MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 1, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:02 a.m. on Monday, April 1, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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 Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Senator Barbara K. Cegavske, Senatorial District No. 8
Senator Michael Roberson, Senatorial District No. 20

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Michael Joe, Legal Aid Center of Southern Nevada
Jon Sasser, Southern Nevada Senior Law Program
John Leach, Subcommittee for Common-Interest Communities, Real Property Section, State Bar of Nevada
Garrett Gordon, Olympia Companies

Marilyn Brainard
Donna Toussaint
Frederick Wilkening, President, Frontier Estates Homeowners Association
Pamela Scott, Howard Hughes Corporation
Greg Toussaint
Chuck Niggemeyer
Anthony Barney, Complete Association Management Company; Absolute Collection Services
Tiffany Barney, Complete Association Management Company; Absolute Collection Services
Bill Uffelman, President and CEO, Nevada Bankers Association
Rocky Finseth, Nevada Land Title Association
William Wright, Subcommittee for Common-Interest Communities, Real Property Section, State Bar of Nevada
Rutt Premsrirut
Richard Perkins
David Rosenberg
Sylvia Smith, President, Nevada Land Title Association
Russell Dalton, Chairman, Nevada Land Title Association
Zachary T. Ball, Nevada Land Title Association
Tim Stebbins

Chair Segerblom:
I will now open the hearing on Senate Bill (S.B.) 280.

SENATE BILL 280: Revises provisions relating to common-interest communities. (BDR 10-863)

Senator Ruben J. Kihuen (Senatorial District No. 10):
As representatives, we give a voice to the people who cannot be here and the people who cannot hire lobbyists to represent them. As representatives of those people, it is incumbent on us to discuss issues that impact them on a day-to-day basis. Homeowners' associations (HOA) are near and dear to many of my constituents.

The problem is that some HOAs fail to communicate effectively with homeowners. As a result, the homeowners are unaware they are behind in their payments or assessments. The HOAs refer the cases to collection companies that add on thousands of dollars in collection fees. It is not unusual to see

homeowners who initially owe $100 to $200 find out that they owe thousands of dollars in added collection costs after only a few weeks. If they had known they were behind, they would have cured the default.

Some homeowners first find out they owe the association when a notice of sale is posted on their front door. By then, they owe thousands of dollars and the sale is imminent. Statute prevents homeowners from challenging unreasonable or unfair charges in court. Instead, homeowners must challenge these costs in arbitration. That process—which is very time-consuming—does not stop the sale of the property.

There appears to be a missing step, as some HOAs go directly from homeowners missing payments to foreclosure, giving the homeowner no opportunity to correct the problem. Senate Bill 280 defines a minimum standard for the collection process that communicates with homeowners and provides an early opportunity for them to resolve the issue before additional costs are incurred.

We are here representing thousands of people across Nevada who are impacted by HOA issues on a day-to-day basis. There are discussions about taxes and education, but any bill relating to HOAs receives most of the attention of my constituents. They do not have the money to be here or to hire lobbyists to speak for them. It is incumbent upon us to protect them from abusive collection management companies and people who are trying to take advantage of them. I support the concept of HOAs. They provide a valuable service for many communities. For the most part, HOAs do a good job; however, there are some that take advantage of our constituents. It is incumbent upon us to make sure we protect our constituents.

Michael Joe (Legal Aid Center of Southern Nevada):
We represent homeowners in various situations, and we see many homeowners who have problems with their associations. Not all HOAs, management companies and collection companies are bad. Much of this is done well, but there is a gap in the process. This bill does not change the foreclosure process for HOAs—they can still foreclose using the same process of giving notice of delinquent lien assessment, notice of default and notice of sale. That process still exists. This bill adds something at the beginning of the process to make homeowners aware of what is happening to them. I cannot tell you how many times homeowners come in after the home is sold and say they did not know

the association could sell their homes. If they come in before their homes sold, they owe thousands of dollars to the collection companies.

This bill tries to give the homeowners every opportunity to pay at the beginning of the process and make them aware of what is happening before it is referred to collections. It also gives the homeowner the opportunity to establish a payment plan. In the last Legislative Session, we crafted a compromise on a payment plan. All sides agreed to it, but all of the HOA bills died last Session. This bill brings back the payment plan concept, where homeowners are offered the opportunity to pay what they owe over a period of time.

This bill has three main sections. First, it defines a collection process. The bill states that the HOA must send letters and make phone calls. This does create additional costs to the HOA, but there are companies that will perform this type of work for a minimal price. Homeowners do not necessarily know they are being collected on or that they owe the associations. Many of the associations stop communicating with their homeowners. I have seen homeowners who have not received statements from their HOAs in over a year and then find out that they owe thousands of dollars. We are proposing to require that the HOA send statements so that homeowners know what they owe and what comprises the additional costs added to their accounts.

This bill also provides an appeal process prior to referring an account to collections. This will allow homeowners to appeal the costs to the boards if there are issues. I have heard from homeowners who mailed payments that may have either been lost in the mail or mailed to the wrong address, and the homeowners do not find out they missed the payments until 6 or 9 months later. By that time, other costs have been accrued. Instead of owing $100 in association dues, they may then owe $900. Some of these people try to go through that process, but by the time they end up paying, they owe thousands of dollars.

The main part of this bill is the mandatory payment plan, requiring the association to offer the homeowner the opportunity to pay over a period of time. If the homeowner owes $500 or $600, he or she would not have to pay it all it once but rather over 6 months. If the amount due is over $1,000, he or she can pay it over a 12-month period; if it is over $2,000, the homeowner can pay it over 24 months. Many homeowners would pay if they had the opportunity, and most homeowners end up paying before their homes go into

foreclosure. At the time they pay, they may pay $2,000 on a bill that may have been $200 or $300. This bill gives them the opportunity to pay it earlier.

The final portion of this bill is the right of redemption. There are homes being sold for between $3,000 and $11,000. The homeowners often say that they did not know the association could sell the property, and they would have paid if they knew. The first time they are aware the HOA could sell the property is when the new investor or owner is trying to evict them. I would like homeowners to have the opportunity to reclaim their property within a short period of time for a small amount of money.

Senator Jones:
Language on page 8, section 7, subsection 5, subparagraph (b), guarantees due process. Due process has a specific legal meaning. For private associations, there is no due process protection. Could you comment on elevation of private associations to due process?

Mr. Joe:
Homeowners do not get hearings for a number of reasons. They feel it is very expensive to go arbitration, so they do not appeal it. By the time they find out their house is for sale, it is essentially too late for most homeowners to appeal to their associations. Generally, there is a process where the HOA has monthly meetings. Depending on where you are in the process, you may or may not be able to attend a monthly meeting before the house is sold. The only option left at that point is to pay. Many homeowners do not have $2,000 to $3,000 on hand to pay. This is designed to give homeowners the opportunity to appeal and be heard prior to their homes being foreclosed upon. They do not currently have that right. The question is if this arises to the same level of due process in the Nevada Constitution. The level is not quite as high, but there needs to be a way to appeal and be heard prior to being foreclosed upon.

