

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

**Seventy-Eighth Session
March 26, 2015**

The Committee on Judiciary Subcommittee was called to order by Chair Victoria Seaman at 6:03 p.m. on Thursday, March 26, 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

COMMITTEE MEMBERS ABSENT:

Assemblyman James Ohrenschall (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Harvey J. Munford, Assembly District No. 6
Assemblywoman Victoria A. Dooling, Assembly District No. 41
Assemblywoman Ellen B. Spiegel, Assembly District No. 20
Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Jonathan Friedrich, representing Nevada Homeowner Alliance
Robert Frank, Private Citizen, Henderson, Nevada
John Radocha, Private Citizen, Las Vegas, Nevada
Mike Aupperle, Private Citizen, Las Vegas, Nevada
Robin Huhn, Private Citizen, Henderson, Nevada
Bob Robey, Vice Chairman, Nevada Homeowner Alliance
Norman McCullough, Private Citizen, Henderson, Nevada
Barbara Holland, representing H&L Realty and Management Company,
Las Vegas, Nevada
John Leach, Attorney, Las Vegas, Nevada, and representing Real Property
Law Section, State Bar of Nevada
Joseph (J. D.) Decker, Administrator, Real Estate Division, Department of
Business and Industry
Garrett Gordon, representing Nevada Chapter, Community Associations
Institute; Southern Highlands Community Association; and Olympia
Companies
Norm Rosensteel, representing Nevada Chapter, Community Associations
Institute
Marilyn Brainard, Private Citizen, Sparks, Nevada
Mark Leon, Private Citizen, Las Vegas, Nevada
Amy Groves, President, Nevada's Finest Properties LLC, Las Vegas,
Nevada
Kristie Cox, Private Citizen, Las Vegas, Nevada
Kathie Chism, Private Citizen, Las Vegas, Nevada
Timothy Hughes, Private Citizen, Las Vegas, Nevada
Jerry Paluha, Private Citizen, Las Vegas, Nevada
Gary Solomon, Private Citizen, Henderson, Nevada
Michelle Goodell, Director of Community Management, Terra West
Management Services, Reno, Nevada
Donna Zanetti, Cochair, Legislative Action Committee, Nevada Chapter,
Community Associations Institute
Eric Theros, Vice Chair, Board of Directors, Nevada Association of
Community Managers

Jacqueline A. Gilbert, representing SFR Investments Pool 1, LLC
Richard Layton, CPA, Layton Layton & Tobler LLP, CPAs, Las Vegas,
Nevada

Michael Cohen, Private Citizen, Las Vegas, Nevada

Jack Webb, Private Citizen, Las Vegas, Nevada

Pamela Scott, representing Howard Hughes Corporation

Delores Bornbach, Private Citizen, Las Vegas, Nevada

Chuck Niggemeyer, Private Citizen, Las Vegas, Nevada

Joyce Patterson-Rogers, Private Citizen, Las Vegas, Nevada

Chair Seaman:

[The roll was called and Subcommittee protocol was explained.] Before we start today's Assembly Committee on Judiciary Subcommittee meeting, I would like to say for the record that one of my goals is to address the issue of super priority liens. In 2014, the Nevada Supreme Court determined that homeowners' associations (HOA) have a super priority lien over all security interests recorded for certain late fees and costs. An HOA can foreclose on a home, extinguishing all other liens, and sell the home for pennies on the dollar. This issue needs to be fixed. For Nevada to have a strong economy and for banks and other lending institutions to continue doing business in Nevada, they need to be able to protect their investments. For this reason, as Chair of this Subcommittee, my goal is to recommend a bill to the full Judiciary Committee that will resolve this issue.

Today we are going to start with a work session. Ms. Thornton, will you please proceed?

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

Diane Thornton, Committee Policy Analyst:

We have two bills for the work session today. The first is Assembly Bill 192. This bill was heard on March 19, 2015. The bill was sponsored by Assemblywoman Woodbury. This bill revised the period of time that the declarant's control must terminate. The bill also revised certain provisions concerning the election of unit owners to the executive board during the period of declarant's control.

An amendment to the bill was proposed by Jennifer Lazovich. The amendment changes the conveyance from 75 percent of the units to 25 percent for a common-interest community with less than 1,000 units. In addition, the

amendment revises the provisions for a common-interest community with 1,000 units or more after the conveyance of 15 percent of the units, that at least one member and not less than 25 percent of the members of the executive board must be elected by the unit owners other than the declarant. The amendment is on page 2 of the work session document ([Exhibit C](#)).

Chair Seaman:

I will entertain a motion for Assembly Bill 192.

ASSEMBLYMAN GARDNER MOVED TO RECOMMEND TO AMEND
AND DO PASS ASSEMBLY BILL 192.

ASSEMBLYMAN JONES SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL WAS
ABSENT FOR THE VOTE.)

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

Diane Thornton, Committee Policy Analyst:

Assembly Bill 301 was heard in Committee on March 15, 2015. It was sponsored by Assemblymen Stewart and Oscarson. This bill prohibits the restrictions on the freedom to display the flag of the State of Nevada in certain places. This bill allows an owner in a common-interest community to display the State of Nevada flag as long as it is not larger than the size of the United States flag that is displayed. There were no proposed amendments for this measure ([Exhibit D](#)).

Chair Seaman:

I will entertain a motion for Assembly Bill 301.

ASSEMBLYMAN JONES MOVED TO RECOMMEND TO DO PASS
ASSEMBLY BILL 301.

ASSEMBLYMAN ELLIOT T. ANDERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL WAS
ABSENT FOR THE VOTE.)

We will take the bills out of order and open the hearing on Assembly Bill 317.

**Assembly Bill 317: Revises provisions governing common-interest communities.
(BDR 10-712)**

Assemblyman Harvey J. Munford, Assembly District No. 6:

Thank you for this opportunity to present Assembly Bill 317. This bill will make two major changes to *Nevada Revised Statutes* (NRS) Chapter 116 for homeowners' associations (HOA).

Section 1, subsection 10, paragraphs (a) and (b), will require a majority of the unit owners to approve spending money for a capital improvement that costs more than 1 percent of the association's annual budget. The approval of the unit owners can be made either through a vote or by signing a written agreement. When the association is spending that much money, the unit owners need to approve the project.

The second part of my bill is in regard to investigations of illegal activity in HOAs. We know there is plenty of it going on. Sections 2, 3, and 4 require the Real Estate Division, Department of Business and Industry, to hire people, including investigators, to respond to the complaints of wrongdoing that involve HOAs or community managers. Some examples would be reports of embezzlement or fraud by members of an HOA board or misconduct by community managers. Division investigators would also be able to issue misdemeanor citations if violations are punishable as a misdemeanor.

Finally, section 5 amends NRS Chapter 289, so that Division investigators will have the powers of a peace officer. The Division already does this for manufactured housing complaints. Therefore, they are familiar with providing this type of service. Although there may be a fiscal impact in setting up these investigators, it will be money well spent to protect our constituents and will give them a way to deal with improper activities in HOAs.

As most of you know, I have been in the Legislature for six sessions, including this one. In three or four of the sessions I have served, I have presented bills related to HOAs. I have always felt that the bills presented previously were created because, while looking at the entire makeup of an HOA board, there was always a very easy complaint or project to deal with. There has been so much set up with democratic principles. The board is elected by the people. The board has to answer to the people. That is the way the *United States Constitution* and government work in our society. I always thought it was going to be very easy to stand by a homeowner when they have a complaint. For some reason, HOA boards do not conduct themselves in the democratic way by showing some type of sensitivity and humanity to the needs of the homeowners.

