MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE

Seventy-Eighth Session
March 19, 2015

The Assembly Committee on Judiciary Subcommittee was called to order by Chair Victoria Seaman at 6:02 p.m. on Thursday, March 19, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Victoria Seaman, Chair
Assemblyman David M. Gardner, Vice Chair
Assemblyman Elliot T. Anderson
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman John Moore, Assembly District No. 8
Assemblyman Lynn D. Stewart, Assembly District No. 22
Assemblywoman Melissa Woodbury, Assembly District No. 23

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Linda Whimple, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Robert Frank, Private Citizen, Henderson, Nevada
Jonathan Friedrich, representing Nevada Homeowner Alliance
Bob Robey, Vice Chair, Nevada Homeowner Alliance
Robin Huhn, representing HOA Board Monitoring Services and Nevada Homeowner Alliance
Gary Solomon, representing HOA Board Monitoring Services
John Radocha, Private Citizen, Las Vegas, Nevada
Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies
Angela K. Rock, representing Olympia Companies
Gayle Kern, representing Nevada Chapter, Community Associations Institute
Keith Lund, Private Citizen, Las Vegas, Nevada
Kitty Michals, Private Citizen, Las Vegas, Nevada
Glen Proctor, Treasurer, Mountain's Edge Master Association
Norm Rosensteel, representing Nevada Chapter, Community Associations Institute
Diana Cline, representing SFR Investments Pool 1, LLC
Marilyn Brainard, Private Citizen, Sparks, Nevada
Scott Hedlind, Private Citizen, Las Vegas, Nevada
Lori Martin, representing Terra West Management Services
Samuel P. McMullen, representing Nevada Bankers Association
Jon Sasser, representing Legal Aid Center of Southern Nevada and Washoe Legal Services
Pamela Scott, representing the Howard Hughes Corporation
Mike Randolph, Manager, Homeowner Association Services, Inc., Las Vegas, Nevada
Jennifer Gaynor, representing Nevada Credit Union League
Marco Velotta, Private Citizen, Henderson, Nevada
Jennifer Lazovich, representing Olympia Companies

Chair Seaman:
[Roll was taken and standing rules reviewed.] I will now open the hearing on Assembly Bill 240. This measure revises provisions governing liens of a unit-owners' association. Assemblyman Moore, you may begin whenever you are ready.

Assembly Bill 240: Revises provisions governing liens of a unit-owners' association. (BDR 10-821)

Assemblyman John Moore, Assembly District No. 8:
Assembly Bill 240 addresses the problems that are caused by a homeowners' association (HOA) using a nonjudicial foreclosure to sell an owner's unit just to collect nine months of unpaid dues, along with any maintenance and nuisance abatement charges, fees, and interest, and to wipe out a first deed of trust in the process. As you can imagine, the amount of these unpaid dues and charges is much less than the balance owing on the mortgage, yet Nevada currently allows this to happen under the so-called super priority statutes in *Nevada Revised Statutes* (NRS) Chapter 116.

Assembly Bill 240 will remove the super priority liens for HOAs and will require HOAs to go through the courts to foreclose liens in the future. Section 2 on page 3 and section 4 on page 5 remove the provisions that provide for a super priority lien for unpaid dues and certain other charges.

Section 4 spells out the new procedure for perfecting an HOA lien: (1) the notice of lien cannot be recorded until payments are 90 days past due; (2) the notice of lien must be served on the unit owner within 30 days of recording the lien; and (3) an action to foreclose cannot be filed until 90 days after service of notice of the lien.

Section 4, subsection 7, provides that any money remaining after the sale and satisfaction of the HOA lien must be paid to the unit owner. Subsection 8 states in part that the HOA must record a notice of discharge or release within ten days after satisfaction of the debt or be subject to a civil suit for actual damages or $100, whichever is greater, along with attorney's fees and costs.

Section 4, subsection 9, shortens the statute of limitation on filing lien enforcement actions from three years to one year after the date of filing the notice of lien. Section 4, page 8, line 1, eliminates the requirement for costs and reasonable attorney's fees to be awarded in a judgment to recover an HOA lien.

Most of the remaining sections are conforming amendments, simply eliminating references to repealed sections and updating references. Section 8 clarifies that this bill applies to the enforcement of liens unless the HOA has foreclosed its lien by sale on or before June 30, 2015. Finally, section 9 repeals six sections of the NRS that set out the nonjudicial foreclosure procedures for HOA liens. That concludes my presentation. I would be happy to answer any questions.

Chair Seaman:
Are there any questions? [There were none.]

Assemblyman David M. Gardner, Assembly District No. 9:
We are already starting to talk to many of the stakeholders, so this bill will be changing from how it is now. The intent of the bill is basically that there are some scary things happening with HOA foreclosures. I have personally seen them myself in my job as an attorney, where I have reviewed some HOA foreclosures that have happened in Clark County, and this is to try and help fix some of those. We have talked with some of the HOA people and they believe this has gone too far. The point is that we need to fix it, and we will be working with some of the people who represent the HOAs. There will be amendments, so this is not the complete bill at this point.

Assemblyman Elliot T. Anderson:
Do you practice in this area?

Assemblyman Gardner:
Yes, to a certain extent. My firm does a lot of work on it, and I occasionally need to go to hearings, so I will write motions on this. I am not on point with this, but if another attorney cannot make a hearing, I will do the research. If they cannot write a motion on this, I will be the one doing the research and writing the motion. There are one or two cases that I am actually on point with some of these HOA foreclosure issues.

Assemblyman Elliot T. Anderson:
What have you seen out in the market?

Assemblyman Gardner:
One of the things that has been happening is a foreclosure notice can be put on a property, which usually happens about three months after an owner has stopped paying or has moved out of the house, and then it sits. Sometimes it is two years later and then they get a trustee deed. Many times all they will do is just post it on the door of the house. I have clients who never see the notice

because they have moved out of the house and they are trying to get the bank to be involved. I have talked to banks and they are not getting any notice either. They will call for a foreclosure hearing. Usually that is done by posting something on the door that says "Trustee Sale," which is usually in about 20 days. After that 20 days, they are supposed to have a hearing where they are going to sell the property. What has been happening is they will go and then decide they are going to continue it. The way our law is written right now, they can continue without letting anyone know except for the people who are at that hearing. If you missed it for whatever reason, you have no idea that it happened. For example, say the hearing happened last month and then you decide that you are going to move it three weeks forward. You can keep doing that as long as you want until you can eventually get the right people there to buy the loan or the house, and then you can sell it. There is no notice to the banks or to the homeowner between the first one that is notified and when it is actually sold. There is no connection, and that is where my concern for the due process issues are.

There is a bill on the Senate side where they are working to fix that with some procedurals. Due process is one of the procedural issues I have.

Assemblyman Ohrenschall:
I think the genesis of the super priority lien comes from the Uniform Common-Interest Ownership Act (UCIOA) that Nevada adopted in the early 1990s. There have been a lot of changes every session. My concern is if we go to the judicial foreclosure process, do you think it is going to be more of a burden to the HOA in terms of the resources they are going to have to spend to collect? A couple of sessions ago, there were a lot of issues with collection agencies and the fees that were being added on. Attempts were made—both through statute and regulation—to try to make sure that we cap those. I have heard different stories as to how successful that has been. Do you think this is going to be the right balance in terms of not forcing the HOA to have to spend more than it might recover as opposed to the current system which derives from the UCIOA?

Assemblyman Gardner:
I think a lot of these due process rights would not have had these issues if a judge was approving the sale. To answer your question whether it would cost more, yes, it usually costs a little more. There are about 20 states that require judicial foreclosures; some of them do not allow nonjudicial foreclosure. Technically, in the state of Nevada we allow both. It is typically chosen to be a judicial foreclosure. In most of the Midwestern states or the Northeastern states, I have been told it is done for about $1,500.

I worked in commercial real estate before I became an attorney, and we did some foreclosures in the Indiana and Ohio areas where the cost was about $1,500. It is a little more expensive, but it is still less than what the regulations are, which is $1,950. That is the amount of collection fees that is allowed right now in the regulations. It is not under the statute. It would cost a little more, and I think it does help with the balance, but that is also something that will be negotiated. It is something the HOAs really did not want to do and if we fix the due process issues, I have much less of a concern with requiring judicial foreclosures. That may be something we take out altogether if we can find a good balance. There are a lot of states that are doing this already, and they have vibrant HOAs in those states as well. I do not think it is going to be a crushing burden. We are trying to find that balance right now.

Assemblyman Ohrenschall:
In your practice, are you finding that the $1,950 cap is effective and actually working in terms of the clients you are representing?

Assemblyman Gardner:
I tend to do more defense on this. We are not even reaching that cap. Most of what we are having issues with is not so much the cap, but the super priority liens. The HOA is only given the nine months. You are getting that and your collection fees are not really getting to that $1,950. The problem is that we are losing all the HOA fees.

To go back to your earlier question, there are 16 states that have passed the UCIOA. There are about 20 states that have super priority liens—us being one of them—but there are 30 states that do not have any kind of super priority liens. Once again, I do not think it is going to be a killer. I apologize—I keep saying this because we were not able to have the meetings beforehand—but that is also one of the things we and the HOAs are dealing with. They had an issue with getting rid of the super priority lien, so we are trying to strike a balance. This is not trying to hurt HOAs, banks, or anyone. It is trying to make sure that due process rights are upheld and that everyone knows what is going to happen. As I stated previously, the Senate bill has already dealt with a lot of this, so the bill may become redundant, but we are still looking at it.

Assemblyman Ohrenschall:
I appreciate your working with all the stakeholders because that balance is important.

Assemblyman Elliot T. Anderson:
I am trying to get my head around all the changes in the measure. Would it be your intent for there to still be a priority of proceeds if there is a sale? Obviously, we are talking about balance, and we need to keep the associations whole in some way, form, or fashion. Would your intent be, if there is a sale, to still allow there to be a nine-month priority of proceeds, or does the bill get rid of priority proceeds?

Assemblyman Gardner:
I will defer to Assemblyman Moore with what he wants to do with his bill, but I actually would not mind seeing that cap raised a little. I think that is one of the issues we are having right now. These houses are not foreclosed on for four years, and the most you can get is nine months of unpaid dues. Even then, you might not get all of your collection fees. I think that is part of the balance we need to strike as well. I do not know if Assemblyman Moore wants to do that in his bill, but I would be okay with increasing the cap a little.

Assemblyman Moore:
I would be open to discussing it and hopefully finding a balance where all parties are represented in an equal fashion.

Chair Seaman:
Can you describe conceptually what you are thinking of as far as amending this bill?

Assemblyman Gardner:
Some of the ideas that we have discussed are possibly getting rid of the judicial foreclosure so that we can do some of the fixes that were done in the Senate bill. Regarding the super priority lien, once again we have not set an exact number, but it is to be kept in there. We may possibly remove the ability to foreclose or limit the ability to foreclose. It is about trying to protect both the HOA, which needs that money, but also protecting the homeowners for some of the notices.