Senator Jones:
I agree that there needs to be a process set out in statute. I am unsure if we want to use the constitutionally charged language of due process, because the moment we start providing due process rights for private associations, it will open up a large issue with many other private associations.

Mr. Joe:
I am willing to change the language so that we do not use the charged language of due process.

Chair Segerblom:
Due process contains effective notice, which you do not list here. We could eliminate the words due process and add effective notice to achieve the same result.

Senator Jones:
Section 11 discusses the right of redemption. Can you go over the changes?

Mr. Joe:
There is no right of redemption. After the property is sold, the homeowner cannot come back and pay off the amount owed and redeem the property. This section allows a homeowner, similar to a judicial foreclosure, to come back and pay it. If there was $8,000 owed to the association, the homeowner could pay the $8,000 and redeem the property. The homeowner would then have it returned to his or her name.

Senator Jones:
Would this mean that if an HOA went through the process of foreclosing on a piece of property, the association would have to hold the property for at least 180 days without selling it in order to allow for the right of redemption?

Mr. Joe:
Not so much the association, but anyone buying the property would be under the threat of the homeowner redeeming the property. If you were to buy it, there would be the availability to the homeowner to buy the property back for 6 months. It does put a cloud on the title, and it makes it harder for investors. Some of the investors may not like that, but we want to give homeowners every opportunity to redeem, especially in the situation where they are not aware.

Chair Segerblom:
What is the current law for a judicial foreclosure?

Mr. Joe:
With a judicial foreclosure, the right of redemption is for 12 months.

Senator Hutchison:
I have similar concerns to Senator Jones in terms of the due process language. In section 11, is there something that justifies the 180-day time period? Why would something around 30 days not work if someone has sufficient notice? If we tighten up the notice provisions, requiring letters and phone calls, that would give the homeowner multiple opportunities. Why wait another 6 months when someone purchases the house? Why not a shorter time in order to accomplish your desire?

Mr. Joe:
Thirty days seems too short, but 6 months may be too long. I have seen homeowners save up the money to pay the HOA when they got foreclosed on, and they had $9,000 in the bank. I have also seen homeowners who were unable to pay because they had lost their jobs. It takes time for them to accumulate the money.

There is another side of the foreclosure process for the HOAs and the banks. The banks are willing to help redeem the properties, but it takes time to negotiate with a bank to come up with $6,000 or $8,000. Banks are willing to do that because the law is unclear about what happens with the first mortgage after the HOA is foreclosed on. Investors are arguing that the first mortgage is extinguished, so the banks are willing to step in so that they do not to have to go through that. It generally takes longer than 30 days, but whether it takes 6 months is another issue. Cases that I have worked on have taken at least 60 to 90 days to get the bank to come forth with the money. That is why we have a fairly safe number for homeowners. If you cannot come forth with the money in 6 months, then the HOA should be allowed to foreclose.

Senator Hutchison:
If someone buys a piece of property, he or she would have to sit on it for 6 months with no economic purpose. That seems like a long time for someone who is buying property to wait around in limbo.

Mr. Joe:
I do not think it is too long, considering people are buying HOA foreclosure properties for $3,000 to $6,000. The question is whether they are also responsible for the first mortgage in terms of getting hold of properties. The intention was to rent the property or negotiate with the bank. It is an inexpensive way to buy a property. It is not that onerous for investors.

Jon Sasser (Southern Nevada Senior Law Program):
The Southern Nevada Senior Law Program sees clients in similar situations and supports the efforts that have been made. Mr. Joe has a client who epitomizes what we are trying to do.

Mr. Joe:
I will attempt to find my client and bring him forward to testify.

John Leach (Subcommittee for Common-Interest Communities, Real Property Section, State Bar of Nevada):
Many of the things described as being the basis or problem for this legislation are not completely accurate. The suggestion that homeowners do not get notice until something is posted on their doors is inaccurate. Several steps must be taken over a 5- to 6-month time period with notices to the homeowners by both certified and regular mail. For the homeowner to say he or she is not aware of it is inconsistent with Nevada law. *Nevada Revised Statutes* (NRS) 116.41095 requires that at the time the property is purchased, a disclosure is part of the closing packet to every homeowner. Section 4 of that statute states that if you fail to pay the owner's assessments, you could lose your home.

Chair Segerblom:
This bill is requiring more notices. How would that affect you?

Mr. Leach:
We are not only talking about the notices but also who will be responsible for the repayment plans. This bill specifically tries to shift the expenses created by a homeowner to his or her neighbors. I attached an article to the material submitted that examines this in great detail (Exhibit C). By shifting the responsibility from one to the other, you are creating an economic problem for the other homeowners. It was mentioned that the reason we have to do this is because our constituents cannot afford lobbyists; however, neither can the people who are paying their assessments.

There are two fallacies being discussed. The first is an abuse of the foreclosure process. There are 500,000 homes that the Real Estate Division says are in common-use communities. In the past 7 months, only 650 of them were foreclosed upon. That is less than 0.01 percent. To say this is a widespread problem is not necessarily correct. The economic problem is widespread, but the

fact that people are losing their homes because of it is not true, not from the context of the HOA.

The second fallacy is that the responsibility should be shifted to the other homeowners. It is inequitable and unfair to shift the responsibility back to them, and that is exactly what is happening. The Commission for Common-Interest Communities and Condominium Hotels has already established and implemented a limitation on the amount of foreclosure fees and costs that can be incurred. If this bill is adopted, it would require board members or community association managers to perform what would otherwise be a collection agency function. We believe this violates NRS 649. A board member is not qualified to pursue collection costs. That is why the *Nevada Administrative Code* (NAC) requires it be done by professionals in the industry.

This requires additional letters and phone calls to the homeowners. Most HOAs do not have phone numbers for their homeowners—there is nothing that requires homeowners to give their phone numbers. Letters are already being sent when homeowners are delinquent, as notice of assessment liens, as notice of defaults and notice of sales. Homeowners' associations have the option to use judicial foreclosure. If a judicial foreclosure is used, then the right of redemption does apply. Telephone calls could also breed fair debt collection violations, especially if the community association management is involved, because that would involve a third-party debt collector. This would take accountability off the person who is not paying the fees and shifting them to the neighbors who are.

Section 9 of this bill would prohibit an association from pursuing unpaid and delinquent assessments until the owner has $1,000 in delinquent assessments. This does not take into consideration the difference in the size of the communities. Some HOAs have assessments of $500 per month, while others may only be $10 per month. To group them into one provision like this is not feasible or realistic.

Section 10 discusses a 180-day right of redemption period. This will reduce the value of the properties and does not discuss who is responsible for the assessments during that period. Does the homeowner or investor who buys the property have to pay assessments on property they may not own 180 days later? Who maintains the property? Properties acquired by third parties will not be taken care of for 180 days. Why should they water the lawn and pay the

bills when they may no longer own the property after 180 days? This bill also does not address what happens if the holder of the first security interest forecloses during the moratorium.

Our committee believes there is an unexplained and unreasonable effort to relieve the delinquent owners of their obligations and to shift the responsibility to the others. We also believe there is already adequate notice. Making phone calls and sending additional notices will not increase the number of people who pay their debts. If anything, it will just increase the size of the debts because of the additional expenses incurred. We oppose this bill in its entirety.

