposed Amendment
S.B. 130	I	1	Senator Donald G. Gustavson	Non-Compliance Notice and Request for Information
S.B. 130	J	1	Senator Donald G. Gustavson	Hearing Reschedule
S.B. 130	K	1	Senator Donald G. Gustavson	Non-Compliance Notice and Request for Information
S.B. 130	L	1	Senator Donald G. Gustavson	Fence Illustrations
S.B. 130	M	3	Garrett Gordon	HOA Violation Letter
S.B. 130	N	2	Jonathan Friedrich	Proposed Amendment
S.B. 130	O	2	Robert Robey	Letter
S.B. 130	P	9	April Minjares	Ansedonia Budget
S.B. 130	Q	1	Norman McCullough	Testimony
S.B. 130	R	2	Jonathan Friedrich	Summerlin West HOA Statement of Revenues and Expenses