One of my constituents once had a complaint with an HOA. She has since passed away, but her complaint is almost what led to her death because there was so much stress and pressure on her to try to get justice. When I come before the Committee with the complaints, I always feel that we, as legislators, should think in terms of equality, justice, and fairness. In the six sessions that I have served, I do not know if this Committee has fully been able to see the oppression, pain, and suffering that has been endured by some of your HOA homeowners. There are 3,000 HOAs in Nevada, and probably the majority of them are run according to standards of honor and fair play. There are still those few that must be singled out, and they should have to explain their actions and behavior towards the residents. I will now turn it over to my former constituent who has always been a strong advocate with regard to HOAs.

Jonathan Friedrich, representing Nevada Homeowner Alliance:

This bill deals with two issues that I have heard in many complaints from unit owners in HOAs. The two issues are uncontrollable spending and corruption. I will first address the corruption. If you keep up with the news in Las Vegas, 37 people have pled guilty in a Federal Bureau of Investigation (FBI) corruption case against 11 condominium complexes. Four of them were found guilty just last week. There have been a number of newspaper articles referring to it. The FBI put out a release last week naming the individuals and what they were convicted of.

As a commissioner on the Commission for Common-Interest Communities and Condominium Hotels, we were told over and over again that all the Commission could do was impose an administrative fine or remove a board member. There is language in NRS 624.115 that we have utilized in this bill. Therefore, this is not something new. It will allow the compliance section of the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels to be able to issue a citation against those individuals who commit a misdemeanor. This will now give the Office of the Ombudsman the tools and the teeth to go after these individuals who are stealing money. You should have a chart before you ([Exhibit E](#)), which was uploaded to the Nevada Electronic Legislative Information System (NELIS). These are a number of the cases that I was able to ascertain the information on. All of the information on this chart was derived from the Real Estate Division.

The columns of the chart show the individual's name, case number, association name, whether it was a community association manager (CAM), the amount that was embezzled, and the date. These are all predicated upon convictions by the Commission. If you add it up, excluding the FBI cases, there is \$3 million embezzled on this chart alone. This chart does not even include all of the cases. The Division desperately needs the ability to bring criminal charges

against these people. Currently, all they can do is bring an administrative action. After it goes before the Commission, it can be turned over to law enforcement. All the while, the money is being stolen.

As far as the expenditures, this bill does not deal with day-to-day operations or with the reserves. It only deals with an item that will be a capital improvement, which is something that is adding to the association. As we all know, one size does not fit all. There are associations such as Sun City Summerlin Community Association that have a \$13 million budget. Alternatively, there are smaller associations that have a budget in the range of \$300,000 to \$400,000. We struggled with what kind of cap to use where they can spend a certain amount of money without getting homeowner approval. I feel very strongly, as others do, that this is homeowner money. The homeowners should have a say in what is being spent. That is what is in this bill.

Assemblyman Elliot T. Anderson:

I suppose Mr. Friedrich appreciates the intent behind the bill. I understand that people want to know where their money is going. I am wondering if this bill may be a little too broad. Making a Division investigator a peace officer is a big change. I do not even know what powers they would have because it does not look like they are being categorized. If you are a category I peace officer, you have full power to investigate murders, et cetera. I am not sure that just sending Division investigators as peace officers to some of these boards would work functionally. I also worry that with that sort of pressure, it would be difficult to get people to sign up to be on an HOA board. I have been asked to serve on mine, and I do not want any part of it. Do you think this bill might discourage people from serving on an HOA board?

Jonathan Friedrich:

If they are honest, no. Somebody who is crooked might think twice. This existing language is already in statute. We can tighten up the language a little more regarding the individual who would be serving the citation or fine. However, the Real Estate Division needs some kind of teeth, and they do not have it now. The embezzlement goes on constantly, and it does not stop. I do not know how many cases came before me when I served as a commissioner. All you have to do is look through the provided list ([Exhibit E](#)).

Assemblyman Elliot T. Anderson:

When you say stealing money, do you mean it literally, or do you mean writing out checks to themselves? That is already a crime.

Jonathan Friedrich:

The Real Estate Division cannot do anything about it.

Assemblyman Elliot T. Anderson:

It is a breach of fiduciary duty. There are a number of ways you could go about this. I would be interested in what the Committee thinks. It just seems like you are trying to swat a fly with a baseball bat.

Jonathan Friedrich:

Three million dollars is not a fly.

Assemblyman Elliot T. Anderson:

We have crimes, lawsuits, and causes of action that would cover this situation.

Assemblyman Jones:

Is 1 percent too low of a threshold? Should it be closer to 2.5 or 5 percent? I agree with Assemblyman Anderson. We have plenty of laws dealing with fraud and embezzlement that are already punishable. The problem with this bill is there is a huge fiscal note attached to it. I do not think it will go through with the fiscal note. If we can find a way to refer to the police department or investigative powers, that may be a better solution. It is just a suggestion because there are already rules on the books. Obviously, all of the people on your list ([Exhibit E](#)) have been convicted. That is why they are on the list.

Jonathan Friedrich:

Two years ago, Assemblywoman Fiore sponsored a bill that passed. It was Assembly Bill No. 395 of the 77th Session. Three people that I know, including myself, went to the Las Vegas Metropolitan Police Department (Metro) with a complaint. They refused to do anything. People in law enforcement do not want to touch these cases. I have gone to the Office of the Attorney General. There is always an excuse. This bill would allow a person from the Real Estate Division to issue the citation. They will not have to spend months going to the Attorney General's Office or to Metro. For the most part, the people listed ([Exhibit E](#)) have not gone to jail. A few of them were arrested and did go to jail simply because their employers filed police reports against them. The majority of the list were managers. They have the purse strings, the checkbook, and they just write themselves out a check. Some of them have gambling or drug habits. There is too much temptation. If it is your community and they are stealing your money, would you be upset? That is the problem.

Assemblyman Jones:

What about the 1 percent threshold?

Jonathan Friedrich:

I started with 1 percent, but we can always go up to 2 or 3 percent.

Chair Seaman:

You had said that these were convictions, but now you are saying only a few of them went to jail. Is that correct?

Jonathan Friedrich:

That is correct.

Chair Seaman:

Is that not a felony?

Jonathan Friedrich:

If it is a large enough amount of money, yes.

Chair Seaman:

Is there anybody else in Las Vegas in favor of A.B. 317?

Robert Frank, Private Citizen, Henderson, Nevada:

I am in favor of this bill for one particular reason. Something has to be done, and if not this, then what? I agree with Mr. Friedrich because law enforcement people have told many of us, many times, that they are not funded or they do not have the training to investigate or convict on white-collar crimes. They have been told by the Legislature and by the Attorney General that they have no business meddling in HOA disputes. You run into situations where very few cases ever receive an administrative conviction. It sometimes takes three to four years to get through the Real Estate Division. By that time, it becomes old news to law enforcement. My advice to the Committee is to pass this bill, unless the lobbyists or law representatives tell you that there is a way to make this work without the bill. I would love to hear them explain how this can be handled without having to pass this bill.

John Radocha, Private Citizen, Las Vegas, Nevada:

I strongly support this bill. This is a much-needed piece of legislation for HOAs. It makes two changes to NRS Chapter 116. The first change puts a cap on spending for capital improvements. The bill does not restrict spending on reserve items or on day-to-day operations. It limits the amount the board can spend on new items to 1 percent of the annual budget without the homeowners' approval. This translates that a community with an annual budget of \$300,000 will be able to spend up to \$3,000 without community approval. Anything over that amount will need a written approval. I am a board member, and I have no objection to this legislation. This would stop wild spending by the board.

The second item in this bill will allow the Office of the Ombudsman to issue a misdemeanor citation if they discover embezzlement or fraud. Currently, all the Ombudsman can do is to bring an administrative hearing against a crooked manager or board member and fine them. The case can then be turned over to the Attorney General, which takes more time to reinvestigate. All of that time, the theft is going on. We need protection. Please pass this bill.