Senator Hutchison:
I do not have the knowledge that you do about the HOA process. A challenge this bill addresses is notification. One of the foundational principles of fundamental fairness is notice. What is required under the law, and is there a problem with that requirement? If there is a problem, why is there not an easy fix? Practicing law, we have to provide notice all of the time, and we have different methods of doing so. If it is a problem, why could you not use a receipt of copy so the homeowner clearly gets the notice? We all feel that the homeowner should have the notice and an opportunity to be heard. Can you address what is required for the notice, and what this bill does in addition that you do not like?

Mr. Leach:
When a person buys a home in a common-interest community, he or she receives a disclosure about purchasing a property in a common-interest community. The disclosure, under NRS 116.41095, included for every property sold under common-interest community specifically tells buyers that they have to pay assessments, and if they do not pay their assessments, they could lose their homes. The statement explains the purposes of common-interest communities and the associated obligations and duties.

Also under NRS 116 is the requirement to mail out the collection policy annually with the budget if the association has a collection policy. All homeowners are not only told when they buy their properties that they have to pay assessments and the consequences of not doing so, but every year they also receive the collection policy that sets forth the policy and order of the events that take place in the collection process. Other notices are also mailed. Some HOAs use coupons and some use invoices. Once the process starts and a person is

delinquent, all associations send a letter to the owner advising him or her of the delinquency and putting the person on notice of a late fee that may be imposed, encouraging him or her to make a payment before the next step is taken. Associations can have different periods of time—30, 60 or 90 days—before they get to the lien process, a notice of delinquent assessment lien. A notice then goes to the homeowner, either by certified or regular mail. Sometimes notices get signed, and sometimes they do not. The HOA may get a forwarding address. During that process, the next notice, the notice of default, may be sent out, and more notices are mailed then. People may choose not to pick up their certified mail or just throw it away—we cannot compel them to read what was received.

The law already mandates notice, and the notices are given. There is no explanation for people to say they are not aware that as part of an association, they have this obligation. Our biggest problem with this bill is that it seems to shift the responsibility from the people not paying their dues or assessments to their neighbors. There is already a cap on the amount of money that a collection company can incur, so if we add different phases, which include more notices, effort and time, then the neighbors end up with the cost.

The right of redemption will not help properties look or sell better. If investors know that if they buy properties they have to sit on them for 6 months, they will not buy. This has a catastrophic effect on the value of properties.

Garrett Gordon (Olympia Companies):
We submitted an amendment (Exhibit D). We think many of the provisions are excellent, but there are some cleanup items.

Marilyn Brainard:
I have a written statement in opposition of this bill (Exhibit E).

Donna Toussaint:
In my HOA, we pay $20 per month. If you cannot collect money until someone owes $1,000, it would be 5 years before we could start collecting. It would hurt everyone else, and it would mean we would have to increase the assessments for those who do pay their assessments.

Chair Segerblom:
Are you opposed to the entire bill or just to those provisions?

Ms. Toussaint:
I am opposed to the entire bill.

Frederick Wilkening (President, Frontier Estates Homeowners Association):
I oppose S.B. 280. This bill takes care of the problems of 0.01 percent of the number of units in the State of Nevada. Our association charges $88 per month, which represents about a year's worth of missed payments before we can get any money from the homeowner by selling his or her house. The water authority and power companies are not going to wait 10 months for payment. I am against the bill in its entirety.

Pamela Scott (Howard Hughes Corporation):
The Howard Hughes Corporation is opposed to this bill in its entirety. We have submitted a statement in opposition (Exhibit F). We have not seen Mr. Gordon's suggested amendments, but we are happy to consider them. We agree with everything the State Bar has said. Most associations do offer payment plans. In Summerlin, a payment plan is offered at 4 months of delinquency. An intent letter that we are going to start collection is sent at 6 months. It takes several months to actually get through the noticing requirements of the law. Houses are not going into foreclosure in less than a year with fewer than six or seven notices sent. People know when they are not paying their bills.

Greg Toussaint:
I oppose this bill. The vast majority of members pay their bills. They object to being forced to pay more and more every Session. I understand foreclosure is a strong step, but when you do not pay your taxes, the county will sell your house. If you do not pay your mortgage, eventually the bank will foreclose.

Chuck Niggemeyer:
I am a homeowner in Las Vegas, and I am against this bill. When are we going to hold the irresponsible owners accountable for what they owe us?

Senator Kihuen:
These people are not irresponsible. They are unemployed or have lost their jobs. These people are working hard to make ends meet. If this bill was not good, management companies would not be sending out emails to every Legislator. Most of the people here do not support at least one portion of the bill, so they want to kill the entire bill. This is a prohomeowner and proconsumer bill.

Chair Segerblom:
I have also received testimony in support of S.B. 280 to include proposed amendments from Jay Bloom (Exhibit G) and a statement in opposition from the Committee on Common-Interest Communities of the State Bar of Nevada Real Property Section (Exhibit H). I will now close the hearing on S.B. 280 and open the hearing on S.B. 332.

SENATE BILL 332: Makes various changes relating to common-interest communities. (BDR 10-587)

Senator Scott Hammond (Senatorial District No. 18):
In 1991, the Legislature enacted chapter 116 of NRS adding uniform laws regarding common-interest communities. Under statute, common-interest communities, also known as HOAs, can have a lien on a home for any construction penalty, assessment or fine issued by the HOA. These liens take priority over all other liens except for liens recorded before the HOA was created, a first security interest recorded before the assessment became delinquent, and liens for real estate taxes and other government charges.

Anthony Barney (Complete Association Management Company; Absolute Collection Services):
This bill effectively delineates the rights between the banks, what we commonly refer to as the first, delineates the rights of the HOA and delineates the subsequent purchaser of a property within an HOA community.

Chair Segerblom:
If the HOA forecloses on its lien and someone buys the property at the foreclosure sale, does it delineate the right between the first mortgage holder, the people who bought it at the foreclosure sale and the HOA?

Mr. Barney:
Yes.

Chair Segerblom:
What is the problem?

Mr. Barney:
We have a plethora of opinions. The district court is clogged with these cases. We have differing opinions with everybody's own self-interest at heart. In the

Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., No. 2:12-cv-00949-KJD-RJJ (D.Nev. Feb. 11, 2013) opinion, a judge took the opinion that whenever there was a foreclosure by the HOA and the bank then came in to foreclose upon its interest, it essentially divested the HOA of its interest and the bank.

Tiffany Barney (Complete Association Management Company; Absolute Collection Services):
The *Diakonos* case in Las Vegas actually heard arguments from a Washington case in which the judge indicated that in a judicial foreclosure, the HOA could strip or extinguish the first security interest. In *Diakonos*, a Las Vegas federal court judge indicated that because there was a nonjudicial foreclosure of the HOA's lien interest, the first security interest was not extinguished. However, he did not consider the Nevada statute, which does not distinguish between a nonjudicial and a judicial foreclosure.