Assemblyman Moore:
It is not so much that we are trying to diminish the HOAs' ability to recover their costs, do what they need to do to keep the neighborhoods looking good, and to do the services they are obligated to provide for their residents. What I am trying to accomplish here regarding the super priority lien is that I do not feel anyone should be in a position above the first mortgage holder to go to foreclosure. In other words, the bank is the one that has the real interest in the property besides the homeowner. The bank is the one that decided you were a good credit risk and lent you the money to purchase the home. Why should

they have to wait for others to be paid before they are? They need to be the first in line to recoup their money, and then everyone else comes after that. They have the most interest in that property, in my opinion.

Assemblyman Gardner:
It is actually a little bit worse than what Assemblyman Moore stated. Right now with a super priority lien, you can foreclose. The way the law works is that you get rid of all the liens below you. So you actually get rid of the first mortgage. This is an actual lawsuit that I am doing right now. My clients bought a $400,000 condominium for $12,000, and their case is currently in federal court. It has been going on for a year and will probably go on for several more years. That is the kind of thing we are trying to avoid. Only two states, Nevada and Washington, allow you to get rid of the first mortgage and the subsequent liens. All the other states that have the super priority liens—about 20 total—allow it to be up there on the list so when the bank forecloses, the lien does not go away. Only Nevada and Washington allow you to get rid of the first mortgage. It was about six months ago when the Nevada Supreme Court said that was their interpretation of the UCIOA which Assemblyman Ohrenschall was talking about.

Assemblyman Moore:
There was a case in the Southern Highlands Community Association where a home valued at $885,000 was sold for $6,000 because of a super priority lien. The bank took it to court in the case of *SFR Investments Pool 1 v. U.S. Bank* [130 Nev. Adv. Op. 75, 334 P.3d 408 (2014)]. It was ultimately decided by the Nevada Supreme Court. I do not see the fairness there. Where is there equitable fairness for the bank in that they took the risk, lent the money, and because the homeowner for whatever reason did not pay their HOA dues to now lose $885,000 on a house. It is bizarre to me.

Chair Seaman:
Are there any other questions for Assemblyman Moore? [There were none.] We will now go to those in support of A.B. 240. To be fair and in consideration of time, I will allow 30 minutes in support and 30 minutes in opposition followed by neutral testimony.

Robert Frank, Private Citizen, Henderson, Nevada:
I have been on one of the largest HOA boards. I am also a member of the Commission for Common-Interest Communities and Condominium Hotels, but I am testifying today on my own behalf. I am not representing the Commission.

I really enjoyed the discussion I just heard from the various members of the Assembly because it helped fill in some gaps that I actually have not heard before. I am grateful for what Assemblyman Moore and Assemblyman Gardner filled us in on.

I am not a lawyer but I am a very strong constitutional citizen, and I feel very strongly that judicial process ought to be involved in taking the property of any homeowner. I believe the government's right to take should be preserved. I do not think HOAs should be granted the right to take property regardless of the circumstances. I hope that at the end of the day, after all the negotiations and amendments, that the bottom line still comes down to only the government can take property from a property owner in this country. I believe that is a very fundamental right. I think it is unfortunate if it might cost a little more money. In the long run, I am not sure it is worth arguing about, but I think the principle of taking property is a very important principle and should be preserved under the Judicial Branch of government.

Finally, there has been continuing debate in regard to whether HOAs are quasi-governmental or whether they are pure contracts. This discussion really brings it to the table again by those who would argue to go ahead and keep nonjudicial foreclosures. If you do, in my opinion, it will further support the argument that it is a quasi-governmental organization and should be managed more along those lines.

Jonathan Friedrich, representing Nevada Homeowner Alliance:
I am a former commissioner on the Commission for Common-Interest Communities and Condominium Hotels. About 40 years ago, before I was on the Commission, it was asked to set fees in NRS Chapter 115 for the super priority liens. That, to me, was a disgrace. The Commission asked a number of collection companies to come and speak to them and tell them what they wanted. Well, if you take a kid into a toy store, they are going to want everything. The collection companies wanted the moon and the stars. They finally came to an agreement of sorts of $1,950 for fees, but that was not the real number. If you read the regulation carefully, it allows for all kinds of attorney's fees. I believe it was four years ago that I submitted several collection companies' bills, which should be in the record. They are anywhere from $3,000 to $5,000; they are not $1,950. If you go through the records, or if you need me to send them to you, I can.

Another item deals with the management companies. After the collection companies got their pot of gold, the management companies wanted their share. It was decided that they should get $200, so now $200 is added into the pot. I feel this bill is long overdue. These auctions do not belong in the

back room of an attorney's office or in the parking lot of a company in downtown Las Vegas. They belong in the courtroom. Mr. Frank was very accurate in what he said.

On page 6 of the bill, starting with line 22, the new language in section 4 simplifies the process greatly, and I am in favor of that.

Chair Seaman:
I just want to remind you that amendments are still being worked on.

Jonathan Friedrich:
I realize that, but I do not know what is going to be amended and I wanted to get the testimony in. On page 7, the word "court" is stated in no less than four places. I am very much in favor of it.

Bob Robey, Vice Chair, Nevada Homeowner Alliance:
I was very happy to see that the idea of due process might come in. Something needs to be done about due process. I have a question regarding the bill that was just raised when you were talking with Mr. Friedrich. There is going to be a work session after the open hearings, and there will also be amendments. Can people like us—who do care and who do show up—ever have another chance?

Chair Seaman:
You can contact Assemblyman Moore directly for more information on the amendments as he goes through them.

Bob Robey:
As I found on the Internet, there are five states leading the nation in foreclosures, and I sent that information to the Nevada Electronic Legislative Information System (NELIS) (Exhibit C). Of the top five states, four are judicial and one is nonjudicial. I do not think it makes a difference if it is judicial or not.

If I contact Assemblyman Moore directly at his Assembly mailbox, may I expect an answer?

Chair Seaman:
I will let Assemblyman Moore answer that.

Assemblyman Moore:
Yes, I respond to any email that comes to me. Please feel free to email me at the address at the Legislature.

Bob Robey:
Thank you very much, Assemblyman Moore.

Robin Huhn, representing HOA Board Monitoring Services and Nevada Homeowner Alliance:
We need more bills that are in support of homeowners and not the companies that are getting the profits—management companies, collection companies, and especially HOA attorneys. I am in support of A.B. 240.

Gary Solomon, representing HOA Board Monitoring Services:
I am going to give you another take on this that you probably have not heard or considered. I am an academic; I have studied homeowners' associations for the past six years. I have published books on the subject. What I am not hearing talked about are the families and what the effect is on families as a result of what is taking place. The judicial foreclosure creates a very transparent way of going about this, but the backroom dealings are destroying families. I doubt there is anyone I am looking at through the screen who is not part of a family; a husband, wife, and children. Now those families are being abused as a result of these backroom dealings. We have a term for it, which is child abuse by proxy. It means that as these activities are taking place, the children in the homes are being abused by proxy from what happened. What might we expect from those children? Research shows that when those kids grow up, they are going to come after people. They are going to attack because they are angry. They are going to hurt others because of what happened to them.

Chair Seaman:
Please stick to the topic for A.B. 240.

Gary Solomon:
It is important to have A.B. 240 so that people do not retaliate against others who took action against them. Does that stay on track? I have a little bit more to say.

Chair Seaman:
Okay, but please stay on the subject of A.B. 240.

Gary Solomon:
The other area of abuse as a result of this, if it does not pass, is elder abuse. It is important to understand that this is in the best interest of the people. This should not be in the best interest of the investor. We must look at the effect on the family.

Chair Seaman:
Are there any questions? [There were none.]

John Radocha, Private Citizen, Las Vegas, Nevada:
I am a homeowner, and I believe it is time for these foreclosures to get into the courts where they belong. You cannot have a conglomerate of industry people all in a nice big boat, trying to rip us off all the time. I am from Pennsylvania, and years ago I belonged to an organization, and I believe you have to get out of these smoke-filled rooms. Too much of this is going on.

I have a question for Assemblyman Moore. Do you accept snail mail? I do not have email and I would like to know that if I wrote to you, would you accept it?

Assemblyman Moore:
Yes. Any kind of mail or correspondence is perfectly okay.

John Radocha:
Thank you, I really appreciate that.

Chair Seaman:
Is there anyone else in support of A.B. 240? [There was no one.] Those who are in opposition, please come forward.

Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies:
Today I am speaking on behalf of the Legislative Action Committee of the Community Associations Institute, Southern Highlands Community Association, and Olympia Companies. As the bill is written, we are opposed. There are some experts here who can address the reasons why. Given our time constraint, I will keep my testimony short. I would like to thank the sponsor and Assemblyman Gardner for meeting with us to discuss the problem and for thinking outside the box about possible solutions. I appreciate their time and commit to you, Madam Chair, that we will continue to work with them in the meantime.

Angela K. Rock, representing Olympia Companies:
As Mr. Gordon stated, I was originally in opposition to the bill as it is written; however, from testimony that I just heard moments ago, it sounds like there is work to be done and I was encouraged by some of the things I heard. I am not going to go through the technical portions of the bill, but only to state and pull out some of the things I recently heard that we need more bills in support of homeowners. I want everyone here to consider that the money that is being

collected by the HOA is, in fact, for the homeowners. It is to ensure that the dues are not raised for those members who are currently paying their HOA assessments.

The second thing I heard is there seems to be an understanding from one of the individuals who testified that the government, or certain entities, need to be able to collect their money because they are providing certain key services. The association is providing key services. Please do not forget that it is not a for-profit corporation. It is a nonprofit corporation that is providing utilities, streets, gates, lights, and I could go on down the line. I agree with some of the testimony that was given by Assemblyman Gardner about protecting due process. Having heard that—as I mentioned, we are not as opposed as we originally were—I would like us all to think long and hard before we eliminate the payment and before we eliminate the incentive to pay at the point that the bank forecloses. Assemblyman Anderson asked an excellent question about ensuring that the association still gets something. I would like to thank you for that comment and make sure that we do not pass a bill that discourages homeowners from paying.

Gayle Kern, representing Nevada Chapter, Community Associations Institute:
I am testifying on behalf of the Legislative Action Committee of the Community Associations Institute. I am an attorney and represent about 300 HOAs, and I consider my representation to be for those assessment-paying members. It is not a club. They do not pay dues, and they do not get to choose whether they pay dues. There are assessments that need to be paid because we are taking care of all of the infrastructure. In a condominium, we are taking care of everything but the air space, so we are actually protecting the collateral that is secured by the deed of trust.