Mike Aupperle, Private Citizen, Las Vegas, Nevada:

I second everything that Assemblyman Munford and Mr. Friedrich said. Regarding Assemblyman Anderson's questions, we have no place to go where anyone will help us, especially in the over-55 senior communities. There are many widows and veterans in these communities. We need help and we need it desperately. This bill will help us get justice.

Robin Huhn, Private Citizen, Henderson, Nevada:

I am in favor of A.B. 317. As the previous gentleman said, I ditto everything that has been said today. Historically, law enforcement has not wanted to get involved in most criminal actions perpetrated by the HOAs and their support services. Because of lack of police intervention, the HOA industry does not have to be accountable for their actions. With the law intervening, it is likely that those in the HOA industry will be less likely to be involved in criminal activities. I am paying to be protected by the police department, but I do not have access to the protection of the police department because I live in a HOA. Please pass this bill.

Bob Robey, Vice Chairman, Nevada Homeowner Alliance:

I also met with the district attorney in Las Vegas and also with the head of the fraud unit. We got absolutely nowhere. They said if we need help, we need to go to the Legislature. The crimes that are committed against the people are not reported to the police. We know nothing about the peace officers being in categories. I have no knowledge of that, but what I do know is that people are getting ripped off.

I would also like to make a point about the 1 percent cap. Maybe what we need to do is to look at the size of the operating budget of an association. At 1 percent, Sun City Summerlin can spend \$500,000 without approval. They are a good board and would not do that. If someone should spend that kind of money, it goes into the reserves and has to be funded from then on. There will then have to be money that is set aside for repairs, replacement, and maintenance of that item. That is the critical issue. If you allow for a capital improvement without the vote of the HOA, everybody will then up the ante of the reserve fund. Please pass this bill. It is long overdue.

Norman McCullough, Private Citizen, Henderson, Nevada:

I am very much in favor of Assembly Bill 317. I am also in agreement with Jonathan Friedrich, Bob Frank, and the gentleman who just spoke. I was with him when we tried to have something done outside of the Real Estate Division's facilities. I want to give you one example. I do not think this legislation is too broad; I do not think it goes far enough. My HOA is responsible for collecting money to paint the outside stucco on my home. I live in a duplex. Two duplexes together are called one building. Somehow we lost over 1,000 feet of stucco that was funded. I would like to know where the stucco went, and where the money is that funded the stucco. I would appreciate it if one of you can tell me how you shrink a building. The floor size did not shrink, and the roof size did not shrink.

Chair Seaman:

Sir, we are talking about A.B. 317. You need to stick to the bill, and please wrap up your testimony.

Norman McCullough:

That is correct. Thank you.

Chair Seaman:

I am going to ask those who are opposed to A.B. 317 in Las Vegas and here in Carson City to come forward.

Barbara Holland, representing H&L Realty and Management Company, Las Vegas, Nevada:

I want to first address the 1 percent issue, and I will give you an example. *Nevada Revised Statutes* requires associations to fund reserves based on a reserve study. The reserve study tells us approximately how much money we need to have at a certain time period for different projects. That is something that is mandated. One complex that I manage has 317 units. The budget is a little over \$600,000. Therefore, 1 percent comes out to be about \$6,125. This year, we were supposed to replace the asphalt on the streets, the concrete, and the curbs at a cost of \$115,701. That is money that we have been funding for a number of years based on the reserve study. Now with this change to 1 percent, you are asking us to go to the homeowners and explain that only \$6,125 is approved against the \$115,701 it will cost to do the job. This does not make sense. Right now, there are a series of bills around about what to do with this type of capital expenditure. I can tell you this is not workable.

There is another issue I would mention. We have a municipal election coming up. I do not think that Nevada, even during a national election, has ever received at least 50 percent of the vote for anything. If you are asking us to try to get a 50 percent majority vote to approve these capital expenditures, it will not happen. People do not vote; it is as simple as that. This bill will turn HOAs into slums.

There is another thing that I wanted to address which has not been brought up. Do you really want to have two sets of standards for the Real Estate Division? They regulate licensees, and I am a broker as well as a community manager. We have the Commission that oversees people who are real estate licensees, and they are treated like professionals. Then we have the community association managers. Anyone who attended any of the hearings for the last three years with some of the Commissioners were treated as though they were criminals just because they manage associations. You cannot have a Division representative be a police officer for one set of licenses and ignore the other. That is why we have an Attorney General. There is a set procedure. If you take a look at section 2 of this proposed bill, it says the Division will require investigators to investigate any alleged violation and then issue a citation. Where is the due process? This is the sort of thing that Jonathan Friedrich complains about HOAs where nobody investigates, but they just make a decision to fine you. There is not one thing in this section that says that I have a right to a hearing. You may investigate, but you may not have all of the information. There is a due process problem here.

We are required to have crime policy insurance. I understand that there are people who embezzle. I read the newspaper all the time. Let us add the attorneys, mortgage companies, insurance companies, bailiffs, et cetera. We can go down the list of the various people who have stolen money. The one thing I can tell you is that the crime policy premiums for insurance of associations have not gone up. That indicates something to me. When someone steals from an association, the insurance company will then reimburse the association. If we have this going to such an extent beyond the norm, I would expect to see significant raises in the crime policy insurance premiums. That has not happened.

As far as I am concerned, we have a problem with due process—a problem which will create two different standards for the Real Estate Division—and 1 percent does not make sense. There has to be some better way of doing this. What is so ironic is we are required by state law to fund the reserve accounts. When we plan our budgets each year, the budgets not only have the operating expenses, but they also have the reserve items. We are required to send the homeowners copies of those sections of the reserve study.

John Leach, Attorney, Las Vegas, Nevada, and representing Real Property Law Section, State Bar of Nevada:

Earlier, Michael Buckley and Karen Dennison submitted a proposed amendment from the Real Property Law Section of the State Bar of Nevada ([Exhibit F](#)). The proposed amendment would bring this provision in compliance with already established statutes that say an association board has the right to, among other things, make modifications of the common area or cause additional improvements to be made as part of the common area, subject to the declaration. What we have now are generations and decades of associations that have covenants, conditions, and restrictions (CC&R) that have already addressed this issue. We believe that this provision, if passed, should be consistent with the declaration. In other words, if the declaration already addressed the subject, that is what it should be.

With respect to Assemblyman Jones's comment, we absolutely agree that the threshold is too low. Quite frankly, if you look at CC&Rs that have been drafted by developers and builders, the numbers are substantially higher. In fact, they usually range from about 10 to 20 percent.

As far as the issue regarding the Commission being asked to issue citations, Mr. Friedrich held up a book and referenced NRS Chapter 624. Those are contractors who are paid professionals, as are community associations and lawyers. We are talking about non-compensated volunteers. It is a very different scenario. Unfortunately, I have to digress because you keep hearing things about the FBI investigation. With all due respect, the information that has been provided is faulty. We are talking about investigations taking place for six years. Our law firm has represented associations in three of the lawsuits against Silver Lining Construction and the individual buyers. I also had to testify in the hearing regarding it. Quite frankly, none of the things suggested here will address that. I think it is because it is such an emotional thing, it keeps getting thrown out there in order to give public sentiment against something that is not realistic. The State Bar of Nevada is opposed to this bill. If it does pass, we believe it should be subject to the declaration and not just an amount that applies retroactively to an association that already has CC&R provisions.

Joseph (J. D.) Decker, Administrator, Real Estate Division, Department of Business and Industry:

I am here to talk to you about a couple of structural issues that the Real Estate Division, Department of Business and Industry, would like to bring to your attention regarding this bill. Currently, regulatory agencies, including the Real Estate Division, can issue citations for violations administratively.