There has been a misunderstanding by the courts of the lien superpriority of an HOA. This bill, with the amendment we have provided (Exhibit I), outlines that the HOA has a superpriority over the first security interest. If they do not pay off the HOA's liens after all the notices have been provided to the first security interests, then they are extinguished by virtue of the superpriority. The courts are saying that they do not read the statute that way; however, other opinions are coming out.

The most recent opinion is from the district attorney for the recorder's office. Prior to March 21 when we received the opinion, the recorder was allowing HOAs to pay transfer tax on only the portion to be foreclosed on. For example, if $5,000 was the amount being foreclosed on, the HOA would only pay transfer tax on that. After reading the statute, the district attorney's office said that is not occurring. The statute says that an HOA has superpriority. A first is subordinate to an HOA lien. Once an HOA forecloses, it gets the title free and clear and must pay the transfer tax on the fair market value of the property. That is the current position.

In December 2012, the Real Estate Division indicated in Advisory Opinion 13-01 that once HOAs foreclose, they extinguish first security interests. This bill was put forth to clarify to the people of Nevada, really the judiciary, that an HOA lien has superpriority if it forecloses, and it extinguishes a first security interest.

Chair Segerblom:
If homeowners do not pay their assessments and the HOA forecloses on them, does the HOA have to give notice to the first, to the bank?

Ms. Barney:
Yes, it does.

Chair Segerblom:
When the HOA has the foreclosure sale, if the bank does not pay off the HOA lien, does the HOA lien go before the bank?

Ms. Barney:
Yes. The HOA must foreclose. Upon foreclosure, it obtains the title free and clear.

Chair Segerblom:
Has any district court in Nevada ruled this way?

Ms. Barney:
Not yet.

Senator Jones:
The intent seems to be an attempt to clear up the issue between two different divisions battling over which entity has more power. I am not sure that this clarifies it but rather makes it more confusing.

Ms. Barney:
That is why we presented the amendment, Exhibit I. We have removed the language in NRS 116.3116, subsection 2, which indicates 9 months of assessments preceding the action to enforce the lien. There has been argument in court among attorneys about what that language in NRS 116.310312 means, "preceding the institution of an action to enforce the lien." We basically removed that language and clarify that it is 9 months of assessments at the time of recordation of the notice of lien. The argument has been made in court that there is no notice for the banks. In our amendment, we have provided that there must be a notice of lien recorded to be prior. Many of the associations are already doing this, but we have also added in our amendment the ability for banks, other purchasers and investors to obtain a payoff amount.

We have also taken out language in NRS 116.31163, subsection 2, which allows anyone who has a recorded security interest to get notice. The provision says that "any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association ..." Many banks have said that they do not notify the association, so they are not getting the notice of default and election to sell. We have removed that language to make it clear that anyone who has a recorded security interest receives notice. The statute does not require that there be a lien recorded, but we are stating that a lien must be recorded if you want to have a prior security interest. That benefits the banks but also puts everyone on notice—including the homeowners if they are not picking up their mail or certified mail—that they have liens on their homes for assessments which need to be paid. We also allow those who would like to pay off, such as an investor or bank, to be able to get a copy of the payoff amount once the notice of lien is recorded. If an HOA has a lien and is moving forward to foreclose, if you do not step up, then the foreclosure of the HOA lien extinguishes your security interest. That is what the statute provides; it is just not clear.

Senator Jones:
What brings you to us here today, clients?

Ms. Barney:
Yes.

Senator Jones:
Who are the clients?

Ms. Barney:
Complete Association Management Company as well as Absolute Collection Services.

Senator Ford:
The lien that attaches when HOA dues are not paid does not have to be filed or recorded. Is that correct?

Ms. Barney:
It does not.

Senator Ford:
You do not have to record it, but the lienholder still has to file the notice of default and election to sell. Is that correct?

Ms. Barney:
Yes.

Senator Ford:
If you record that, it typically constitutes notice to everybody. Is that correct?

Ms. Barney:
Yes.

Senator Ford:
Are the banks saying that does not constitute notice for purposes of being able to extinguish their liens?

Ms. Barney:
That is what they are arguing. The statute indicates that a recording of a declaration of the covenants, conditions and restrictions (CC&Rs) is perfection of the lien. There is notice out there. The banks have notice that they are able to have a lien perfected upon nonpayment even before they lend to people in the community. It is not a lien until there is nonpayment of assessments. Recording of the declaration actually perfects the lien. That is why the statute does not require someone to file and record a notice of lien.

Senator Ford:
The constructive notice or actual notice when you file the CC&Rs is given to the bank relative to a lien being able to attach when HOA dues go unpaid. Is that correct?

Ms. Barney:
Correct.

Senator Ford:
After the lien attaches because the fees are not paid, HOAs then file notices of default and election of sale, which generally constitutes to everyone that a foreclosure is about to take place. Am I correct in saying that the banks have

indicated they do not believe that the notice of default and election of sale is notice to them for purposes of a foreclosure?

Ms. Barney:
Section 3 of our amendment, Exhibit I, is pertaining to a notice of default and election to sell. If you look in section 3, subsection 2, notice must be provided to "Any holder of a recorded security interest ... who has notified the association ... ." The banks basically indicate that they do not have people notifying associations that they are a security interest, so we just want to take that language out to clarify that if there is a recorded security interest, provide the notice. That is for the banks.

Senator Ford:
It sounds like you are going to be giving an additional set of notice.

Ms. Barney:
Yes, for the notice of lien.

Senator Ford:
Talking about additional notice in S.B. 280 for banks to notify the homeowners should not be an issue either. I am not objecting to what you are saying about the new notice, but notice has occurred by the filing of CC&Rs, and additional notice has occurred when you file a notice of default and election to sell. Because of arguments, you are now saying that no notice has occurred and we wish to give new notice, which adds an additional step and additional monies to the process for the bank before you can foreclose. We need to be fair and equitable all the way around. If we do this for the banks, we need to do it for the homeowners as well.

Ms. Barney:
The amendment indicates that if you want priority, you need to file the notice of lien. You do not need to file it, but that is addressed in section 5 of our amendment, which was the original section 1 of the bill. If a notice of lien has not been recorded and the bank asserts a priority, then you default to section 5. That is where the association, or the purchaser at the association sale, will become a tenant in common with the bank. The bank may do a later foreclosure, but the HOA cannot be punished for going forward with a foreclosure sale when a bank is sitting on its rights. We are seeing that in the Las Vegas community. A house may be destroyed with broken windows and

doors, and the HOA cannot let that house sit there. The HOAs have fiduciary duties to keep up the property, and they do so. An HOA will go through a foreclosure sale and be able to keep up that property. When the HOA does that, it will foreclose and make the repairs necessary. Section 5 will allow the association or an investor who buys at the association sale to get back out what they put in. The courts are ignoring the HOA lien foreclosure sale. Courts are allowing banks to foreclose when the HOA has expended money to repair a property, and the HOA gets wiped out. It is an unjust enrichment argument.

Senator Jones:
Is there a precedent for this forced relationship between a bank and an HOA in other states?

Ms. Barney:
No, there is not.