On the issue of a judicial foreclosure versus a nonjudicial foreclosure, if I were here testifying on my own behalf, a judicial foreclosure means that I just quadrupled my business because you have to have an attorney for that. However, that is not in the best interest of the association nor, would I submit, in the best interest of our judicial system. You will also have to be employing a lot more judges, because just one entity in Nevada commenced about 1,500 collection matters that would now be a lawsuit each month. That does not mean that all of those go to foreclosure. We resolve the majority of them. For the majority of them, the homeowner either pays or the lender forecloses and we stop our action. Those do not all go to foreclosure. If we have to commence a judicial foreclosure for all of the collection action, it will be at the commencement of that collection. You are going to have huge unintended consequences with the need for more courthouses and more judges to take care of this volume.

The nonjudicial foreclosure process is not something that is unique. It can be found in NRS Chapter 107. Lenders do it; they are not a governmental entity. The nonjudicial foreclosure process has a lot of protections. With all due respect to Assemblyman Gardner, I would like to identify what the process is. The process of NRS Chapter 116 requires a notice of delinquent assessment and claim of lien that is required to be mailed, certified and regular mail, to the homeowner. The next step is the notice of default and election to sell. It is exactly the same process as a lender uses when foreclosing on the deed of trust. It has to be recorded to everyone of interest on that property, both junior and senior, as well as the owner. If it is not done, it is not a proper nonjudicial foreclosure.

The next process, just as with a nonjudicial foreclosure by a lender, is the notice of sale. That is also required to be published in the newspaper, to be mailed, certified and regular, to all persons of interest. We get a trustee sale guarantee just like the banks do, and it is posted on the property as well as a courthouse or other area which is approved to have those notices posted. There is a lot of notice given that is not done. The only thing that happens is—he says there was a hearing, and I believe he was referring to when you cry the sale, which is a sale by auction—there is an allowance to postpone the sale, just as with the banks. Up here in the north, we cry the sales on the courthouse steps of the Second Judicial District Court.

I would assert that the protections are there. If you want to tweak some of them, or you want additional notices to be given, that is fine. But I think if you try to take away that process, you will have a lot of unintended consequences and it will hurt the assessment-paying members. Similarly, the lien has, quite frankly, saved our state, especially with respect to the last several years. If we had not been able to do that, the assessment-paying members of the association would have seen their assessments go up dramatically. With respect to the amendments, I am very anxious to talk with the sponsor and participate in the discussions, but as it stands now, we cannot support this bill. [Letter submitted (Exhibit D).]

Assemblyman Ohrenschall:
Have delinquencies and arrears gone down to the associations? You said that assessments have not gone up dramatically. Do you have any data on it?

Gayle Kern:
I can tell you anecdotally that in my own practice, prior to six or seven years ago, I had never ever completed a nonjudicial foreclosure. Then we had a period of time where there were some that were completed, and now we are going back to resolving cases at our initial communication with the borrower.

They are wanting to keep their homes. For my own practice, I have seen a dramatic decrease in going further down the process. That has been over about the last 10 or 11 months.

Assemblyman Ohrenschall:
Has there been an increased use in bank impound accounts, or anything like that, to avoid sending the arrears out to collection agencies and trying not to have it go down that road?

Angela Rock:
In my own practice, I have not seen banks come forward at the management company level with a concept of impound accounts. On a personal note, I just recently bought a home and during my closing, when I was signing the mound of papers, that did come up. They did, in fact, discuss that they may move to that. I was encouraged—they did not know what I did for a living—but that was not required at the time and I have not seen it in practice in my day-to-day operations. If that happens, and if a bank did pay through an impound account and even wanted to pay quarterly—let us say to prepay as they do insurance or taxes—then, of course, that would not only protect their asset, but would all but eliminate the need for most of us.

Assemblyman Elliot T. Anderson:
I think we have a problem that we have to fix. I am not sure what the solution is yet. It is a complicated issue. I would take a little bit of issue with the statement that there is not a notice problem. I think there has been. I do not know whose fault it is, but I think it is something we need to get ahold of. We have to ensure that people know they have a chance to respond and that there is some sort of way they can go back and fix it. I realize there were some things put in last session for the homeowner, but we do also have to consider the bank's interest. We have to find a way to get there, so I am really interested to see all of the proposals and to see what comes out of the Senate. I would like for you to talk more about how you think we could go about fixing this issue, whether it is this bill or another bill. What is it that you think would be a good idea to do?

Gayle Kern:
What do you perceive the problem to be? I wholeheartedly agree that if people are not following the requirements of the statute, then there is a problem. The statute requires certified and regular mailings of all notices to anyone with a recorded interest in the real property, and if that is being complied with, then the lenders should be getting notice. If they have recorded a deed of trust or if

there is an assignment recorded, you are obligated and required under the specific terms of the statute to send them the notice of default and election to sell and the notice of sale.

Assemblyman Elliot T. Anderson:
For whatever reason, it has not been happening. At a minimum, I think we need stronger notice provisions to ensure that people are aware their rights are potentially on the chopping block. Even though this is a nonjudicial process, the Takings Clause still applies when we use any government process, whether it is judicial foreclosure or nonjudicial foreclosure, and we have to ensure that people have the opportunity to be heard. For whatever reason, it is not happening all the time; sometimes it is. We just have to figure out what the solution is.

Assemblyman Jones:
A statement you made was concerning to me. Assemblyman Moore testified how in Southern Highlands $6,000 got a $695,000 house, and in your testimony you are saying that liens saved Nevada. That is a little over the top for me, and I would like you to explain it.

Gayle Kern:
Probably seven years ago, when lenders were foreclosing on a regular basis, we would make our demand on behalf of the association for the lien. The lender would pay it and we would write off the rest of the delinquency. Sometimes the entire lien is a year to three years worth of assessments. Then when the lender foreclosed—remember, the lien is only triggered when a lender forecloses or when the association gets down to the very end and forecloses—there is a portion of the lien that is a lien that can extinguish the deed of trust if it is foreclosed upon. But as the Nevada Supreme Court found in the *SFR Investments Pool 1* case, the lender has every ability to tender that amount and then if the association continues with its foreclosure, it does not extinguish the deed of trust. There is one lien that has a portion of it that is the lien. The ability to first collect those lien amounts, I believe, protected associations and did save those associations from having to increase their assessments.

If you look at the statistics—I apologize, I meant to print it out—up until a year ago, the total number of HOA foreclosures in the state of Nevada was less than 500 a year. One year it was 120 and another year there were 200. It jumped up to a little over 1,000 in 2013 or 2014, but it has been very recent. I would agree with you that my comment was not directed to the ability to extinguish the first deed of trust. It was to the ability to collect that lien from the lender so that we did not have to write off the entire amount of the lien. I hope that distinction addresses your concern.

Assemblyman Jones:
My concern is when you say, "It saved Nevada." To me that seems a little unjust when we are talking about such unjust enrichment and you are making the claim that it saved Nevada on behalf of homeowners' associations. Do you see how that could come across as a little bit offensive?

Gayle Kern:
I am concerned about the assessment-paying members. There is no question in my mind regarding those homeowners who are trying to stay in their homes, who need their community taken care of, and are paying their assessments, that they do not end up taking on the burden of those assessments that are not being paid. To me, protecting those assessment-paying homeowners who want to stay in their homes and are trying to be part of that community and paying their assessment is very important, and I believe those are the people who benefitted from not having to incur increased assessments to pay for what was not able to be collected.

Chair Seaman:
We will move on to testimony in Las Vegas, but please be sure to work with Assemblymen Moore and Gardner.

Keith Lund, Private Citizen, Las Vegas, Nevada:
I am a homeowner, and for the past eight years I have been on two HOA boards. I rise in strong opposition to A.B. 240 as it is written and I am absolutely pleased to hear that there are amendments yet to come. I am grateful for that.

Before Assemblyman Jones spoke asking for a recommendation or a comment, and based on what I heard from Assemblyman Gardner and Assemblyman Moore about their concerns, they have two major issues about notice and making sure these things were not happening without proper notice and that people knew what was going on and that the lender is not wiped out. I am not in the lending business, I have no vested stake, I am not an attorney, and I have no financial interest in this beyond being a homeowner. To me, the idea that the lender gets wiped out is silly. I think the lender should be protected, but it sounds like if we simply ensure that when the HOA forecloses, the lender is still maintained and can come in behind it and foreclose themselves, or take it back and simply make the HOA whole in the process, that all by itself protects the lender and maintains this process.

Having sat on the HOA board and having done this for eight years through the downturn and through the recovery without the tenets that A.B. 240 wipes out, the HOA would not have functioned at all. We derived upwards of 10 to 30 percent of what we brought in and we were running deficiencies; 10 to 30 percent during 2011, 2012, 2013 came in from collections; and the banks did not act until we began to post notice to foreclose. In all of that time—and I sit on the two HOAs representing more than 1,700 homes in your district, Madam Chair—we foreclosed once. We are not looking to foreclose and most HOAs do not want to foreclose. The banks would not act until we at least brought that action. We need someone to make things happen to protect our homeowners, and at least the HOAs, because they were close to the ground and heard it from the homeowners, were willing to act.

With regard to notice, I agree that the ability to delay multiple times without giving good notice does not allow us to know when the actual sale is going to happen. If we eliminate those, it cleans up the notice and the HOAs either have to act or not. To protect the lender and to make the notice cleaner, it sounds like some procedural changes would do it. I promise you that wiping out the lien, from my experience on both HOAs, would cripple HOAs and it would cost thousands of dollars and special assessments to the homeowners who are already trying to pay their dues.

Kitty Michals, Private Citizen, Las Vegas, Nevada:
I am a homeowner and I am on an HOA board. I am totally against the bill as it stands. If there are changes and adjustments, that is good news and it will be interesting to see what the final bill looks like. We would have suffered without the priority lien. I live in a very small community with only 46 homes, so if we had two homeowners who could not pay their bills and nothing was effective, we would be out. The fact is that if we had nothing firm to hold, why would anyone pay their assessments? Why would anyone pay their HOA dues? I think that would create another problem.

Glen Proctor, Treasurer, Mountain's Edge Master Association:
I am a board member for Mountain's Edge Master Association, a community in southwest Las Vegas of 10,500 homes and growing. I am here in the official board capacity to argue against A.B. 240. Since the housing crash of 2008, we have experienced a high rate of delinquency on assessments. As fiduciaries of our association, it is our duty to pursue these debts, and the tools we use are collection companies and the filing of liens. In normal circumstances, banks would foreclose on defaulted properties in a timely manner and, in such cases, NRS provides that the association is entitled to nine months of unpaid assessments. In practice, banks are sitting on defaulted mortgages and taking

no action for years on end. Meanwhile, the association's expenses continue unabated, so the responsible homeowners who pay their assessments have been stuck for years paying more than their share to make up for the shortfall.

The recent Nevada Supreme Court decision affirming the super priority liens wipe out first security interests in foreclosure was positive for HOAs because it has encouraged banks to bring delinquent properties current on assessments in order to avoid association foreclosures. The association in turn does its part by maintaining the appearance of the neighborhood that helps to increase property values, which is positive for banks when they do act.