The problem with NRS Chapter 116 is the disciplinary authority lies with the Commission and not with the Administrator of the Division. Theoretically, misdemeanor citations would require corresponding NRS Chapter 116 fines or Administrator authority in order to actually be issued. Additionally, a probable cause citation would result, theoretically, in a Commission hearing. However, that is the current structure that is in place minus the fines because NRS Chapter 116 does not include Administrator fines to be issued.

Regarding the issue of major crimes, at the point that a probable cause arrest is made for a major crime such as embezzlement or fraud, there are currently law enforcement agencies and statutes that address those crimes. Theoretically, the Division would be making arrests for violations of real estate statutes that would bypass the Commission and go into the court's jurisdiction, which is confusing in this bill. I am here to answer any questions.

Assemblyman Elliot T. Anderson:

Thank you for coming out to talk to us about the technical issues. I wanted to ask about the peace officer section. Is that something that you would consider in your scope? Have you contemplated that before, and is it feasible for Division investigators to have the powers of a peace officer?

J. D. Decker:

The statutes that we administer through our regulatory agency would not be supported or furthered with peace officers at our disposal. Currently, we administer through administrative law with the Commission having the authority to impose discipline based on the cases that we present for prosecution. Major crimes are covered under criminal statutes by law enforcement agencies. We refer to those. Someone mentioned hitting a fly with a baseball bat. Our statutes support administrative law so, without corresponding statute changes, there are no fines under NRS Chapter 116 for the Division to administer. All of that authority lies with the Commission. I hope that answers your question.

Assemblyman Gardner:

You said you do not have the ability for administrative citations currently. I am wondering who in your Division can. Is it a licensee, manager, or attorney? Who is within your purview?

J. D. Decker:

That is an excellent question. Under NRS Chapter 116, neither the Administrator nor the Division has the authority to give anyone a citation or to fine anyone. We investigate and present our findings to the Commission, which

has full authority to impose any disciplinary action. Under NRS Chapter 116A, which applies to our community manager licensees, there is a certain level of authority that the Administrator has to administer fines outside of a Commission hearing. Normally, we investigate, conclude the investigation, and issue a fine, which is delivered through the mail. Theoretically, those could be delivered in person by an investigator. The reality is those come from the Administrator of the Division and are delivered directly to the licensee.

Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies:

In an effort to not be redundant, I will make three additional points. The first point is in regard to the 1 percent allowance. Certainly, that threshold is very low. It would negatively impact the smaller associations significantly. One percent of a \$45,000 budget is \$450. A typical park bench could cost \$450. Every time something needs to be purchased with that small of a threshold, we will have to send a mailing to all homeowners. The cost to send the notices will have to be accounted for. If the 1 percent threshold is imposed, the cost of stamps and paper to send to possibly thousands of homes may outweigh the actual capital improvement expenditure.

With regard to the Real Estate Division and the term "any," not allowing the Division any discretion with regard to investigations is troubling to us. There have been a lot of figures put on the record, and I will add a few more. I have some enforcement statistics from the Real Estate Division, and over 200 are in the categories of no violation, unsubstantiated allegations, and duplicative. There were over 100 that were terminated by the Division.

We think there is a proper format and procedure to investigate. If the complaint is unsubstantiated, or is not relevant, the Division has the ability, under existing law, not to move forward. Under the proposal, with any alleged violation, they would have to use state resources to move forward.

Assemblyman Gardner:

You were talking about a small association with a \$45,000 budget with a 1 percent allowance, which would equal \$450. Then you said it could cost a lot more for a large association, which is correct. Those large associations would also have much larger budgets. Therefore, 1 percent would be a much larger amount. If you have an \$8 million budget, that would be \$80,000. It will be a very large amount before you have to hit anything like that. I am wondering how often you think those 10,000-unit associations would hit that \$80,000 mark to do a commercial improvement?

Garrett Gordon:

You are correct. I would argue that the larger associations have a lot more capital expenditures than the smaller associations. In the CC&Rs that threshold is usually 10 percent to 20 percent. In these larger associations, such as Southern Highlands HOA, they are dealing with capital improvements all the time. We felt that to have to go out to the membership and expend thousands of dollars in order to attempt to get a majority supporting the expenditure is a little bit burdensome and not appropriate. We should refer back to the CC&Rs, as Mr. Leach referenced.

Norm Rosensteel, representing Nevada Chapter, Community Associations Institute:

My comment is also about investigating any alleged violation. There has been a backlog at the Real Estate Division of up to several years of complaints which they have been trying to sort out. It is not good to spend several years going through these complaints. The reason there are so many is because many of them are frivolous complaints. The Division needs to have the ability to decide what is worth pursuing and what is not.

Marilyn Brainard, Private Citizen, Sparks, Nevada:

I just have a couple of quick comments. It has to do with the fact that we are talking about nonprofit corporations that are set up with a volunteer board. They can either be self-nominated or nominated by a committee. They are given the fiduciary responsibility and the business judgment to make decisions on capital improvements. Many times they will have guidance from the governing documents. To put an artificial layer of any amount on here is not necessary. We look at the board of directors to exercise discretion. They are already held to standards and can be disciplined if they do not meet those standards.

I am sorry that Mr. Friedrich sees oppression wherever he looks. That is the lens through which he views associations. Of those of us who live in associations, close to 90 percent are pleased with our associations and feel it is the lifestyle that we like.

Lastly, I would like to give the new Administrator of the Real Estate Division, Mr. Decker, the opportunity to direct his staff as he sees fit. That is why you have an Administrator, and not someone who is bound by lockstep rules in the statutes. Let us give him a chance to show us he has some good ideas for how he can improve the quality of life for our unit owners, managers, and all of us involved.

Mark Leon, Private Citizen, Las Vegas, Nevada:

On the capital improvements provision, I want to say that for a large association, it is practically impossible to get a majority of homeowners to simply vote. The provision may just as well say that no capital improvements are ever allowed. It is heavy-handed to set the limits so high without regard to the realities faced by individual communities. I say leave it to the homeowners of each association to determine their own capital improvement limits.

I would like to address the provision requiring that the Real Estate Division punish a board member with misdemeanor charges, without discretion, for any violation of NRS Chapter 116. I am looking at the definition of a misdemeanor, and I have determined that if I violate NRS 116.31086 by opening an envelope containing bids before a board meeting comes to order, it would be just as egregious as if I committed petty theft, prostitution, public intoxication, simple assault, disorderly conduct, or vandalism. The bill includes a bonus option of having Metro haul me off in handcuffs. I do not understand why you do not allow the Division to invoke the death penalty.

Chair Seaman:

Can we just stick with the bill, please? If you have something new to add, please do so. If not, just oppose the bill and agree with a prior speaker. We are running out of time here.

Amy Groves, President, Nevada's Finest Properties LLC, Las Vegas, Nevada:

I am going to add a couple of things regarding Mr. Leon's comments about sealed bids. What if a sealed bid comes to a management company, and our receptionist accidentally opens it? We do not want to live in fear that we are going to get the bracelets put on us because of an accident. What if we accidentally mail out our election ballots 62 days in advance instead of 60? That is not an appropriate use of the Division. Both of those would actually count as an egregious violation. I am strongly opposed to the Real Estate Division being peace officers and actually issuing citations. We cannot work under those conditions.

Over the years, there have been managers and board members that have written themselves checks. They flat-out stole money. They were caught by the board members who went through the financial records or during the audit at the end of the year. You cannot just write yourself a check and get away with it because there are checks and balances already in place.