Senator Jones:
Where did you come up with the idea?

Mr. Barney:
We have been working on it for 3 years.

Senator Hutchison:
Is that with or without the banks' input?

Ms. Barney:
We have recently had some bank input on this.

Senator Hutchison:
Do they want to be tenants in common with you?

Mr. Barney:
No one wants to be a tenant in common with someone to whom they disapprove. We have a partition situation that we deal with day in and day out in the courts, where people get paired because of their reluctance to agree upon an issue. In this regard, the banks have the opportunity to enter into that. That is unfavorable. For the situations where the lien is not recorded, there is a catchall and the ability for the banks to say they want to act in such a way

wherein this will not apply. But it also preserves their equitable interest on both sides in the event there is not a recordation of the lien.

Bill Uffelman (President and CEO, Nevada Bankers Association):
We have been working with Senator Hammond and others on this bill. Unfortunately, I did not see the amendment they submitted until this morning. They put forth an intriguing argument.

Chair Segerblom:
What is your definition of superpriority? Does it have priority over the first mortgage?

Mr. Uffelman:
One would think that they are always going to be paid out for the amount of a superpriority lien. We had a lot of discussion about this in the 2009 Session when the 9 months—previously 6 months—came up, so we did a carveout for the federal piece.

Chair Segerblom:
Does the superpriority lien have priority over the first mortgage?

Mr. Uffelman:
That was always presumed in the past. The HOAs said they were not in a position to foreclose. In the end, it was when the bank foreclosed that the HOAs were to get paid an amount of money. The question was if HOAs were to receive 9 months of regular dues or 6 months of regular dues, were they also getting the collection costs? I am not suggesting how big the superpriority lien is, only that a superpriority lien exists, and at the time of the foreclosure, that amount of money is carved out.

Chair Segerblom:
Now the HOAs are saying that if you do not pay it off ahead of time, you lose your mortgage and security interest.

Mr. Uffelman:
Since decisions started coming down, the situation has been brought to the fore. This bill is an attempt to guarantee HOAs will get the property because they are foreclosing and then become tenants in common with reluctant partners or parties that are financial institutions or otherwise. It is not clear in

the bill if an investor buys the property, but it seems the financial institution would be a partner with the investors. The investors may rent the property out without paying the HOA fees during their tenancy.

I have not had an opportunity to send this information to the banks to see their response. My opposition is based on uncertainty and topics that came up when we discussed the bill last week. In 2009, we confined this to Fannie Mae and Freddie Mac as entities that could have 9-month periods. If the Legislature processes a bill that amends NRS 116.3116, it should also include the U.S. Department of Veterans Affairs and Federal Housing Administration (FHA) in the 9-month category. If a bill passes, I ask you to make that technical correction.

Rocky Finseth (Nevada Land Title Association):
We are opposed to this bill as introduced. We have not had a chance to review the amendments. We will be happy to do that and continue to work with Senator Hammond.

William Wright (Subcommittee for Common-Interest Communities, Real Property Section, State Bar of Nevada,):
We are opposed to this bill. The primary reason we are opposed is section 1, which changes the priority scheme that has existed for 22 years.

Chair Segerblom:
How does section 1 change it?

Mr. Wright:
It creates a tenants in common which is an equal priority.

Chair Segerblom:
Is it not equal right now?

Mr. Wright:
No, the drafters of the model act made that clear in their comments as we stated in our March 29 written testimony (Exhibit J).

Chair Segerblom:
What is the priority right now?

Mr. Wright:
The priority is as stated in NRS 116.3116. It is prior to the first security interest for the amount considered a superpriority. If it were equal priority, then subsection 3, which deals with two competing association liens, states as much. It does not, it states that they are prior to all other liens.

Chair Segerblom:
Would this bill reduce the priority of the HOA lien?

Mr. Wright:
Yes. I want to make a comment on the amendment. The idea that there is not a lien on the property until something is recorded or a delinquency appears is not accurate. *Nevada Revised Statutes* 116.3116 states that there is a lien on the property. That statutory lien is called a springing lien. The lien amount is zero, but once there is a delinquency, it springs forward. The lien has always been on the property once perfected by the recording of the CC&Rs.

Senator Ford:
We argued about notice and someone complaining about not getting notice. The Real Estate Division does not want to provide new notice to homeowners in the HOA. This bill provides notice to the banks under the same circumstance where notice is already presumed because of filing and recording of a notice of default and election to sell. What is your position on notice in this case?

Mr. Wright:
Our committee believes there is a notice requirement section under NRS 116.31168, subsection 1. It states that the provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. If you follow the argument of the drafters of the Uniform Common Interest Ownership Act of 1982, the opinion has this as priority; NRS 107.090 requires notice to all junior lienholders. If you take the position that the superpriority lien is prior to the first mortgage, there is a requirement to provide notice under NRS 116 and NRS 107.

Senator Ford:
Does a springing lien attach because notice has already been given relative to the filing of the CC&Rs?

Mr. Wright:
Yes. After the CC&Rs are recorded and perfected, the lien is always there in the amount of zero. It springs forward once there is a delinquency.

Senator Ford:
The next step is filing the notice of default and election to sell. Do you list how much is owed in that notice?

Mr. Wright:
The next step is actually the notice of delinquent assessment, which is mailed. Thirty days after, the notice of default is recorded. After that would be the notice of sale. There are three separate notices.

Senator Ford:
Are all of these notices to the bank?

Mr. Wright:
Nevada Revised Statutes 116.31168 states that the foreclosure of the association's lien must follow the provisions of NRS 107.090, which require notice to the junior lienholders. We believe NRS 116 requires notice to the bank.

Senator Ford:
Would this require new notice to the bank? Notice has already occurred by virtue of the filing of the CC&Rs. You contend that a new notice is required after an amount owing for HOA dues arises. You have to give new notice to the bank about your superpriority lien before you can file your notice of default and election to sell. Is that correct?

Mr. Wright:
Yes. The section which talks about notice of default and election to sell states that NRS 107.090 is to apply to the association's foreclosure of its lien. That statute requires notice to junior lienholders.

Senator Ford:
Is that a distinction between the HOA circumstance where the homeowner is requesting a new notice? Albeit notices are given all throughout the statute, this situation where the bank requires new notice is because you think the statute actually requires it in this case.

Mr. Wright:
Yes. The banks are examining another section which would require notice if requested, but NRS 107.090 is clear that it does not need to be requested, it must be sent. By NRS 116, you are required to treat an association lien under the provisions of NRS 107, which requires the association to give notice. I have not had an opportunity to look over the amendments in detail, but they do not change the problem that the State Bar has with section 1, which is equal priority. We believe this is going to cause additional complaints in court and fighting over a particular property. It forces people into a tenant-in-common situation.

Rutt Premsrirut:
We need to review the Federal Housing Finance Agency charter and the U.S. Department of Housing and Urban Development (HUD) charter. By federal law, lending agencies have federal preemption over HOAs. I read caselaw where an HOA foreclosed and HUD reversed the foreclosure since it is a federal agency.