Assembly Bill 240 seeks to make it harder for the HOAs to take action on unpaid assessments to the point that it will cost more to collect than the value of the unpaid balance. This bill does nothing to reduce the costs of the association, so the board has no choice but to raise assessments on the only remaining source of income left—the people who diligently pay their assessments every month. Assembly Bill 240 punishes these solid citizens who have made fiscally responsible choices in life, work hard to pay their mortgage, their taxes, and their assessment, while simultaneously rewarding those who have defaulted on their promises. We urge you to reject this measure. It is great for bankers and lawyers, but it is not so good for the solid citizens.

Norm Rosensteel, representing Nevada Chapter, Community Associations Institute:

I am here appearing on behalf of the Community Associations Institute and as a homeowner in a common-interest community. If you remove the super priority lien, as others have said, you make the people in the association who are paying their assessments to have to come up with the money for this. The reason we are in the situation we are in is because of the inactivity of the banks and their not taking any action at all, so the associations have had to take some kind of action. Millions of dollars will wind up being put on the backs of the owners who do pay their assessments on time.

Regarding the judicial foreclosure, it is much more expensive and will clog the court system unbelievably. As Ms. Kern said, there are 1,500 notices of default filed by one collection company. You can figure 8,000 to 10,000 of those a year, and in the court system today, it is just not going to be manageable.

Additionally, some information from the Foreclosure Mediation Program shows there were 13,040 bank foreclosure certificates filed in fiscal year (FY) 2014, and 1,245 HOA notices of sale for a total of possible foreclosures of 14,285.

Of those, 358 actually were foreclosed on by associations, so in the whole state for FY 2014, that is approximately 3 percent of the total. It is not a large number.

In closing, I think we all agree that no one wants to see the banks wiped out. The associations are not looking for a windfall or wiping out the first mortgage holder, but they do want what is owed to them.

Assemblyman Ohrenschall:
Is the 3 percent figure you had out of the total of 14,000?

Norm Rosensteel:
That is correct.

Assemblyman Ohrenschall:
Do you have any data as to how much of arrears, dues, and assessments are recovered by the board versus how much has been paid out to the collection agencies? If we are having a good balance and making the association whole, that is great. If there is unjust enrichment the way there was six or seven years ago, then I am worried. Do you have any data about that here in Nevada?

Norm Rosensteel:
I do not have any data at the current time, but we can certainly get you as much information as we can.

Assemblyman Ohrenschall:
I appreciate that. Would you be able to distribute it to all of the Subcommittee members?

Norm Rosensteel:
Certainly.

Diana Cline, representing SFR Investments Pool 1, LLC:
I am a homeowner and a purchaser at some of these association foreclosure sales. We oppose A.B. 240 as written, and we are very concerned that the HOAs and the homeowners, who are doing the right thing, will be left with the cost of unpaid assessments. We are definitely happy to work with the sponsors regarding the issues to keep the HOAs whole and to address any concerns.

It has been mentioned a few times that the *SFR Investments Pool 1* decision that came down from the Nevada Supreme Court seems unfair to a lot of people. Some of the facts in that case might be helpful in understanding

why my client was able to purchase a property for $6,000 and the deed of trust on the property was for $885,000. As previous testimony mentioned, the bank—not the HOA and not the neighbors who are paying their dues—is the one who can decide who moves into the community. They are the ones who decide if someone can afford it. In that particular case, the bank gave the buyer an $885,000 loan in 2007, and the borrowers defaulted in 2008. They abandoned the property in bankruptcy, and then it was four years before the association finally took action and foreclosed. The bank had done all the things that they needed to do to foreclose. They lifted the stay in the bankruptcy and obtained their certificate of mediation five full months before the association foreclosed.

So the bank had the ability to foreclose at that time, there was no holdup, and the association and the other members of the community were still left holding the bag. I think those facts are helpful in understanding when my clients purchase properties at these sales, over 60 percent of them are already abandoned. We are not looking at kicking homeowners out of their homes. We are looking at homeowners who have already moved on and the association is still not being able to collect dues.

As for the low prices at these foreclosure sales, those days are gone. The day after the *SFR Investments Pool 1* decision came out, prices at the foreclosure auction the next morning were at market rate.

Assemblyman Elliot T. Anderson:
I worry about the commercial reasonableness of these sales. I think it has a lot of unintended effects on the potential suitability of the renters that come in and rent from a lot of investors. I know my own community has gone through some issues like that. Are you telling me now that none of these "fire sale" prices are occurring anymore? Am I hearing that correctly?

Diana Cline:
That is correct. The prices went up to market value, or the foreclosure market value, the same as you would get at any NRS Chapter 107 sale. The day after, the prices have gone down because the banks are still litigating the issue of whether or not there will be clear title, so the prices have stabilized around 50 to 60 percent of market value at this point.

Assemblyman Elliot T. Anderson:
With the prices going up, why are people still buying? Does that make sense? With these prices, they are not bargains anymore. Is that slowing down the number of people who are bidding on these properties? Are your clients still purchasing a lot of properties?

Diana Cline:
My client is not purchasing a lot of properties because properties are not going to sale. The banks are taking care of it, and the homeowners—who now understand that an HOA can foreclose and they could lose their home—are actually paying. One of the comments that my client received when they talked to homeowners after the foreclosure sale was, "I got all the notices. I just did not know that the HOA could actually do it."

Marilyn Brainard, Private Citizen, Sparks, Nevada:
I live in Wingfield Springs Community Association. It is a master association in Sparks. I have been there 17 years—nearly since the very beginning of it.

I would like to follow up regarding what the previous speaker had mentioned, that delinquent assessments are down, and I think someone asked a question about it. I am happy to say that they are certainly down in my community. We do not have the outstanding balances that we have had in years past. I am very glad to hear that because assessments are our only source of income. It is our only revenue stream for our nonprofit corporation. We do not go out and do fundraising to help meet our expenses, and we do have a lot of expenses. Assessments are very important to us.

I look forward to what one of the speakers in Las Vegas mentioned, which is seeing what the amendments are going to be. I congratulate you for working positively with your colleagues on the Senate side of the Legislature to help come up with language that will help, and not hurt, close to over 3,000 associations in our state and close to one million unit owners. One million Nevada citizens live in associations, and we rely on that. We look forward to seeing what the final bill will be.

Scott Hedlind, Private Citizen, Las Vegas, Nevada:
I am a homeowner who lives in an HOA. I am also an owner of a small management company, and I have been managing communities for 13 years.

I have been down in the trenches every day. I wanted to make a couple of comments. First of all, I appreciate the fact that there are going to be amendments to this bill because there are some real issues on it. Secondly, there has been a lot of talk about the fairness of the nine-month super priority lien. I personally do not know why the banks get off with a break of only having to pay nine months, especially on properties that have been vacant for four or five years. Why are they not responsible for paying the entire amount? I doubt if I will get anywhere with that one.

If there is a question about banks getting notice, why can there not be a requirement that the banks give an address that they want their foreclosure notices to be on file with the Real Estate Division or the Commission so that every bank has a way of getting in contact with them? I do not know if you realize this, but the same bank can have 15 different addresses to go to and the person who receives a notice may not know what to do with it. By the time it goes through the different departments, who knows what could happen to it.

I am also in agreement that the HOAs should be on a level playing field with the banks and we should not wipe out their lien, and their lien should not wipe us out. There has been a lot of talk about the impact on the HOAs. I do not know if you are aware of this, but most associations use an outside collection agency that is no-fee, no-cost. We send the account to them after we have sent all the notices that we can send, and their costs are put on top of the actual assessment that is due and the assessments that come due. Under this law, it is going to be very risky for these collection companies to stay in business without being paid up front. For an HOA to go forward with a foreclosure process, they are going to have to pay their way through.

I manage communities with anywhere from 10 to 564 homes, with most of them being under 100 homes. They cannot afford to pay the cost of the liens and notices let alone the attorney's fees to bring a property to foreclosure. By the way, during that process when they are putting out this money, what happens if the bank comes in and forecloses and we cannot get any money back? It is going to be a huge burden to HOAs. The smaller the HOA is, the bigger the burden is going to be.

There is a concern about owner-occupied properties. I can understand that. The vast majority of properties I have seen—in fact, of all the communities in 13 years—not one of my HOAs has ever foreclosed on a property, mostly because of the risks that are still involved in it. Most of the properties I see that are vacant and not maintained are because the owner is long gone. How are you going to give notice to a homeowner who has left? Under the statute, they are still supposed to provide us with a mailing address, but they are long gone, and they are not going to get the notice. The bank should be getting the notice. I do not do the collection part, so I do not know if they are getting the notice. If they have a place on file where the collection agencies can get the right address, I think it would help alleviate that problem.

There was a question about unjust enrichment. We are all just trying to do a job. As a homeowner, I want it to be fair that I am paying my assessment, and that the next-door neighbor or the bank is paying their assessment.

Lori Martin, representing Terra West Management Services:
I am with Terra West Management Services and also a homeowner in Las Vegas. I provided the Committee with a document (Exhibit E), which was signed by several individuals regarding A.B. 240 and the opposition thereof. In listening to everyone's testimony, it is very valid to hear on the opposite side. I believe that the banks should definitely have a protection for their investment in Nevada's mortgage industry. One of the things I am concerned with is creating the requirement for something to go to court through the judicial process that ends up being a litigation matter. Then it ends up on the HOA's pending litigation statement, which is required in a resale package. I often get phone calls from underwriters asking about the items listed on the pending litigation for each HOA, and this actually triggers the underwriters to deny the loan. The whole creation of the judicial process will absolutely slow down or cease loans in the state of Nevada. That was primarily one of the concerns I had after listening to everyone.

I also wanted to thank Ms. Cline for explaining the background on the *SFR Investments Pool 1* ruling because it lets everyone know how much notice the bank had and that the $885,000 was not just snuck out in a parking lot and done. There was the ability for the bank to do several things, and the unjust enrichment was caused by the bank, and the HOA did not get the difference in the money. It went to the person who bought the property for $6,000. That is pretty much all I needed to say.

Chair Seaman:
Is there anyone in Las Vegas who is neutral on this bill? [There was no one.] Is there anyone in Carson City who is neutral on A.B. 240?

Samuel P. McMullen, representing Nevada Bankers Association:
I think there are a lot of great ideas and I understand that there will be more, but I do not like the fact that we have to sign in against something just because we might want to see it amended. I thought what would be important would be to take a few seconds and indicate for the audience and for the Subcommittee that, unfortunately, in this session, there are always two houses and two sets of bills that are coming through. We have been working on the Senate side on a bill, Senate Bill 306. The Nevada Bankers Association's position with respect to trying to involve themselves in that bill and then to actually help position it was based on the theory that the best thing for everyone would be to see if there was a way to accelerate the ability of the banks to pay off the loan of the super priority amounts, get the HOA the money as soon as possible, and make that not the only nine months they get—if that, in fact, is paid off, and another one starts growing before foreclosure that they could utilize the lien again for that.