Regarding the 1 percent allowance, I will refer to a small association. We manage an association with a budget of \$6,700 per year. I could not imagine getting all eight owners together every time we needed to spend over \$67. It is not realistic for the large or small associations, although I do realize it may be easier to get 8 people to agree more often than it would be to get 100 to agree.

Kristie Cox, Private Citizen, Las Vegas, Nevada:

I would like to agree with those who have talked about laws already being in place. I would also like to address Mr. Friedrich's comment about the excessive fraud. The 11 cases that he mentioned are out of 4,500 HOAs. That is less than 1 percent. That is not excessive at all, but rather more rare than the norm.

Capital expenditure is not defined in NRS Chapter 116; therefore, you would need to define what a capital expenditure is before you can codify it. The CC&Rs that I have read from places that I have owned, or others that I have looked at, all define what an owner needs to vote on and what a capital expenditure is. There is no need for this law.

Kathie Chism, Private Citizen, Las Vegas, Nevada:

I am a board member for the Yellowstone HOA, which is a subassociation of the Mountain's Edge Master Association. There are 12,000 homeowners in Mountain's Edge Master Association. It took the board over a year to get an answer from 50 percent of the homeowners for something they were trying to pass. When we have an election ballot at Yellowstone HOA, where there are 1,200 homeowners, we are lucky to get 100 ballots back. That is giving them 60 days to vote. If you set it at 1 percent, we will never be able to have a capital improvement. You need to raise it, if you need it at all.

Chair Seaman:

Is there anyone else in opposition to A.B. 317? Seeing none, is there anyone in the neutral position? Seeing none, I will invite the sponsor to come back up.

Assemblyman Munford:

I just want to take this time to commend Jonathan Friedrich for taking the steps and the time to bring about some type of awareness of the abuse that is taking place at HOAs. I have presented HOA bills previously, and they have never made it out of the Committee. I am enthusiastic about this one. I hope that something will happen and some justification will come out of the bill. I am here to support Mr. Friedrich. Although he is not my constituent anymore, he is a friend and I told him that I would give it one last shot for the HOAs. I hope to do something that will benefit them and contribute to a better life for the homeowners.

Jonathan Friedrich:

I have a couple of responses to Barbara Holland. She was talking about the reserve. This bill does not deal with the reserve account. This is strictly for capital improvements, which is something that was not there to start with, but the associations want to add. Many associations are just spending money wildly and hitting people with special assessments to pay for the improvements.

Ms. Holland also said we should go to the Attorney General. We have been there, and they do not do anything. Regarding the due process on a misdemeanor citation, after the citation is served, the due process starts. As for crime insurance, we do not know yet what the rates are going to be. It only went into effect a couple of years ago. When the insurance companies have to start paying out claims, you will start to see increases.

As far as the Real Estate Division is concerned, when Mr. Decker took over about eight or nine months ago, he inherited 440 unresolved cases that were sitting there for up to four years. They dumped 200 of them because they were too old. Those 200 people never had the opportunity for a hearing or any investigation on their intervention affidavits.

Regarding the discussion from the gentleman from Mountain's Edge about opening the ballots, no candidate, incumbent, or individual running for the board can touch those ballots. It is a class D felony in statutes currently.

Chair Seaman:

I will now close the hearing on Assembly Bill 317. We will open the hearing on Assembly Bill 238.

Assembly Bill 238: Makes various changes to provisions relating to a homeowners' association. (BDR 10-808)

Assemblywoman Victoria A. Dooling, Assembly District No. 41:

Thank you for the opportunity to present Assembly Bill 238. This bill addresses two issues that I feel are currently a problem in the context of homeowners' associations (HOA). One problem is who should serve on the executive board or become an officer, and the other is what is the procedure for soliciting bids on association projects.

Section 1 of the bill sets additional limits on who may serve as a member of an executive board or as an officer of an HOA. Currently, the list of ineligible parties only includes those with immediate family members, such as a spouse, parent, or child, serving as the community manager. My bill would make a person ineligible if they were living with their spouse or relative in the

third degree of consanguinity or affinity, and the spouse or relative was an executive board member or officer. There is a chart ([Exhibit G](#)) that we have put on the Nevada Electronic Legislative Information System (NELIS) from Nevada's Commission on Ethics. The chart shows who the third degree of consanguinity or affinity would include. Basically, the third degree includes aunts, uncles, great-grandchildren, great-grandparents, nieces, and nephews. Other persons who would be ineligible to serve as board members or officers are a person who has a financial interest in a matter before the executive board and a person who owns two or more units.

The second part of the bill relates to soliciting bids for association projects that are expected to cost more than \$500. Section 2 requires the association to solicit at least three bids on projects costing more than \$500, to read the bids out loud at the meeting, and to use the procedures in *Robert's Rules of Order* in voting on the bids. You will also see the existing definition of association project has been clarified to include professional services such as engineering or legal services. That concludes the overview of the bill.

I had a lot of feedback on the original version of the bill. We are proposing two simple amendments ([Exhibit H](#)) which were uploaded to NELIS, and they are conceptual mock-ups. The first proposed amendment is to remove the language making a person owning two units ineligible and to substitute a different category of persons who would be ineligible to serve on an executive board or as an officer. Those would be people who co-own a business or are a business associate of someone already on the board or serving as an officer or community manager. This exclusion will avoid any potential problems caused by any business partners or associates serving together as HOA board members, officers, or community managers. It will enhance the independence and objectivity in the management of the association.

Section 2 of the proposed amendment will require that a summary of the bids be read at a board meeting and made available to the association members. Obviously, reading the entire bid documents could take hours and would include personal information. The idea would be to provide summaries of the bids instead in order to improve the transparency, which is the goal of this section.

That concludes my presentation. I will be happy to answer any questions. I am presently working with groups and certain individuals on more amendments. Mr. Jonathan Friedrich is here to go through the bill with you.

Assemblyman Jones:

I was going to ask about more than one unit. I think it is wise you amended that because why penalize someone who has more than one house or unit. How can you have summaries of bids if you are not allowed to open the bids unless it is in front of the whole board?

Jonathan Friedrich, representing Nevada Homeowner Alliance:

First of all, the bids would have to be opened at the meeting. All that would be provided at the meeting from the bid is the name of the vendor, the cost, and a brief description of the work involved. People have come to me complaining about the boards not reading the bids. They do not disclose who the vendor is or the amount of the bid. The homeowners have a right to know.

Assemblyman Gardner:

Section 2, subsection 1, paragraph (d) says, "The members of the executive board must vote on the acceptance of a bid in accordance with the most recent edition of Robert's Rules of Order Newly Revised." I was wondering why that was put in there instead of saying by majority vote or something else to that effect.

Jonathan Friedrich:

This is something that was requested by the Legislative Counsel Bureau (LCB). That was not the original language proposed.

Assemblyman Elliot T. Anderson:

I want to direct your attention to section 1, subsection 9, paragraph (a), subparagraph (2). I am looking for more clarity of the language there. Can you just tell me what situations you are trying to reference there, and what situations that you have seen in the past that you are trying to avoid now with this measure?

Jonathan Friedrich:

We are trying to prevent board members from steering the bids to certain favorite individuals.

Assemblyman Elliot T. Anderson:

How would you know if someone stands to do something wrong in the future? That is what I am trying to figure out. You are determining the qualifications for someone to be on the board. How do you know what is going to happen in the future? Are you saying that if you are a contractor, you cannot be on the board? I would think that in order for someone to be prohibited in that way, you would have to figure out what they are going to do in the future.

Jonathan Friedrich:

I am not quite sure I understand the question.

Assemblyman Elliot T. Anderson:

It is the language that says "stands to gain." How do we know what they stand to gain?

Jonathan Friedrich:

It is referring to kickbacks.

Assemblyman Elliot T. Anderson:

Once again, how do you know when they are voted to the board that they will fit into that category?