Richard Perkins:
We have been in discussion with Senator Hammond. We submitted a separate amendment (Exhibit K). We expect to continue to work together to bring another suggested amendment.

David Rosenberg:
I have submitted written testimony (Exhibit L) regarding the amendment in Exhibit K. The Real Estate Division Advisory Opinion 13-01 is included in my testimony (Exhibit M).

Chair Segerblom:
Are you willing to work together with these people on the bill?

Mr. Rosenberg:
Yes.

Senator Hammond:
Mr. Uffelman mentioned the FHA not being included in the bill, but it is included.

Ms. Barney:
Mr. Wright said the superpriority lien would be reduced with this bill, but it would not. The 9 months of assessments are there to stay. It does not reduce the superpriority. He indicated that there was a notice of delinquent assessment lien. That lien is only required to be sent to the homeowner but not recorded. We were looking at NRS 116.31168, which he quoted, about the foreclosure as if a deed of trust is being foreclosed. Typically, a deed of trust is recorded as to capture a priority. That is why we indicate that if you want priority, you need to file the notice of lien of delinquent assessment. There also are issues with the tenancy in common situation, section 1 of the bill and section 5 of the amendment.

Chair Segerblom:
We understand the concept and why people have issues with it. I have received written testimony in opposition and a proposed amendment from Jay Bloom (Exhibit N). I have also received written testimony in opposition to S.B. 332 from F. Gerald Mackin (Exhibit O). I will now close the hearing on S.B. 332 and open the hearing on Senate Bill 295.

SENATE BILL 295: Revises provisions relating to title to real property. (BDR 9-1003)

Chair Segerblom:
Is S.B. 295 related to A.B. No. 284 of the 76th Session?

Senator Michael Roberson (Senatorial District No. 20):
Yes, it is related. I, along with Assemblyman Jason M. Frierson and former Assemblyman Marcus Conklin, participated in Attorney General (AG) Catherine Cortez Masto's working group on changes to A.B. No. 284 of the 76th Session that dealt with the practice of robosigning. It was during those conversations and discussions that I became familiar with the issue of a bona fide purchaser (BFP) and the importance of the issue in the world of title insurance. As the AG's working group continued its work on changes to A.B. No. 284 of the 76th Session, the title industry representatives on the working group made us all aware of the importance and the need for the BFP to be made a part of the overall A.B. No. 284 of the 76th Session fixes. Unfortunately, the working group ran out of time to thoroughly vet the issue. The title industry was asked to bring forward the issue in a separate measure, thus the bill before you today.

Since the start of the Session, the title industry and other interested parties have been working on the BFP language to satisfy the needs of the title industry as well as other parties, such as the AG's Office, Legal Aid Center of Southern Nevada and individuals representing borrowers. After the introduction of S.B. 295, work continued between the interested parties, and that ongoing work product is before all of you today in the form of proposed Amendment 7784 to S.B. 295 (Exhibit P).

Chair Segerblom:
Does Catherine Cortez Masto's working group have a bill in the Assembly?

Senator Roberson:
I also support a separate bill that does not deal with the BFP issue. The proposed amendment, Exhibit P, was acceptable to some of the parties mentioned earlier; it was not acceptable to everyone, in particularly Legal Aid.

Mr. Finseth:
I am happy to cover the mock-up of the amendment after clients in Carson City and Las Vegas talk to you about the concept of the bona fide purchaser. I have also submitted testimony in support of S.B. 295 (Exhibit Q).

Chair Segerblom:
Were these issues considered by the AG's committee but not part of her final work product?

Mr. Finseth:
Yes. She was willing to entertain the concept of the BFP. The working group ran out of time. She asked the parties who were interested to continue working.

Sylvia Smith (President, Nevada Land Title Association):
I have submitted written testimony about the importance of the BFP (Exhibit R). Our trade association has worked with Attorney General Masto's working group on needed amendments to A.B. No. 284 of the 76th Session. These changes have been introduced as A.B. 300, which Nevada Land Title Association (NLTA) fully supports.

ASSEMBLY BILL 300: Revises provisions governing real property. (BDR 9-961)

Part of our work on those revisions was to include the BFP and encumbrance language. Unfortunately, at the end of the working group, it was decided that this important section would not be in the bill sponsored by the AG's Office. A BFP is important to homebuyers and all those associated with the home-buying process, which is so vital to the financial recovery of our great State.

Chair Segerblom:
What did A.B. No. 284 of the 76th Session do that you do not like?

Mr. Finseth:
Assembly Bill No. 284 of the 76th Session did not have BFP provisions. The NLTA brought the concept forward to the AG's working group as well as several other changes reflective in A.B. 300. Attorney General Masto ultimately asked us to carry a separate bill, which is S.B. 295.

Chair Segerblom:
Does this guarantee that somebody has a right to say he or she has the title?

Ms. Smith:
Yes.

Chair Segerblom:
What is the problem with the current law?

Ms. Smith:
The statute is very confusing. The definition of a BFP is referred to more completely as a bona fide purchaser for value without notice. A BFP is also described as one who purchased an asset for a stated value, innocent of any fact that would cast doubt on the right of the seller to have sold it in good faith. This is vital if the former owner shows up to claim title, since the BFP will keep the asset and the former owner or party who claims to have an interest would have to look to the fraudulent seller for financial compensation. In order to assert a BFP protection, a buyer must have purchased in good faith, paid valuable consideration and must be absent of notice. Anyone who did not purchase in good faith or pay valuable consideration would not be considered a bona fide purchaser.

Chair Segerblom:
If I have the title to my property and I borrow money as a lien against the property, then the property is chopped up into a million pieces and sold. You want to say you paid money for that mortgage and you have a right to the property? The property owner could not come back later and say because the mortgage owner could not show that he or she had the property and clear title, what you bought is not clear, therefore, I can come and take the property back?

Ms. Smith:
No. If you are foreclosed upon as a borrower and the bank or lender has gone through its process under NRS 107 through a nonjudicial or judicial foreclosure and a buyer purchases the property, you can challenge that. You cannot kick out the new purchaser from the property who in good faith bought the property as a BFP.

Chair Segerblom:
If I cannot kick them out, who am I challenging?

Ms. Smith:
You would challenge the lender in court.

Russell Dalton (Chairman, Nevada Land Title Association):
I have submitted written testimony (Exhibit S). This bill protects an innocent party who buys a property at a foreclosure sale or from a bank that has foreclosed on the property. It gives the innocent party protection against the prior owners' rights to that property if the buyer had no knowledge of any defect in the foreclosure process. It requires that the former borrower or any other party that claims a defect in the foreclosure process to seek monetary damages against the bank or those parties who wronged that borrower as opposed to disrupting the title, interest and ownership of the buyer after the foreclosure sale.

Senator Ford:
This concept has been in existence forever. You always protect for value the BFP who bought something without notice of fraud in the past. The recourse was against the person who committed the fraud or who made the mistake. Is this any different?

Mr. Dalton:
Zachary T. Ball will cover the legal concept we are interested in. The challenge for the title industry is that in NRS 107 or NRS 111.180, the concept is not secured. That is what we are attempting to do.