Given the *SFR Investments Pool 1* opinion which was explained to you today, the banks could have tried to cancel the extinguishment, but that did not seem to be the best resolution of this. Based on a notice of default timing, we had asked for sooner than that, but it seemed like from the HOAs that that was a smart time to do it because it would be recorded and it would be done in a way that would give the 90 days or X period of time after the notice of default to allow the bank to come in and pay that off. If that was paid off then, in effect, what would happen would be that the HOA would get the money, sooner probably than some of the current time frames, and then the bank would again sort of, just to use my phrase, have the lending world and the foreclosure world come back into a more normal course.

Homeowners' association foreclosures have been interesting over the last few years, but what the banks want to do is to have the opportunity to continue to search for workouts or to ultimately foreclose if that is the only option. That bill is processing. I will be happy to explain it to anyone else. The point is that there is a lot of good work happening. I really commend Assemblyman Gardner and Assemblyman Moore and members of this Subcommittee for having their name on this bill and being interested in it and Assemblyman Jones for trying to figure out other things that would be helpful.

I think we will get a smart bill out of this session that will actually become a win-win for more people and try and take some of the issues away. I did not want to go off topic, but I wanted to let you know there are other options.

Chair Seaman:
Assemblyman Moore and Assemblyman Gardner, did you want to come and wrap it up?

Assemblyman Moore:
We have heard a lot of opposition, and it is interesting that the only opposition seemed to come from HOAs and not the homeowners themselves. It is true that HOA members are homeowners as well, but primary interest is the business of HOAs. I believe HOAs have other remedies to recover the amount in arrears that is owed to them, meaning that we have small claims courts and there are other options available rather than taking a hardworking Nevada family and forcing them out onto the street because they could not, or did not, pay a service fee to an HOA. It is the HOA's choice to put a family out on the street and if we put one family out on the street in Nevada, that is one too many. I would strongly urge your support of this bill.

Assemblyman Gardner:
I would like to ditto what Assemblyman Moore said. I believe that we got caught up a bit in extensive rhetoric on the opposition side. Many states do not have super priority liens, and yet they are not all bankrupt. Many states use judicial foreclosure, and yet they are not all bankrupt. We will continue to work with everyone and try to find a happy medium if we can. I think the opposition seemed a little exaggerated to me based on what the actual facts are throughout the country.

[A letter in opposition (Exhibit F) was submitted but not discussed.]

Chair Seaman:
I will now close the hearing on Assembly Bill 240 and open the hearing on Assembly Bill 259.

Assembly Bill 259: Revises provisions relating to real property. (BDR 9-181)

Assemblyman Elliot T. Anderson, Assembly District No. 15:
I am here today to present Assembly Bill 259. I would like to open my testimony by providing the members of the Subcommittee with information on the measure as well as highlighting the bill's key provisions.

As many of you may know, the Foreclosure Mediation Program was created by the Legislature in 2009 through Assembly Bill No. 149 of the 75th Session. This was created to help residential property owners stay in their homes during a very turbulent time in Nevada mortgage finance, a time when people did not know what was up, down, left, or right. The market was riddled with uncertainty. No one knew what was going on, and there were a lot of things that we had to get fixed.

The purpose of the Foreclosure Mediation Program was, and continues to be, to address the foreclosure crisis in Nevada by putting homeowners and lenders together to mediate an alternative to foreclosure. Assembly Bill 259 makes changes to the Foreclosure Mediation Program and adds homeowners' associations (HOA) to participate in the program as well. There are two key components of A.B. 259, which are two different and distinct sections.

Section 1 specifically requires the lender to send a representative to the foreclosure mediation session who has the authority to modify the economic value of the loan and to bring proof of that authority. This requirement will ensure that it is done faster and clearer than it has been. Right now we use outdated language—the beneficiary of the deed of trust—which really does not

do much for us in an economy that is based upon securitization. Oftentimes, the deed of trust is in the name of Mortgage Electronic Registration Systems (MERS) and only comes out to the servicer for foreclosure. It does not necessarily mean that you have the right to modify the note. When the Legislature said we want the owner of the loan to come and negotiate with the homeowner, sometimes that servicer, or the beneficiary of the deed of trust, is under contract to a different party and cannot always come to the mediation with that full authority.

The Permanent Editorial Board for Uniform Commercial Code (UCC) has spent some time clearing up the confusion with this. Article 9, specifically *Nevada Revised Statutes* (NRS) 104.9203, is the way to determine the rights for people when there are securitized loans after it is sold. Initially, the beneficiary of the deed of trust would be the person who has that right, but once they sell it and are under contract to someone else, you would need to look more towards NRS 104.9203. I have provided a memorandum (Exhibit G) that I created. I spent a lot of time researching and working on this issue because I used to work as a foreclosure clerk with the Legal Aid Center of Southern Nevada.

The way the bill operates is when you have a securitized loan, you can expect that the promissory note is going to be endorsed and blank because it has to be sold sometimes repeatedly. The idea is that when it is endorsed and blank, it is bearer paper under UCC Article 3; however, it does not mean that you necessarily have the right to modify it. Even though it is bearer paper and if you have possession of the note at mediation, it does not quite work when you are under contract to someone else that you do not exactly have the full rights to modify it. This bill tries to update all language to get something that is more useful for the courts and is clear to understand. I have cited in my memoranda the UCC Editorial Board, which is really an expert and the authority on rights relating to mortgage loans.

Section 2 requires a homeowners' association to give the owner or a holder of a security interest in the unit the option to engage in the Foreclosure Mediation Program prior to a foreclosure sale. Currently, HOAs can impose liens on a residential unit for certain amounts that are due, as we have just heard. Existing law authorizes the nonjudicial foreclosure process in that instance.

Section 2 provides that a homeowners' association cannot foreclose by sale its lien on a residential unit if the owner or each holder of a security interest on the residential unit chooses to enroll in the Foreclosure Mediation Program upon the homeowners' association recording a notice of default and its election to

enforce the lien by selling the residential unit. The manner in which the Foreclosure Mediation Program is carried out is similar to the mediation of a foreclosure of a deed of trust under the traditional program with the bank.

You have already heard about this issue, and I think this is another crack at figuring out how we can rectify this issue, get notice to everyone, and hopefully make the HOA whole, make the collection companies whole, and make sure we do not have a homeowner getting kicked out unnecessarily, and ensuring that the bank does not lose its interest. This is a problem that we have to get our heads around if we want to ensure that lending continues to go on. I want to emphasize before I end my testimony that it is not mandatory for the parties to engage in the process. It would be one step where they can say, "Oh my gosh, I could lose my interest here; I want a chance to get it." Hopefully, when people get notice of the mediation, the bank will come in and pay off the super priority amount. The bank could even potentially add that to the arrears of the homeowner and then the homeowner could enter into an agreement with the bank. I need to give credit to the banks behind me in terms of the traditional program, particularly some of the larger lenders, such as J.P. Morgan, Bank of America, and a few others, because it has become very effective. I will be happy to answer any questions.

Assemblyman Gardner:
I appreciate this bill. I, too, have dealt with some of these mediations and this seems to fix a lot of the issues we were having. We would have the bank on the phone but we could not get anywhere because there was no one who could actually do anything. That would happen a lot with the mortgage companies with the ones I saw.

Assemblyman Jones:
You mentioned that the mediation is not mandatory. Could you elaborate on that? If it is not mandatory, do you think that people are actually going to attend? As my colleague mentioned, they do not even participate by phone.

Assemblyman Elliot T. Anderson:
Let me clarify that a little. If the unit owner or the holder of a security interest wants to elect the mediation, then it is mandatory. There would have to be a certificate recorded before the HOA could proceed to do a sale. That would be required; however, if the unit owner said, "I am tired of this," then the unit owner would not have to do it and the same thing for the security interest holder. I would expect that if they have a security interest, they would want to either pay it off or try to get some resolution. Hopefully, they just get the notice and pay off the super priority amount. I think that would be the ideal and not even go to mediation; just have it taken care of without having to go

through the process. When it comes down to mediation, there is not a lot you can mediate with a super priority amount. It is not where you can reduce interest. The idea would be that this is a clean, clear policy choice and that we are going to ensure that everyone's rights and responsibilities are clear, that people get notice, and that we attempt to fix this issue that has been hanging over our state. I thought, why get into the super priority statutes if I can just get people to talk?

Assemblyman Jones:
Obviously, the turmoil and the problems came because of the recession that we had. Now we have come through that, and in the previous bill, the deeds are almost at full market, et cetera, on the full foreclosure, on the steps of the courthouse. Is this adding on to something? Do you feel it is still necessary when we have already transitioned through, or is it just more stuff that we are piling on because of the past when we are actually through that time period?

Assemblyman Elliot T. Anderson:
I think that what we have realized with the super priority and other issues is that our law was not equipped for what came at us. We were just not ready for it. I think that no one in this Legislature, contrary to the justices' opinion in *SFR Investments Pool 1 v. U.S. Bank* [130 Nev. Adv. Op. 75, 334 P.3d 408 (2014)], read the Uniform comments to the 1991 Uniform Common-Interest Ownership Act, and if they did, I am very impressed.

In some of the rationale that we knew what we were getting into with this law, I do not know if that is quite accurate. I think we need to try to get it right now that it is subsiding a little bit. I think we should leave it in there in case we have another calamity happen, because now that we have had experience with all of these issues, I think we have fully vetted these laws.

Section 1 is an attempt to try to clarify it and get the law to be even more efficient for all of the parties involved. Many times these mediations still get tripped up over wondering if a person has the authority or not. Should something happen again where we have a national crisis that we cannot control, which is a Wall Street-driven problem and not one that is driven in Nevada, I think we want to have the right processes in place so that we are capable of handling it and we have less stress with all of our constituents. Now that the lenders have experience with it, I think it is going to run a lot more smoothly and effectively.

Chair Seaman:
Is there anyone in Las Vegas or Carson City in support of A.B. 259?

Jon Sasser, representing Legal Aid Center of Southern Nevada and Washoe Legal Services:

I am here in support of the bill. There was a question about if this crisis is behind us. Things are a lot better, but I believe the last statistics I saw show that we are still number two in the United States in terms of foreclosures, and still number one in terms of our homes being underwater. We are making a lot of progress, but we are not out of the woods yet. I heard Justice Hardesty in his testimony to the Senate Committee on Finance express some concern that there may be another bubble of foreclosures coming. I do not know that we can say that everything is smooth and dandy.