Jonathan Friedrich:

You do not know.

Assemblyman Elliot T. Anderson:

How would it be enforced?

Jonathan Friedrich:

In my own association, I was told it was going to cost \$10,000 to modify the front entry gates. It did not seem right to me because I am a former contractor. I solicited bids and the cost for the same job was \$2,500. There is too big of a spread between \$10,000 and \$2,500. It was obvious that somebody who should not be reaping the benefits actually would be.

Chair Seaman:

At this time, can you go through the bill?

Jonathan Friedrich:

While I was on the Commission for Common-Interest Communities and Condominium Hotels, I met a couple, and they were part of a three-person association board. The husband ran that association like a tyrant, and eventually the complaints caught up with him. I have a copy of the Real Estate Division, Department of Business and Industry finding of facts. It lists a whole host of abuses including spending homeowners' money on himself for hotels, car rentals, purchases at Walmart, et cetera.

Chair Seaman:

Mr. Friedrich, when I say to go through the bill, what I mean is to let us know what this bill is going to do.

Jonathan Friedrich:

This bill will prevent individuals who are husbands and wives, brothers and sisters, et cetera, from serving on a board together in order to prevent conflict of interest and abuses. In my example, the state had to spend \$22,884 to investigate this case, which was not recovered. In another case, \$300,000 was embezzled by two individuals who were living under the same roof.

Chair Seaman:

Can you go through section 2 now?

Jonathan Friedrich:

Section 2 would require the board to request bids for any expense over \$500. Garrett Gordon is going to speak about that because he represents Southern Highlands Community Association, where there are major problems with that issue. We are working on an amendment. As far as the bids are concerned, we already discussed where they would be read aloud. I do not know where the part about *Robert's Rules of Order Newly Revised* came from—possibly LCB.

Chair Seaman:

Did you want to amend that? You are certainly able to do that.

Jonathan Friedrich:

Yes, you can take that out. This is very important. Currently, there is no requirement for an HOA to get bids for professional services, such as attorneys, accountants, and engineers. Years ago, that was in regulations but somehow got lost in the shuffle. We would like to see associations go out and get bids for these services. This is what is addressed in section 2.

I have one other item, which is an amendment ([Exhibit I](#)). Senator Schneider introduced Senate Bill No. 182 of the 75th Session in 2009. The words "the tenant" are mentioned in the Legislative Counsel's Digest. Those words were never inserted into the actual bill.

Chair Seaman:

Have you submitted the amendment?

Jonathan Friedrich:

Yes, I have.

Chair Seaman:

I am going to ask those who are in favor of A.B. 238 to come forward.

Bob Robey, Vice Chairman, Nevada Homeowner Alliance:

I am not going to spend time on the wonderful idea of limiting consanguinity. That is obviously needed because we have seen too many abuses. I want to speak about professional services.

You will notice there is proof that attorneys do get proposals. One of the items says if you want to request an assignment, you must provide a proposal. In the example from my testimony ([Exhibit J](#)), the attorney asks for a request for a proposal. In the Sun City Summerlin Community Association, we also request proposals. My testimony also provides the example of where an attorney responded to a proposal. I did not include the details because I did not feel it was appropriate. The fact is that when we request professional services, we do request the account, and we do put out bids for engineering even though it is not required by law. I commend my board for doing that. However, the legal services people have fought this bill because of the concept of attorneys having to provide a proposal. The attorney himself might be \$600 per hour, but his legal assistant services may charge \$200 per hour. Who is being paid what amount for what work? Some of you attorneys know what I am trying to say. The point is we need proposals from attorneys.

Robert Frank, Private Citizen, Henderson, Nevada:

In the two years that I have served on the Commission, I have seen many cases of this. I am frustrated because of the backlash from the industry and from the attorneys who object to having competition for spending the people's money. It is the people's money. It is not the association's money. Any money they waste has to be replaced or augmented in future assessments. Fiduciary duties means they are supposed to be responsible for spending the money, but there are a lot of arguments about whether the board is responsible to the association, the corporation, or the people who elected them. They should be responsible to the people of the association because if there is not enough money, or they waste the money, they will ask for more. The people will have no choice but to give it to them. This idea of putting more teeth into the competition is not only justified but it is urgently needed.

The same people who argue against the inconvenience and the waste of money are talking about other people's money. For the most part, the professionals get paid regardless. The biggest problems are kickbacks or favors that are granted for various contracts. You cannot eliminate fraud. I am a former U.S. Air Force contracting officer, and I am very familiar with the details of how to avoid fraud. The amount of \$500 is a lower threshold than I am used to in terms of requiring competition. All of us that are human beings know that if we

are going to spend \$500, we will have no trouble picking up the phone to ask for bids. I would encourage the Committee to seriously think about passing this. If you think \$500 is too low, what is reasonable? I feel the reason there are so many really lame excuses for not wanting to obtain competitive bids is because people are just lazy or do not care about how much money is wasted.

There was a point that was made earlier that almost every bid without competition you get from a board can be beat 100 percent of the time. Any bid that is received that has no competition can be beat for both quality and price. I do not go along with the idea of trusting a vendor just because I have done business with them before. It does not work that way. Money talks.

I commend Assemblywoman Dooling for bringing up the issue of conflict of interest on the boards. This is a much bigger problem than you realize. You do not have to read through the details of a Federal Bureau of Investigation (FBI) case to realize how insidious the problem is for the statute to allow this wide-open board relationship. I encourage you to keep the teeth in there. Both of these matters are critical items and I really urge you to put them into statute.

Mike Aupperle, Private Citizen, Las Vegas, Nevada:

I am in support of the bill. Please pass it. The biggest problem is keeping the same community association manager (CAM) year after year. The CAM should have to justify their existence. I believe that they should not be able to ingratiate themselves with three votes on the HOA board, which has nonprofessionals—amateurs—who are easily swayed by the CAMs.

Timothy Hughes, Private Citizen, Las Vegas, Nevada:

I own properties in multiple HOAs, and I am urging that you have everyone read the bids. I listened to a board that regularly approved bids without telling any homeowners, or they hired contractors to the tune of over \$100,000 without a bid. Please be sure that everyone does the bid process properly.

Robin Huhn, Private Citizen, Henderson, Nevada:

I am in favor of this bill. My HOA does not disclose companies, costs, or bids. I was on the HOA board. What I would do when any of this would come up is take my copy to the homeowners so they could read what was going on. There is not a lot of disclosure or transparency. I firmly believe that these professional companies and attorneys need to place their bids. I was on the association board when the HOA decided to hire the attorney that we have now. There were no bids. Nobody wanted to talk about hiring anyone else. The majority voted for this attorney just because the president said they should. There are many attorneys out there that are leaching off homeowners, and it is very unprofessional. We need attorneys that are going to bid because they want to

be there to help the association and the homeowners. On our board, there is a husband and wife team. Between the two of them, they have caused more problems than have been solved.

Chair Seaman:

You state that you sat on the board. Can some of these issues be handled under your own bylaws? Can you vote on material such as what is in this bill into your own bylaws?

Robin Huhn:

Yes, it all can be changed.

Chair Seaman:

Did you try to do that when you were on the board?

Robin Huhn:

I tried to do many things when I was on the board. I was very pro homeowner, but I was always voted down. My suggestions were never listened to.

John Radocha, Private Citizen, Las Vegas, Nevada:

I strongly support this bill. Evidently, the people going against it do not believe in the free market. This bill lets the sun shine in. It requires boards to get three bids and read them aloud at a board meeting. It also requires boards to get bids for professional services such as attorneys, accountants, and other professionals rather than using the same firms over and over again. This bill will create competition and possibly save homeowners money on exorbitant fees. It also prohibits two people living under the same roof from serving on the board at the same time. This would stop any conflicts of interest and possible corruption. I am in favor of this bill. Please pass this much needed reform.

