TO: ASSEMBLY COMMITTEE ON JUDICIARY
April 28, 2015, 8:00 AM

SB 174 (4/23/15)

Comments from the following members of the Common Interest Community Committee of the Real Estate Section, State Bar of Nevada:

Mandy Shavinsky, Karen Dennison, Michael Buckley, Bruce Flammey, William Wright, John Leach

Section 9(a)(2) – NRS 116.31187 already contains numerous restrictions on board members and officers from entering into contracts with the association or accepting any commission, personal profit or compensation of any kind from the association in exchange for providing financing, goods or services to the association. In most cases, an individual is elected to the board *prior to* having to act on any matter that could benefit that individual. NRS 116.31187 already prohibits officers and directors from receiving compensation from association contracts. The proposed language in this section is vague and will likely result in further cost to associations as a result of eligibility challenges. As an example, in a situation where a board votes to settle a construction defect lawsuit where it expects to receive a cash settlement, *all owners* could receive "personal profit or compensation" because a surplus of funds could result in lower assessments for all owners.

Section 9(a)(3) – This section deprives an owner of more than one unit in a community from that owner's right to serve on an association board and/or as an officer.

There are serious issues with adding this type of prohibition in NRS 116:

IMPACT ON UNSOLD INVENTORY.

It should be noted that given the 5 year sunset on a declarant's period of control set forth in NRS 116.31032(b) and (c), *there are numerous projects with significant inventory that are no longer controlled by the declarant.* As such, this provision would prohibit an owner trying to sell numerous remaining units in so called "broken projects" from serving on an association board. This will discourage investment in projects with significant unsold inventory and adversely impact the continued recovery of the residential real estate market. In many cases, owners of blocks of unsold units have conducted significant diligence on projects and would be good board members by virtue of their familiarity with the association financials and common elements. With respect to companies that have already invested millions of dollars in the Nevada market, this legislation will jeopardize their investments.

DEPRIVATION OF RIGHTS AFFORDED TO ALL OTHER OWNERS.

Aside from the bulk owner scenario described above, it seems patently unfair to require any unit owner, regardless of how many units it owns, to pay assessments for the units that it does own, but deprive that owner of the right to serve on a board. This penalizes and discourages people from investing in or otherwise owning multiple units in a community.

EFFECT OF PROPOSED OWNERSHIP THRESHOLD OF 75% IN SECTION 10

Though likely well-intentioned as a compromise, the exception to allow a non-declarant who owns more than 75% of the units in an association to serve on a board does not provide any assistance to multiple unit owners because it does not address the: (i) likely adverse impact on unsold inventory; or (ii) the deprivation of rights of owners discussed above.

By way of example, assume that there are 100 units in a condominium community. Fifteen of these units were sold before the project was foreclosed on by a lienholder. An investor purchases the remaining 85 units from a bank that foreclosed and has been renting them in the interim until the market recovers. Once the new owner sells only 11 units out of the 85 that it owns (leaving 74 units), neither that owner (nor the owner's representatives if the owner is an entity) will have the ability to serve on the board of directors, despite the fact that the owner is required to pay a full association assessment for each of the 75 units it continues to own. Simply put, the owner has more invested in the condominium project than any other owner, but is deprived of its rights because it owns more than one unit.

Assembly Committee: Judiciary
Exhibit: F Page: 1 of 1 Date: 4/28/15
Submitted by: Senator Scott Hammond