The bill does two things which we think are very important. When you go to a mediation—and we do have attorneys in our offices that represent clients in these mediations—this bill would ensure that you actually have someone who you can negotiate with who has the authority to reach a deal if a deal can be made. That is hugely important. As to section 2, we think it is important, based on the testimony you heard in the last bill, that if you are going to lose your home, there should be a process by which someone other than the parties be involved. If it is the courts, then that is the most due process—probably the most expensive due process. With this, at least you will get a certificate from the Foreclosure Mediation Program that there has been an opportunity offered to mediate and that it has been unsuccessful or not taken advantage of, and then the state gives that certificate saying it is okay to go forward with the foreclosure. If you are going to lose your home to a bank, you have the opportunity to mediate. If you are going to lose your home to an HOA, we think the same right ought to be there.

We heard testimony on the last bill that very few of these cases actually go to the foreclosure sale, because one of two things happen beforehand. First would be that the homeowner comes up with the money, and the earlier that we can get their attention and get them to come up with the money, then the lower the collection costs are that they have to pay, so we think that is important. The other possibility is the bank, that they come up, so this gives them another bite at that apple as well, and will hopefully cut down even more on those situations where we do go to foreclosure sale and we do have those odd situations where someone picks up an expensive property for a small amount of money.

One of the things I would like to say generically about all of these bills is that I have been involved in the discussions that led to Senate Bill 306 as well. One thing that I am very concerned about is, if we continue with our law as it is, as interpreted by the Nevada Supreme Court, the federal government is

basically saying, "I am not sure we want to make loans to anybody under that anymore." They are filing lawsuits against the people who are buying these properties at the foreclosure sales. I do know that you are buying a lawsuit from the federal government if you are one of the 80 percent of folks who have the federal government involved in their loan. I think that elephant in the room needs to be recognized as we go through this whole process.

Samuel P. McMullen, representing Nevada Bankers Association:
I do not have a Nevada Bankers Association position, but when you are arm-twisted by Assemblyman Anderson and Mr. Jon Sasser to show up at the table at their elbow, you do it. Based on the conversations I have had with Assemblyman Anderson and with his testimony tonight, I think we are willing to work through the process and clarify a couple of issues. In regard to the things that I think are key to us, we do not really have an objection with respect to section 1, subsection 6 on page 4 regarding the person with authority. I think that has been the intent of the mediations from day one and besides some bumpy runway trying to get it going and trying to get people to understand and have them come prepared, I think it is working for the most part, but it only works if people come there with the ability to do a deal. That seems extremely important and I do not think my Association will have a problem with that.

In section 2, which starts on page 7 of the bill, there are some interesting circumstances—at least there are such a variety of circumstances that could be at issue at any moment. As I heard it said again tonight, if it is really basically to try and make sure that the HOA and the unit homeowner have a chance to sit down and mediate, that is great. That could be a situation where there is only a default on the HOA assessments and not on the lender. I know that that happens; I do not have any facts about the sort of arrangement and confluence of those two things.

Having the lender be a part of that, when there is no default on it, is sort of an interesting question mark. If it allows for people to elect in, as this does, then I think that makes some sense. If they want to, they can. If they decide not to, it seems to me that that should not take away the homeowner's right to do it if there is a later foreclosure brought by the lending institution or the lienholder as opposed to the HOA as a lienholder.

Trying to clarify those types of issues with Assemblyman Anderson were some of the things we talked about earlier today.

As far as we are concerned, any chance for someone to work out the ability to stay in their home and have it make sense and do it in a way that is fair, reasonable, and not too costly for everyone I think is probably what everyone's goal is. We will be happy to work with the sponsor to make sure that we can make this as acceptable as possible to us.

Assemblyman Ohrenschall:
I appreciate this bill and what you are trying to do. I think it is great trying to get both sides together. My question has to do with the track records. I have heard varying accounts about how successful the mediations can be. Are you optimistic that people are going to participate and that this is going to work and not just have a stalemate? I hope you are, but I would like to hear some comments.

Jon Sasser:
I think each party should have the opportunity. The way it works is you get the notice that you can be in the mediation program. You have 30 days to let the program know if you are going to do it and put up your $200 to be in the mediation program. If you do not, then the HOA can get a certificate to go ahead. When they sit down together and with the bank having notice—these are slightly different issues than getting a refinancing or qualifying for one of the federal programs that you are going to be dealing with at a regular foreclosure mediation—you have a certain amount of money that you are behind, and you have to work something out. I am hoping there are fewer of these coming along.

I would like to give a plug for Senate Bill No. 280 of the 77th Session, which said for the first time that before the ball is handed off to the collection agency and while these costs are not running up very rapidly, there has to be at least one letter after a 30-day delinquency to the homeowner saying you have a right to know what the charges will be, and if you do not pay, you have a right to enter into a repayment plan, and if you think the amount is wrong, you have a right to a hearing before the board.

I am hearing anecdotally tonight that within the last 11 months or so that homeowners are paying a lot better and we are seeing a lot fewer of these, so I would like to think that that legislation has had some success. I think the more bites of the apple that you give the homeowner, the more they are going to be successful. There are going to be some who cannot afford it and have walked away, so this will not help them. It will help those who elect it within the 30 days.

Assemblyman Ohrenschall:
I appreciate your hard work on this.

Bob Robey, Vice Chair, Nevada Homeowner Alliance:
I wish I were as eloquent as Mr. Sasser. He said something that caused me to just become elated. Someone will be taking a second look at why the delinquency exists. No one tonight has mentioned the fact that many times I have been called and people have said, "It is a bookkeeping error on the management company's books." We are aware that management companies change from one association to another to another, and they have to transfer their books and records, but that does not mean that those books and records are accurate. Thank you for this bill, Assemblyman Anderson, and thank you, Mr. Sasser, for your wonderful comments. Not to take anything away from Mr. McMullen—he was also eloquent.

Chair Seaman:
Is there anyone else in support of A.B. 259 in Las Vegas or Carson City? [There was no one.] Is there anyone in opposition of A.B. 259?

Norm Rosensteel, representing Nevada Chapter, Community Associations Institute:
One of the issues we see with the bill is that it drags the process out longer, but there are also a couple of procedural issues. Having a person there with the authority to negotiate is a problem because the board has to make decisions with the majority of the board, so one person does not have the authority to do that.

The second issue is that assessments are not negotiable. They are what they are. They can negotiate with late fees and interest, but the assessment is the assessment. If you can negotiate the assessment, no one is going to pay their assessment. That is the problem we see with it.

Gayle Kern, representing Nevada Chapter, Community Associations Institute:
We agree, and I would let Mr. Sasser know that the bill that was passed last session that allowed the payment agreement has been very effective and it is taking care of some of these. We do not fundamentally have any kind of problem with having more opportunities to see if we can get payments. We really do not want to foreclose. The way it is written, I think we would like to work with Assemblyman Anderson to see if we could do some amendments that would make it a little smoother or the procedure work better, but we do believe that it is important to try to get the homeowners to be able to pay their assessments. That is all we want.

Pamela Scott, representing the Howard Hughes Corporation:
I am here on behalf of the Howard Hughes Corporation, the developers of Summerlin, which is quite a large association. With regard to what Mr. Sasser said about the early notices, the 60-day letter, as it is being called these days, is basically a mediation. It gives the homeowner the opportunity to come in and sit down with the board and technically mediate when they are only 60 days delinquent, have accrued no collection costs, and maybe only have a few late charges. I think it has been successful. I think it will continue to be successful. I know it is being called "second bite of the apple" to go into a mediation before foreclosure, but my main concern there is the time it is going to add to this.

For the record, I will say that no Summerlin master association has ever foreclosed on a homeowner. They are carrying multimillion dollars in receivables as well. I should put it that the homeowners who pay every month are carrying. That is one of the fallacies. The association is the homeowners. There is no one else's pocket to take it out of. It does not come from the management company, the developer, or the lawyers—it is just the homeowners. They are the only ones who pay.

Currently, to get to a notice of default stage that triggers this mediation, it takes approximately six months, and that is a best-case scenario. It is usually much longer than that. This bill would add another four months minimum to the process, and it will add to the collection cost. I want to make sure that everyone understands that because if the bank steps in and starts their foreclosure, the associations will then lose the difference between the nine months and however long it takes. Very often these homes are empty homes, so those homes are not going to be in mediation as they did not come in on the 60-day letter. When a homeowner takes bankruptcy and abandons the home, that bankruptcy is in place for years. Everything is stayed for the association as well as the bank. Some of the banks do go to court and get a lift of the stay. Associations do not do that. It would be too expensive to do that, so they sit for years on these bankruptcies. Technically, they should get all of their money, but the homeowners who leave are supposed to be paying the post-due assessments, and they do not, and we cannot file new liens for the post until the bankruptcy is released. I think the associations will suffer from the time frames, and certainly from the additional cost to them.

Mike Randolph, Manager, Homeowner Association Services, Inc., Las Vegas, Nevada:
I am a licensed collection agency that represents homeowners' associations in the recovery of assessments. I am against the mediation program for HOAs. There are a lot of properties that never make it to foreclosure but by adding this to the program we already have, when we file the notice of default we will be

required to pay the additional $200 plus the additional mailing on every notice of default that is done on behalf of an association, whether the homeowner elects to go to mediation or whether their lender would like us to go to mediation.

The problem I have with lenders being brought into the mediation is that we really do not know who it is a lot of times because it is a MERS product. It is registered through MERS, someone else is servicing it, or someone else is the beneficiary of the note, so we do not know who it is that has the authority to come in and ask for this mediation on the HOA's side of the bill.

I think it would also extend the amount of time it takes, and every time we are waiting longer, it is another month of assessments that is going to get written off because the maximum collected, once the bank forecloses, is going to be nine months. If this program takes it up to 10 to 12 months, then we are just looking at every month that this extends it is another month that is going to be written off and that amount will have to be recovered by the homeowners who already pay.

As anecdotal information, throughout my client base, the 60-day letter has been exceedingly effective and because of market conditions, we are starting to see with homeowners' associations, like a lot of other businesses, that their new 90-day receivable numbers are considerably lower than they were in 2007 through 2012. We are seeing a lot of associations today that are looking at between 3 and 5 percent in new 90-day delinquencies as opposed to the 18 to 20 percent we were seeing a year ago.

Assemblyman Ohrenschall:
Is it not just as possible that if the homeowner elects the mediation, and mediation happens, that an alternative to forgiving arrears might work out, or maybe even arranging a payment plan? The HOA could still be made whole and the homeowner might still be able to save their home. There is another possibility as well, do you agree?

Mike Randolph:
Yes, I agree. There is mediation, arbitration, and another program available through the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels at the Real Estate Division, Department of Business and Industry. At any time during the process, from the day the initial 60-day notice goes out all the way to the day of sale, the homeowner is always capable of contacting the board of directors or calling me directly in my office. They can also go to the financial institution or the Real Estate Division to have someone else get on the phone to try to mediate a program.

We are always open to mediation. I always want to get paid; I do not want to foreclose.