Senator Ford:
Are people buying a foreclosed home from a real estate investor, and if there is fraud, then the person who is foreclosed upon comes back after the person who bought it from the real estate investor?

Mr. Finseth:
We can cite nothing one way or another that this practice is actually happening. That could occur without S.B. 295 and the BFP statutes in place.

Senator Ford:
Is it common law? Do we have to put this in statute?

Chair Segerblom:
These are insurance companies. They do not want to pay insurance. They are worried about making sure that whoever gets the property is guaranteed and they do not have to worry about it.

Mr. Dalton:
There are layers of requirements being put into the foreclosure process. Even though we cannot point to specific cases and issues that have arisen which have set aside foreclosures or have challenged and required the title insurers to step up, as more layers are put on the foreclosure process and as more processes are added, we will be required to reassess our position as to whether we will be able to insure postforeclosure homes. We may not be able to unless this bill is implemented so that specific BFP statutes are available to us in the period after the foreclosure where a borrower or another party who finds a minor defect has the ability to challenge. Under NRS 107.080, we look to shorten time frames after a foreclosure that either a prior owner, borrower or some other junior lienholder has the right to challenge. Even though we may have what is considered a BFP, we still have a window of opportunity for those parties to challenge ownership of the property.

Zachary T. Ball (Nevada Land Title Association):
The concept of the bona fide purchasers already appears throughout *Nevada Revised Statutes*. There are descriptions or definitions found in NRS 111.325, NRS 645F.440 and NRS 205.372 to name a few. The problem is that the statute protects a BFP from a specific group of wrongdoers. For example, NRS 111.325 protects a BFP from a transfer of property not recorded with the county recorder's office where the property is located. If one qualifies as a BFP, any unrecorded transfer or conveyance is void against that BFP as long as the BFP is first to record. In that specific situation, it protects a BFP within the situation of unrecorded conveyance. That is true as to all of those NRS instances I reviewed. The benefit here is that, although we did want it in NRS 107.080 revisions, it did not happen. We were unable to make that agreement. It is a compromise on our part, but we do believe putting this in NRS 111.180 at least allows a codification of the strengthening theory of BFPs and gives the title industry and the real estate market the ability to better situate itself within these instances. There still is an opportunity within the timelines provided for that challenge, but it does protect BFPs thereafter. I have submitted prepared testimony (Exhibit T).

Senator Hutchison:
Do you have the offense of BFP status without this being in statute? This is a common law concept that we learned in law school. If someone challenges it postforeclosure and says he or she was foreclosed on improperly and wants to stop the proceedings, it is not difficult to contemplate. There are scenarios all the time where someone claims foreclosure was improper and sues everybody, including the subsequent purchaser. Do you currently say, common law, BFP value, motion to dismiss and go away?

Mr. Ball:
Yes, we do. It will be greatly strengthened by codification within the statute. We are looking at a specific court function. In order to prevent those lawsuits, this gives the title industry the ability to better rely on the Nevada statutes and law at the transactional phase.

Senator Hutchison:
It is a matter of strengthening this and making it more reliable from the title companies' point of view? Is the challenge usually because there was not proper notice given or some other defect?

Mr. Ball:
Yes, that is generally the challenge.

Senator Hutchison:
How often have you seen situations where courts have had to determine whether notice was properly provided in a foreclosure challenge by a prior owner?

Mr. Ball:
I have had a number of cases that have claimed wrongful foreclosure. In each of those cases, an element or a statement within the pleading states notice was not properly given. None of those cases have resulted in an order finding that proper notice was not given. The statute requires that it be substantial compliance. In each one of the cases I have handled, if there was not a finding by the court to that specific requirement, the court was in favor of the foreclosing entities.

Senator Hutchison:
In your practice, you see the claim and the argument over and over again that proper notice was not provided, but at least you have not seen that it has been successful in persuading a court to do that. I assume you want to strengthen the BFP status to provide the subsequent purchasers some certainty and let them move on with life. Even though the challenge has been made, you have not ever seen that be successful in your practice?

Mr. Ball:
That is correct.

Senator Roberson:
This is clarification of language existing in NRS. We intend to tighten the time frames. We want buyers of homes to rest assured.

Chair Segerblom:
I would love to sell an insurance policy and make sure that I would never have to pay on it.

Senator Roberson:
We want the insurance industry to provide a marketable title to consumers.

Chair Segerblom:
That will help speed up the process.

Senator Roberson:
Absolutely. The Legal Aid Center will not be opposing or testifying on this bill.

Chair Segerblom:
I will now close the hearing on S.B. 295 and open the hearing on S.B. 356.

SENATE BILL 356: Revises provisions relating to real property. (BDR 9-824)

Senator Roberson:
Senate Bill 356 represents the work product of the Real Property Section of the State Bar of Nevada, hereinafter referred to as the Section. It is intended to make technical corrections to laws affecting real estate loans. The bill has been approved by the Bar's Board of Governors who believes, as does the Section, that the bill addresses matters that particularly benefit from the expertise of the Section's lawyers. A similar bill passed both Houses in 2011 but failed when extraneous language was added in the closing days of the Legislative Session.

Chair Segerblom:
I will close the hearing on S.B. 356 and reopen the hearing on S.B. 332.

Mr. Rosenberg:
We proposed an alternative amendment to this bill to clarify what the law has always been and still is. The courts are trying to decide what it should be. In 1991, the Legislature put in a very clear rule. Legislators were looking at California and saw the problems beginning with HOAs there and realized that someday that would happen in Nevada. It happened here 20 years later, but in the meantime there was no caselaw on it. Courts are now struggling to determine if the Legislature meant to do what it said. The intent was to have the superpriority lien be senior and foreclosable so it could foreclose out the first mortgage. It is important that it be able to do that. For it to work properly, you would never end up with a foreclosure. The idea is to force the banks to show up or force the banks to tell the person in the house to pay the money. It is incredibly effective. If you are working on a mortgage revocation or do a short sale, the bank will make you pay it, or it can escrow the money. Fannie Mae and Freddie Mac have specific provisions intended for banks to do this, just like they do with property taxes.

It was understood for the last 20 years when people were making loans in Nevada that this is how the system worked. Suddenly, it is coming to the forefront. The banks are busy and they miss some of these. The HOA collection companies do not do the best job in noticing them. The problem we have is not the system; it is that it is not working right. When Mr. Joe was talking about people not being able to pay the lien off, in some cases that is the bank and some cases the people. When he talked about selling prices of $8,000 or $10,000 for a $100,000 house, that is also not a fault with the law. The Legislature passed the right law; the fault is in the uncertainty. If you are an investor, you know that what you buy is subject to a lawsuit. You have to spend $30,000 to buy the property, plus deal with the bank coming after you. Many people cannot afford that.