Jerry Paluha, Private Citizen, Las Vegas, Nevada:

I have one comment on the previous question addressed to Robin Huhn. You can amend your covenants, conditions, and restrictions (CC&R), but who enforces them? The board members are the ones who would probably disregard obtaining three bids. I have done studies and have seen on several other boards that anywhere from 15 to 20 percent can be spent on items that are not put out for bid. Therefore, three bids are absolutely necessary. It is the only way to ensure cost constraints and to make sure the board and the management company do their jobs as required for the entire HOA. As a retired certified public accountant, I do not have an objection. I think professional services should be treated the same way as any other vendor to an HOA. This would help in letting in some younger people who may work less expensively while providing the same or higher level of service. I urge all of you to think seriously

about this. Put yourself in the same boat as if you are in an HOA, and vote this in so that we can keep people who are living together from being on the boards. We also need to get the three-bid requirement passed because it is essential to the viability of all homeowners.

Norman McCullough, Private Citizen, Henderson, Nevada:

I am in favor of this bill, and I would like to make a comment. I do not think it goes far enough. I think a change should be made to stipulate that any bids sent out by HOAs to perform work should be mandated to include quantities whenever available.

I will give you an example. If you were a contractor, and I sent a letter to you saying that I wanted you to build a bridge and wanted you to tell me how much it would cost, would that be satisfactory? It probably would not be because it does not have enough information, yet my HOA sends out bids on a per building basis. They do not tell them how big the building is or how much stucco is on it. They do not tell them what the quantity of stucco is needed. They only want to know what it would cost to paint it. It needs to be mandated that when quantities are available, they should be included in every bid.

Gary Solomon, Private Citizen, Henderson, Nevada:

The focus of my work is on HOAs and the psychological and physiological effects on them. It surprises me that we do not turn to science to answer these questions. Science has shown that nepotism is problematic. This is nepotism, and it creates problems in organizations.

History has shown this and it is something that we do not need to be doing anymore. Relatives or people under the same roof are in a position of control in a hyperstratified organization, which is what HOAs are. This is a problem. This is science and we do not need to argue the point.

Chair Seaman:

Is there anyone else in favor of A.B. 238? Seeing none, is there anyone who wishes to testify in opposition?

Michelle Goodell, Director of Community Management, Terra West Management Services, Reno, Nevada:

I do not have any problem with reasonable restrictions for the board members. However, I do want to caution you as to how far we should go because it is difficult to get people to serve on the board. Regarding bid procedures, \$500 is ridiculously low, and we would never get anything done. Also, I am glad that the reading of bids aloud is to be a summary of the bids. However, it does include the scope of work, which is quite long in most cases. I think we need

to remember that these requirements are suggestive of the members actually making the decision. It is the board members that make the decision on these bids; it is not the homeowners. Therefore, the board members are the ones who should read and review them, and not necessarily the homeowners. That information is usually shared at the board meetings. The information about conducting the bid process using *Robert's Rules of Order Newly Revised* is redundant. We are already required to conduct our meetings in that manner. I am concerned with the bill language which adds in the professional accounting and legal services. If we leave that in, it needs to be clarified. Regarding bids for legal services, let us say we already have a general counsel working with the association. Does it mean that every time we need a legal opinion we have to go out to bid? I would ask for further clarification on that.

Donna Zanetti, Cochair, Legislative Action Committee, Nevada Chapter, Community Associations Institute:

I would like to make four points. We understand that some of the language with regard to who may serve on the board might have been added to address concerns about overrepresentation from a single household. We are concerned about the impact on smaller associations where it is already difficult to get enough owners on the board. We propose that you consider allowing additional homeowners from a single household to be a candidate if there were insufficient candidates to fill the open seat.

The present scheme for elections is largely an honor system of voluntary candidate disclosure under *Nevada Revised Statutes* (NRS) 116.31034. If the candidate does not choose to disclose, there is no sanction penalty for that. What if they run and perhaps they are elected? The only way to remove them is for the membership to remove them. We propose a section that would clarify if a person attempts to run or serve on the board, despite the prohibition on doing so, that the association, acting through the board, has the authority to keep that person's name off the ballot and prohibit his or her continuing service.

The \$500 limit is too low. It is going to delay repairs and maintenance. Keep in mind that boards meet, at a minimum, four times a year. They can meet more often, but four times is the minimum. As an example, graffiti removal would routinely cost more than \$500. While you are waiting to get the bids, more graffiti may accumulate, which would raise the cost. You would be waiting from one meeting to another. We need a more reasonable figure that allows boards to conduct their business. One size does not fit all here, and we want to take into account that it may not be possible to get three bids.

Chair Seaman:

Have you met with the sponsor of the bill?

Donna Zanetti:

Yes, and Mr. Gordon is going to address that.

Chair Seaman:

Is the sponsor aware of these proposed amendments?

Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies:

Yes, that is correct. I thank the sponsor for meeting with me. I have started working on an amendment with her. The amendment would focus on persons residing together instead of the prohibition of family or marriage. It would be more of a carve-out with respect to an insufficient amount of candidates. Also, we would add a new section. Currently, when state law determines a candidate should be ineligible, there is no mechanism to take that person off the ballot. We will add some language saying that if someone is ineligible, we can actually take that person's name off the ballot before the ballots are sent out.

Regarding section 2, you have heard that \$500 is too low. We are going to work with the sponsor to maybe use a percentage of the budget. That may be something that will work with both small and large HOAs.

Marilyn Brainard, Private Citizen, Sparks, Nevada:

I was not going to testify on this bill, but I feel compelled to do so. This is regarding the bids for legal services. Many associations have suffered because they did not understand that you have to engage legal counsel who understands association law, especially NRS Chapter 116, which gets bigger every two years. You need someone who really practices in that area. Our board decided to interview for legal counsel, and the interviewees were invited to a meeting. We were able to talk to them in order to be satisfied that we were going to obtain the best legal counsel we could. Soliciting three bids for an attorney is not appropriate for an association. They need to go with known attorneys who have practiced in this area.

Kathie Chism, Private Citizen, Las Vegas, Nevada:

I am on the board of directors at Yellowstone HOA, and I have no problem with most of this bill. I do have a huge problem with three bids. At our meeting last week, we solicited eight bids for six different projects. We did not get three bids back for any of them. For one project we did not get any bids back, and for some projects we only got two back. We have an impossible task of

trying to get three bids. People do not want to bid, but we try. Maybe you can change the wording to say solicit a number of bids. There is no guarantee you are going to receive them. We had to table one of the projects because we did not get back any bids.

**Barbara Holland, representing H&L Realty and Management Company,
Las Vegas, Nevada:**

The problem with section 2 is it does not talk about emergencies. I received a phone call this week regarding an electrical problem that needed to be taken care of before someone got electrocuted. There was a sewer backup where we had to call an emergency plumber. We had a car that drove through a building and is sitting in someone's bathroom. The insurance company will have to take care of that one. I will be more than happy to try to get bids for these types of emergencies but, if this passed, I would have a lot of problems in terms of responding to emergencies. One of the problems we have is that when you go out for bids, it does not matter what the dollar amount is. It is very difficult to get three bids even for something under \$1,000. Let us assume that a roof needs to be replaced. We are not professionals and we do not have the same type of resources that the counties and cities have for someone who is going to write up the specifications. When these bids come to the board and they are opened, no one can make a decision because these bids need to be put on a spreadsheet. Somehow people have forgotten that, and there needs to be a reality check. What happens is I can have the board read the three bids and then tell the homeowners that we will have to take something that is very complex and get additional material and additional expertise.