Assemblyman Ohrenschall:
I hope I am understanding this correctly. This bill would be a supplement to the mediation already existing in NRS Chapter 38, not supplanting it?

Mike Randolph:
I do not know whether the sponsor intended this to supplant NRS Chapter 38 or be an addition to it.

Robert Frank, Private Citizen, Henderson, Nevada:
When I read this bill, I could not intellectually get into the combination of what seems to be intended with very complex additions. Speaking as a member of the Commission for Common-Interest Communities and Condominium Hotels but not representing the Commission, observing and then reporting many of the foreclosure problems we have seen the past few years, I have to say that my basic fundamental principle is that I oppose nonjudicial foreclosures.

Speaking as a former member of a large HOA board, I am quite familiar with renting to people who try to game the system and try to dodge their responsibilities of paying assessments. I have to agree with the previous comments. There are plenty of opportunities for people who have honest intent to have the opportunity to avoid foreclosure.

From personal experiences I ran into on my board, I sadly found that many times the communications in regard to the intent of the rules, with the intent of the correspondence, and what the actual purpose of where we were going to go on some of the communications that led to collection company involvement, were very fuzzy, and not always well intentioned, in my opinion. The bottom line is that while I was on the HOA board, we never foreclosed on anyone, but that was many years ago before the crisis we are talking about.

Quite frankly, my conclusion is that I cannot see, from reading the bill, where it would significantly help solve the problems. After all the testimonies we have heard on both of these bills, and some of the bills to come that have not been discussed yet, in terms of HOA statute changes, this is kind of a cloudy situation where it is hard to say there is a single solution in this bill or any other bill that can be done as written. It looks to me like we have a lot of work to do to pull them all together and make sense at the end of the day. Thank you for the opportunity to comment.

Chair Seaman:
Is there anyone in Las Vegas or Carson City who would like to testify in neutral regarding the bill?

Jennifer Gaynor, representing Nevada Credit Union League:
We understand that Assemblyman Anderson has spent a lot of time down in the trenches assisting homeowners with the Foreclosure Mediation Program. We appreciate his attempt to clean up what he sees as some technical issues with this program and to make it available to more homeowners. We have taken a look at the bill and we believe we will be able to comply with what it asks for without a problem.

Jonathan Friedrich, representing Nevada Homeowner Alliance:
There was something that was said a little while ago by Mr. Rosensteel. Either four or six years ago, the Legislature put into NRS Chapter 116 where it specifically says that the board can negotiate with the homeowner. Unfortunately, I do not have the statute with me, but I can send it to your office tomorrow morning by email.

Assemblyman Elliot T. Anderson:
Just to make it clear on where I am with this, I am willing to negotiate the total time frame. My intent is not to make this unnecessarily longer, but it is an attempt to let us tap the brakes a little bit and make sure we can get everyone in a room and have them talk.

I appreciate the fact that we have already done some changes with the 60-day letter that you have already heard about, and I want to ensure that this process works well for the homeowners, lenders, and the HOAs. I think we can get there.

The beauty of this is that it is a clearer policy choice than getting into the super priority statutes. I believe it is a lighter process than the judicial foreclosure. Although it would add some cost, it would not cost as much to employ. If you have an attorney who is in litigation, I think that is going to cost you a lot more. This is a way to get halfway between where we are at now and the judicial foreclosure.

Chair Seaman:
I will now close the hearing on Assembly Bill 259 and open the hearing on Assembly Bill 301.

Assembly Bill 301: Prohibits restrictions on the freedom to display the flag of the State of Nevada in certain places. (BDR 10-533)

Assemblyman Lynn D. Stewart, Assembly District No. 22:
Assembly Bill 301 is brought about by a constituent who flew the flag of the State of Nevada on his property in a homeowners association (HOA) during the 150th anniversary of Nevada. He was told he could not do this, and he was prohibited from flying the flag. We brought this bill forward so he could do so as long as it was not larger than the United States flag.

Chair Seaman:
Are there any questions from the Committee? [There were none.] Is there anyone in support of A.B. 301 in Las Vegas or Carson City?

Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies:
We are in full support of the bill and are here for any questions.

Marco Velotta, Private Citizen, Henderson, Nevada:
I am representing myself in support of A.B. 301. I am a proud Nevadan, and during our sesquicentennial year as a state, I celebrated the occasion at many events throughout the state, including the parade in Carson City. I also did so by flying the flag of the State of Nevada in front of my house at my residence until I received a cease and desist letter from the Champion Village HOA even after following the procedures outlined in our governing documents. When I presented my arguments to the board and to the community manager, they were not swayed and would not hear the matter except through a closed session. However, they had no problem approving me to fly a Denver Broncos flag. I attempted to come to a resolution but I was advised that nothing could be done and that I would have to contact my legislators for a change in the *Nevada Revised Statutes* (NRS). I did this through Assemblyman Stewart, for whom I am very grateful.

I am a city planner and I do not take any issue with reasonable covenants, conditions, and restrictions (CC&Rs) and I fully understand and agree with the standards for signage and support of community aesthetics. Throughout this experience over the past year, I have reviewed signage standards and zoning codes in many of the cities and counties across the state, and none contain prohibitions on flying state flags on residential or commercial properties. Some even explicitly allow for it, including the City of Henderson, the City of Las Vegas, and Carson City. However, if you live in an HOA, as many Nevadans do, where HOA governing documents apply, it depends.

Most HOAs tend to be restrictive. Some, such as ArrowCreek in Reno and the Sun City communities in southern Nevada, only allow the American flag. Some, including Caughlin Ranch in Reno, explicitly allow for the state flag to be flown and others, including my HOA, may leave it up to the boards' discretion to pick and choose how you can decorate your property.

In my case, this is our state government's flag and as a matter of state and civic pride, I hope that all Nevadans, whether they live in Laughlin, Jackpot, West Wendover, or Lake Tahoe, have the right to freely fly our state's emblem, regardless of whether we are celebrating a milestone or not. The American flag is protected under NRS, and I respectfully ask this Subcommittee and the Legislature to extend the same protection to our state flag as well. Thank you for the opportunity to testify before you today and for your efforts this session.

Chair Seaman:
Thank you for your patriotic testimony.

Assemblyman Ohrenschall:
Thank you for bringing this bill. You either love HOAs or you hate HOAs. A lot of us are wondering why we even need a bill like this and why should we have to amend the NRS for this. I understand why you are doing it, but I am sorry that your constituent had to go through that. I think it shocks the conscience.

Assemblyman Elliot T. Anderson:
I love Nevada and I love this bill. Home means Nevada.

Robert Frank, Private Citizen, Henderson, Nevada:
I represent homeowners on the Commission for Common-Interest Communities and Condominium Hotels but I am representing my own opinion tonight. I think this deals with one of the fundamental complaints that I hear so often against HOAs and it is the domineering bullying against people for no good reason whatsoever.

Homeowners' associations are supposed to be protecting the property rights, the lifestyle of people, and the ability to have the quiet enjoyment of their properties. It is so ridiculous across the country and in this state that we see so many boards—I admit it is always a minority—insulting us citizens by taking advantage of us and abusing their authority by wanting to change a statute for something as simple as this.

It gets me really stirred up as an American patriot to simply say you have to change the statute in order for everyone to be allowed to show their patriotism for their state and for the American flag. I am glad you are doing this, but I am saddened that we have to do this sort of thing from a statutory point of view. I am glad to endorse and encourage this kind of thinking.

Jonathan Friedrich:
Me, too. This is regarding the behavior of boards that most people find repulsive, and so do I.

John Radocha, Private Citizen, Las Vegas, Nevada:
This is an example of when you come into an HOA community, you read the CC&Rs and bylaws, and they are vague. Then when you decide to do something that you feel is highly personal, they beat and fine you to death.

I do not know why the CC&Rs cannot be held the way they are. You look at it and think you can live by that, but then they come with these other things that are not in the CC&Rs or bylaws. Who gave them the authority? They want me to abide by the CC&Rs and bylaws but they decide that maybe they do not like me or maybe I am anti-Nevada. Maybe I came from California and I do not like Nevada. This is what my gripe is.

Chair Seaman:
Are you in support of the bill?

John Radocha:
One hundred percent. I had put out a sign that said "Support our Troops" and you should have seen the hell I got for that.

Chair Seaman:
Is there anyone in opposition to A.B. 301? [There was no one.] Is there anyone in neutral for A.B. 301? [There was no one.]

Assemblyman Jones:
Assemblyman Stewart, do you want to amend and add the "Support the Troops" as well just so we do not have a hassle next year or later on in the session?

Assemblyman Stewart:
I do not want to complicate matters, but I do support our troops.

Chair Seaman:
I will close the hearing on A.B. 301 and open the hearing on Assembly Bill 192.

Assembly Bill 192: Makes various changes relating to common-interest communities. (BDR 10-661)

Assemblywoman Melissa Woodbury, Assembly District No. 23:
Assembly Bill 192 is a measure that pertains to the timing for the transition of a declarant-controlled homeowners' association (HOA) board in large scale master planned communities. *Nevada Revised Statutes* (NRS) defines such common-interest communities as having 1,000 units or more. Typically, master planned communities are built in accordance with a development agreement. The development agreement requires the construction of key infrastructure such as parks, trails, and police and fire stations at various phases of the project development. In southern Nevada, there are several master planned communities, which include Southern Highlands, Mountain's Edge, Summerlin South, The Village at Tule Springs, and Inspirada.

Assembly Bill 192 allows the developer within a master planned community to remain on the board until 90 percent of the units are conveyed. The additional time on the board allows the developer to continue completing its obligations under the development agreement, while working with the homeowners who have joined the board. Since the developer is ultimately responsible for the proper completion of the community infrastructure, allowing the developer to remain in control of the board for a longer period of time also ensures the financial stability of the master planned community once it is conveyed to the association for maintenance.

Jennifer Lazovich and Angela Rock of Olympia Companies are here to go into more depth regarding the bill.

Jennifer Lazovich, representing Olympia Companies:
I turned in an amendment that I would like to talk about (Exhibit H). I would probably consider it more of a technical clarification. When the bill was drafted, our intent was that if the developer was going to stay on the board for a longer period of time—that period rising from 75 to 90 percent—we felt it was also a good idea to bring a homeowner onto the board sooner. For those master planned communities of 1,000 units or more, we are suggesting that if the numbers increase to 90 percent, then a homeowner can come onto the board at 15 percent rather than 25 percent. My attempt at the technical amendment was to ensure that the reduction from 25 to 15 percent applied for those master planned communities of 1,000 or more units.