When the Real Estate Division came out with its opinion, it correctly stated that this is—and has always been—the law. When Advisory Opinion 13-01, Exhibit M, came out, we immediately saw what we expected to see. Instead of the houses worth $100,000 selling for $8,000 or $10,000, they suddenly jumped up to be worth $40,000 or $50,000. There was still uncertainty, but the price had gone up quite a bit based on that. As time went by, the banks started attacking the Advisory Opinion, saying it is just advisory and you do not have to worry about it. Then we saw the prices come back down. In a world where the statute is working properly, people would get proper notice and the bank would get proper notice. Everybody would have as much opportunity as possible to pay the lien off before an actual sale. In almost all cases, you will find that it gets paid off before the sale. In the cases where it does not, the HOAs need to have this stick. Without the stick, they could get wiped out, leaving no reason for the banks to show up or for the homeowners to pay the money.

The people being hurt are the good-paying homeowners. You can hate HOAs and management companies, but the homeowners who live there and are happy to take money out of their paychecks to pay cannot be subsidizing everyone else and bailing out the banks. We are clarifying the statute in the most reasonable way possible to reduce the need for litigation.

Chair Segerblom:
Have you talked to Senator Hammond about your amendment?

Mr. Rosenberg:
Yes, and we are working with him on it.

Chair Segerblom:
You are trying to clarify that the HOA's superpriority lien is superpriority, so if it does a foreclosure, the bank either comes to the table or is wiped out.

Mr. Rosenberg:
Let it be shown clearly, and you will see it work. If it does not work, it can be changed next Session. People are buying under this assumption and think that banks will show up because they really want to get the houses back. However, many of the banks would be very happy to have them go to sale. If a property sells for market price, the proceeds will first go to the HOA and pay off maybe $4,000 or $8,000, and the rest will all go to the bank. The prices on these houses are not at market value. It cannot be market value until there is clarity and until people know what they are buying.

Chair Segerblom:
They are not market price because the people buy these properties subject to the first?

Mr. Rosenberg:
People do not know what they are buying. They do not know if it is subject to the first. They rely on the law which says it is not; they go to a court and the judge changes his mind, and it becomes a springing lien that actually does not spring into place until you have the foreclosure by the first lienholder. There is too much confusion created by people sorting out what something very clear means.

Chair Segerblom:
I will now close the hearing on S.B. 332 and open the hearing on S.B. 397.

SENATE BILL 397: Revises provisions governing eminent domain. (BDR 3-886)

Senator Barbara K. Cegavske (Senatorial District No. 8):
Senate Bill 397 adds a new public use that would justify taking private property through eminent domain.

Chair Segerblom:
Is this so that Opportunity Village can buy the property next to it?

Senator Cegavske:
Yes. One of the stipulations is that it has to be for public use.

Chair Segerblom:
Do other private entities have the right to use condemnation?

Senator Cegavske:
Not to my knowledge. They are either swapping with the public agency or making something so it is even when they do an exchange and stipulating that it has to be for public use. The terminology in section 2, subsection 3, paragraph (a) would assist us.

Senator Hutchison:
This bill adds another basis for exercising eminent domain. The idea is that land could be acquired by the governing body, not by a private party. The land could be swapped with other land that may be being used for vocational rehabilitation purposes and those types of things. Is that your understanding?

Chair Segerblom:
We had the issue before where the government was buying property and turning it over to private individuals, and that was subject to the constitutional amendment. This would give an exemption for a nonprofit that deals with rehabilitation purposes.

Senator Cegavske:
Correct.

Senator Ford:
Is it possible for someone to ask the government to condemn a piece of land that the owner does not want to sell so that someone can use it?

Senator Cegavske:
I hope not. That was never the context of anything explained to me. I sit on the board of Opportunity Village and was asked to help with this. The person who asked me to bring this forward is not here today. The main part is on page 4, section 2, subsection 3. I made it specific so that it would not. It is through the

exchange process with the public agency, but the property has to be used for public use.

Senator Ford:
I understand the purpose of the bill. I am interested in knowing the background of the reason for bringing this. I want to ensure that, for example, we do not have Opportunity Village fighting with its neighbor over land it wants that is not for sale, and now it has us doing its bidding by instituting a new exception to eminent domain.

Senator Cegavske:
That has never come up. We have a partnership with a community college, and the other side of us has a working relationship with another agency, Easter Seals. We have not had any concerns with the property there in utilization or sharing. This clarifies that if those issues come up, it would have to be for public use and an exchange. I had not heard of anything you have referenced.

Senator Hutchison:
One of the reasons for eminent domain would be if a county, state or city wants to acquire property for vocational training, employment or social recreation. That is the purpose of Opportunity Village, helping persons with intellectual disabilities. If Clark County wants to do that, it can acquire the property for that purpose just like it could for a highway. If someone wanted to lobby the County because the neighbors will not sell their property, condemning it through eminent domain and making it for the person's type of business could happen. It is the same way the County could be lobbied to take somebody's private property for a roadway. The question is whether this is good policy for us.

Chair Segerblom:
Is this an amendment to the People's Initiative to Stop the Taking of Our Land (PISTOL)?

Nick Anthony, Counsel:
No, I do not believe this runs afoul of PISTOL, which dealt with private to public to private. This is specifically for public use.

Chair Segerblom:
The PISTOL did not deal with nonprofits or public uses?

Mr. Anthony:
No, it did not.

Chair Segerblom:
I will now close the hearing on S.B. 397.

Tim Stebbins:
When S.B. 280 was before this Committee, there were comments about due process and concern about what that means or does not mean. In 2009, the Legislature passed S.B. No. 182 of the 75th Session that assigned the definition of due process when it comes to homeowner fines. It was assigned to the Common-Interest Communities and Condominium Hotels Commission to come up with a regulation to define what due process means under NRS 116.31085, which lists some basic rights, and the Commission is supposed to expand on that. I believe the Commission may be addressing that issue at this time. I am not on the Commission, so I cannot speak for it.

Chair Segerblom:
This meeting is now adjourned at 10:57 a.m.

RESPECTFULLY SUBMITTED:

_____
Kaci Kerfeld,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE: _____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	7		Attendance Roster
S.B. 280	C	5	John Leach	Email—Community Associations Institute of Nevada
S.B. 280	D	6	Garrett Gordon	Proposed Amendments
S.B. 280	E	2	Marilyn Brainard	Prepared Statement
S.B. 280	F	1	Pamela Scott	Prepared Statement
S.B. 280	G	4	Jay Bloom	Statement and Proposed Amendments
S.B. 280	H	14	State Bar of Nevada	Prepared Statement
S.B. 332	I	7	Tiffany Barney	Proposed Amendment
S.B. 332	J	17	William Wright	Prepared Testimony
S.B. 332	K	7	Richard Perkins	Proposed Amendment
S.B. 332	L	2	David Rosenberg	Prepared Testimony
S.B. 332	M	20	David Rosenberg	Advisory No. 13-01
S.B. 332	N	1	Jay Bloom	Prepared Testimony and Proposed Amendment
S.B. 332	O	2	F. Gerald Mackin	Prepared Testimony
S.B. 295	P	6	Senator Michael Roberson	Proposed Amendment 7784
S.B. 295	Q	2	Rocky Finseth	Prepared Testimony
S.B. 295	R	1	Sylvia Smith	Prepared Testimony
S.B. 295	S	2	Russell Dalton	Prepared Testimony
S.B. 295	T	1	Zachary T. Ball	Prepared Testimony