As Assemblywoman Woodbury indicated, Angela Rock and I represent Olympia Companies. They have been the developer of the Southern Highlands community and will be the developer of another master planned community in southern Nevada called Sky Canyon, which is in the northwest portion of Las Vegas. They have a lot of experience being the master developer, and as part of their obligations with Clark County in the case of Southern Highlands, they have to put in parks, fire stations, numerous trails, and obviously the infrastructure in the roads and spine streets. That takes a lot of development experience, but it also takes a lot of accounting experience. To give you an example, even though Southern Highlands has not completely built out its master planned community, their operating budget for their development as it sits today is $8 million. The master association has five seats on the board. When they created the board, the developer put three people on the board with expertise in the following areas: a certified public accountant for the accounting background; someone with an urban planning background to assist in the development of trails; and a construction manager, with the idea that there are substantial amounts of infrastructure we have to put in and complete before our obligations under the development agreement are finished. That is the background as to why we think it is important for us to stay on the board until 90 percent occupation.

Angela K. Rock, representing Olympia Companies:
I will keep it brief because I believe that Assemblywoman Woodbury and Ms. Lazovich basically covered the tenets of the bill. I will make myself available for questions as we move through it, but essentially I just want to make it clear to everyone that, as Ms. Lazovich stated, we are dealing with a budget of about $8.5 million in Southern Highlands. It is going to be the same and potentially more for Sky Canyon because there will be more community amenities. I think it is key to bring a homeowner onto the board early. Think about a community—for the ease of math—as having 10,000 units. If you have 2,500 units built in an association, think about how large that is, how many parks, how many sidewalks, and how much money you are dealing with at that point in time. It can be very daunting for a homeowner representative to come on the board and learn about the process and the budgeting. On top of all of that, everything we have learned tonight about NRS Chapter 116 and managing all of that process, as you continue to move through it, at 75 percent—from looking at that mythical association with 10,000 homes—you still have 2,500 homes left to build. You have parks, sidewalks, streets, lights, and intersections.

One of the important things to note is that when a developer transitions, they are required to turn over a funded reserve account. It is a reserve account so those homeowners can have a budget they can take and fiscally and responsibly

move through and keep the assessments at the same rate. If you are turning over a reserve account and thereafter building a great deal of infrastructure, you have a disconnect. You want to push that number so that as they are completing the infrastructure, they are then turning over the reserve accounts and control of the association to a group of individuals who have been there from the 15 to 90 percent and have had a great deal of time to learn all this.

Assemblyman Gardner:
What are your concerns regarding the developers', the declarants', ability to basically extend their control of these kinds of communities? For example, there are communities around my area where they have built it over a 10 to 15 year period and there is still a lot to be built. So for 10 to 15 years, it is basically a declarant's fiefdom. Do you think increasing the number is going to increase the number of people they will be able to basically, in my opinion, somewhat abuse in this time frame?

Jennifer Lazovich:
In a master planned community, you have the master association which I just described with the five board members and their expertise. As each community is built within that master association, it has its own homeowners' association board that transitions quicker than the master planned association would transition; therefore, you get homeowner input within their individual communities quicker. The master association is meant to oversee the bigger picture part of the master planned community, not so much the individual details of each subassociation.

Chair Seaman:
Are there any other questions from the Committee members? [There were none.] Is there anyone in support of A.B. 192?

Garrett Gordon, representing Nevada Chapter, Community Associations Institute:
Today I am here on behalf of the Legislative Action Committee of the Community Associations Institute, which is made up of over 1,000 associations and homeowners. We think this bill strikes a good balance between both of them. A homeowner gets on the board sooner and the developer is able to stay on longer to fulfill its obligations to these large communities. We think it strikes a balance with the amendment and we are in full support.

Pamela Scott, representing the Howard Hughes Corporation:
We are in support of this bill. Summerlin is a vast community; we have 30,000 developed homes in our three master associations right now. We have another 10,000 acres to develop and another 30,000 homes that will eventually be built. As Ms. Lazovich said, these are master associations.

Assemblyman Gardner had concerns about developers staying on the board and abusing it. I have to tell you that I have been managing at Summerlin for close to 20 years, and the developers who have served on the boards in the past have known which hat they are wearing when they are sitting on the board. They know that hat is the homeowners' hat, and I have always been very impressed with it.

Summerlin North Community Association, which is a master association of about 16,000 units, transitioned to a seven-member homeowner board in 2001. The Howard Hughes Corporation still manages that association by contract, not because we want to stay, but they do not want us to leave. We are under contract to give them two years' notice if we want to leave. I do not think abuse in these master associations is an issue, but we can be supportive of the bill.

Chair Seaman:
Is there anyone in opposition to A.B. 192?

Robert Frank, Private Citizen, Henderson, Nevada:
I am speaking from experience, serving for two years after a transition period on the board of a community with over 7,000 homes. I have also had experience for two years on the Commission for Common-Interest Communities and Condominium Hotels, but I am representing my personal opinion tonight. I am strongly opposed to this bill because I think that proper balance between homeowner interest and developer interest are already in the current legislation.

In my opinion, when a developer is trying to extend this period of time, it is all about the money control, the profit control, and it delays the amount of investment into the reserves. It delays a lot of the decisions. Go back to the basic question—is this a community association? Is the lifestyle and the quiet enjoyment of the environment under the control of the people who live there, or is it being dictated by the developer until the 90 percent completion? It makes no sense at all to me. During the period of time of transition between 75 percent and 100 percent sales—which I have experienced—there is a natural inclination of the developer and the homeowners to want to cooperate and work together as a team. The sales of final properties are just as important to the homeowners as they are to the developer. Everyone wants to sell out and

successfully complete but, unfortunately, depending on the circumstances of the personality of the developer, there is a tendency to want to maximize profits as you get toward the end. I think this kind of control and motivation for overcontrol is dangerous and destructive to the community lifestyle. I do not see any need for it whatsoever and, therefore, I strongly oppose it. I am going to be listening to some of the arguments as they come in, if there are more, about why this is necessary. As of now, the proponents that I heard tonight gave me no compelling evidence to recommend that you do this. I am still strongly opposed.

Jonathan Friedrich, representing Nevada Homeowner Alliance:
I am speaking on behalf of the Nevada Homeowner Alliance as a legislative affairs spokesperson. I am a former commissioner on the Commission for Common-Interest Communities and Condominium Hotels. Once again, the greedy HOA developers and industry officials are trying to fatten their bottom lines at the homeowners' expense. We need to stop them. When a developer decides to create a homeowners' association in Nevada, state law clearly says that when 75 percent of the community is built and sold, it then transitions to a homeowners' association. At that time, the developer is no longer in charge of the management of the community unless the new association run by the homeowners decides to hire them back. This has been the law forever and the developers know this. The HOA industry officials know this, yet they want it changed. Southern Highlands is close to being 75 percent built out, and holds very profitable management contracts for the community in addition to being the developer in that area of Las Vegas. Furthermore, when the developer turns the community over to the association, the amenities, such as parks and clubhouses, must be built and completed. Reserve funds must be in the bank and also turned over to the new board. This is a costly step in the transition process.

In the Southern Highlands case, it seems like they are not willing to give up their contracts and turn over control of the community. They are asking to rewrite the rule book in the middle of the game. The HOA industry is always telling the homeowner that they have to follow the rules. By increasing the percentage of community completion from 75 to 90 percent, they can hang on for many years longer or possibly forever. They tried to change this two years ago at the last legislative session and it failed. This is nothing short of pure greed at the expense of homeowners. This bill was introduced in the last session of the Legislature, was opposed by the Real Estate Division, Department of Business and Industry, and it did not pass. It deserves the same treatment in this session.

Just a couple of other comments on items I heard about completing the infrastructure. It is my belief that the county and/or the city requires bonds to safeguard that the developer or the declarant completes those projects. Mr. Robey will speak next and he has some information about the Uniform Common-Interest Ownership Act.

Bob Robey, Vice Chair, Nevada Homeowner Alliance:
I am a past board member for a very large Sun City Summerlin community association. I am also the past president of a very small association in California. I used to work at the National Security Agency for a short time during my military service, and I enjoy flying the flag.

I am going to read you something from the Uniform Planned Community Act. The Uniform Law Commission wrote the following: "A common problem in the development of condominium and planned community projects: the temptation on the part of the developer, while in control of the association, to enter into, on behalf of the association, long-term contracts and leases with himself or with an affiliated entity." [Mr. Robey submitted prepared testimony (Exhibit I).] This is in Article 3, Section 3-105, Termination of Contracts and Leases of Declarant, which is part and parcel of the Uniform Planned Community Act and NRS Chapter 116.

Chair Seaman:
Mr. Robey, we have your testimony on NELIS, so go ahead and summarize.

Bob Robey:
I looked at the Legislature's opinion poll, and in the last two days 194 people voted no. The industry opposes this bill. The homeowners desperately need it. If you read the opinion poll for this bill, you will see Southern Highlands people commenting about their association, but they are not here tonight. That is a very confusing thing to me. Why are they not here? They have called me on the phone, they have called Mr. Friedrich on the phone, but they are not here.

John Radocha, Private Citizen, Las Vegas, Nevada:
I am against this bill. To me as a homeowner, it is legalized theft. That is my opinion. I am not arguing with anyone or saying it is, but to me it is legalized theft. I am against it and I would appreciate it if you would say that we are going to keep things as they are because they have been working, and seeing that they are working, they do not need to be fixed.

[A memorandum from the Real Property Section of the State Bar of Nevada (Exhibit J) was submitted but not discussed.]

Chair Seaman:
Is anyone in Las Vegas or Carson City neutral on A.B. 192? [There was no one.] I will close the hearing on A.B. 192, and open it up for public comment. Is there any public comment? [There was none.] Are there any comments from the Committee members before we adjourn?

Assemblyman Ohrenschall:
I would like to thank all the presenters and the witnesses in Las Vegas for sticking around so late. I know everyone cares about the good running of the HOAs and protecting homeowners' rights.

I also want to congratulate you, Madam Chair. You did an excellent job for your first time in chairing a legislative committee.

[A list of bills related to common-interest communities (Exhibit K) was submitted but not discussed.]

Chair Seaman:
I will now adjourn the meeting [at 8:28 p.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Whimple
Committee Secretary

APPROVED BY:

_____
Assemblywoman Victoria Seaman, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary Subcommittee

Date: March 19, 2015 **Time of Meeting: 6:02 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 240	C	Bob Robey, Nevada Homeowner Alliance	Testimony in Favor
A.B. 240	D	Gayle Kern, representing Nevada Chapter, Community Associations Institute	Letter in Opposition
A.B. 240	E	Lori Martin, representing Terra West Management Services	Letter in Opposition
A.B. 240	F	Barbara Holland, H & L Realty, Las Vegas, Nevada	Letter in Opposition
A.B. 259	G	Assemblyman Elliot T. Anderson	Written Testimony
A.B. 192	H	Jennifer Lazovich, representing Olympia Companies	Proposed Amendment
A.B. 192	I	Bob Robey, Nevada Homeowner Alliance	Testimony
A.B. 192	J	Real Property Section, State Bar of Nevada	Memorandum
	K	Assemblyman Ira Hansen	List of Common-Interest Community Bills