Another thing I would like to mention is about the HOA sting, which should have been called the construction sting because it was the construction company who initiated it. Those people were not married, and I always wondered where he found all of these people in the first place. This is where part of the problem is, and I am not sure where the balance is. Many investors own quite a few homes. Some of these investors own 30 or 40 percent of the HOA properties, which is now turned into an apartment community. By law, they can put tenants who work for them in their units and those tenants can run for the board. I can own a company that possesses perhaps 20 percent of the HOA properties and can have my employees sit on that board. That is something to be more concerned about. A husband and wife may not agree on anything, but employees have a real problem because if they do not vote the way the employer wants them to vote, they can be fired. You have to have some sort of balance, although I am not quite sure what that balance is. I can appreciate the fact that someone who owns up to 40 percent of the HOA has an interest.

Chair Seaman:

Ms. Holland, thank you for your testimony.

John Leach, representing Real Property Law Section, State Bar of Nevada:

We have submitted a written response to this provision, specifically section 1, that addresses some of the issues regarding eligibility to serve on the board. It sounds like Mr. Gordon is working with the sponsor regarding people living in the same homes. We will wait to see what comes out of that, and not address it right now.

The section regarding owning multiple units has apparently been withdrawn. However, Assemblyman Anderson raised a good question about personal profit or contribution. It seems that we keep overlooking the fact that there are already statutes in place that specifically address this. If you refer to NRS 116.31084, it specifically requires a member of the board who stands to gain any personal profit or compensation to disclose it to the board and to abstain from voting on the matter. Are there people who are dishonest? Yes, in every walk of life, but there already is a statute that addresses Assemblyman Anderson's concern. You do not always know when you first run for the board that an issue may arise in the future. We think the statute already covers that point. There is also a provision that prohibits a member of the board of directors from having a contract to provide services. Therefore, we feel that is already addressed in the statutes.

With respect to section 2 regarding bids, there is already a provision in *Nevada Administrative Code* 116.405. It specifically says that when practical, a board of directors is supposed to get three bids. It is broader than what has been suggested, but it does include services. I am an attorney, and over the past several years, more often than not, I am being asked for biographies, fee schedules, et cetera. I believe this has already been taken care of. The bid amount of \$500 is absolutely unworkable in associations. It is an inefficient way to do business. We need to have a much higher threshold, if there is going to be a dollar amount placed in there. Perhaps using percentages might be a better option.

Eric Theros, Vice President, Board of Directors, Nevada Association of Community Managers:

We are in support of the bill. We are okay with transparency and requesting bids, even for services. The issue we have is with the \$500 threshold. I believe Garrett Gordon has mentioned that they are working on an amendment making it a percentage of the budget. We would definitely be in support of that. Please keep in mind that a simple roof repair could range anywhere between \$600 and \$1,900, and can happen on any given rainy day.

Amy Groves, President, Nevada's Finest Properties LLC, Las Vegas, Nevada:

It sounds like the other side wants more proposals, especially from a manager or a lawyer. In defense of the lawyers, I can say that sometimes you are better off paying extra for a specialized lawyer than calling half-price lawyers to get it cheaper. In the long run, you will spend much more than if you hired an expert in your own field. We can call any HOA lawyers at any time to get quotes. That has never been a question.

With regard to changing the manager often, I do not support it. I still manage the first HOA that I started managing ten years ago. I have a history and rapport with this community that you do not get by changing managers all the time.

The \$500 spending limit is just unrealistic, even for something minor. Let us say that a pool pump goes out, it is the middle of summer, and your pool is going to turn green if it is not resolved immediately. If I need three bids, what am I supposed to do? Perhaps I should go to Leslie's Pool, take an envelope, and say, "Dear clerk, don't tell me what it is, but put your bid in this envelope and seal it so that I can take it back." It is not realistic. If we have known vendors that we already do business with, we should be able to use them for these smaller items.

Chair Seaman:

We are going to move to neutral testimony on A.B. 238.

Jacqueline A. Gilbert, representing SFR Investments Pool 1, LLC:

We had originally signed in as opposition because we had a problem with section 3 in the original bill regarding owning more than one unit in the association. However, I am working with the sponsor and we have since changed our position to neutral.

Mark Leon, Private Citizen, Las Vegas, Nevada:

I was originally against this bill, but I switched to neutral seeing that a lot of what I was against is going to be addressed with amendments. I would like to emphasize Assemblyman Jones's point about being able to read a summary to the membership. It really would be helpful if the board had the ability to open the bids before the meeting so that the community association manager could assemble the bids together in a spreadsheet format, and then the board will not be sweating bullets in front of the homeowners while trying to figure out what to do.

Chair Seaman:

I am going to invite the sponsors back up to conclude the testimony.

Assemblywoman Dooling:

I would like to thank you for allowing this bill to be heard this evening. I also would like to thank those who were in opposition or are still in opposition for their many ideas and for contacting me to work on this in order to bring it to a good place for everyone.

Jonathan Friedrich:

In NRS 116A.630, subsection 20, it says, "Obtain, when practicable, at least three qualified bids for any capital improvement project for the client." This is only dealing with capital improvement. Assembly Bill 238 would also deal with existing ones.

Chair Seaman:

Thank you for clarifying that. We are now going to close the hearing on Assembly Bill 238, and will open the hearing on Assembly Bill 254.

Assembly Bill 254: **Makes various changes relating to common-interest communities. (BDR 10-739)**

Assemblywoman Ellen B. Spiegel, Assembly District No. 20:

I know that you have had a long, late evening with other bills to get through, so I am going to go through this as briefly but comprehensively as I can. I would like to start by talking about the legislative intent behind this bill. This bill is designed to do four things: It will help protect individual homeowner assets, it will help protect and conserve the common assets of the association, it will streamline administrative tasks making it more efficiently run, and it will strengthen the financial viability of the association, reducing the need for special assessments. Everyone who lives in a homeowners' association (HOA) is used to paying the monthly assessments. We want to make sure that special assessments are not really required unless there is truly an extraordinary occurrence. I would now like to break down the bill by these legislative intent goals. I have folks who will come up and speak to the various sections. This is just a broad overview.

In terms of protecting individual homeowner assets, section 1 allows the association to enter a unit to fix water or sewer leaks, or to remediate mold damage. [Continued reading from PowerPoint presentation ([Exhibit K](#)).]

Section 21 allows a unit owner to have a vehicle towed if it is parked in the unit owner's assigned parking spot. Currently, they are not allowed to do that, which has been an issue for several of my constituents. The second big area is to preserve common assets.

Section 1 allows the association to remediate damage in common elements such as roofs, pools, et cetera.

Section 4 protects the association from liability and lawsuits by requiring insurance, including coverage for elected and appointed directors.

Section 5 revises audit procedures and requirements. It makes it less onerous for smaller associations unless a majority of owners vote that an audit is needed. [Continued reading from PowerPoint presentation ([Exhibit K](#)).]

You will hear later from one of my constituents who resides in an association where they provide water. My association provides water as well. I do not get a separate water bill. During the downturn, there were so many homeowners in arrears that they were having difficulty paying their bills. The figure of assessments that are in arrears for this small, 154-unit complex is really shocking. They know they will not be able to get their money back. They want to make sure that going forward, we can have some sort of provision for this.

There are two conceptual amendments. The first regards a rainy day account. Because HOAs are all nonprofit corporations, they are not allowed to keep significant amounts of money from one year to the next. They are not allowed to have retained earnings the way other businesses are. This would give them an exclusion under the law to put some money aside in case there is bad debt, which can be used to pay for services that the association cannot just turn off. First of all, there are health issues to consider. You cannot cut off the utilities for a unit. It causes health issues and it is not allowed under *Nevada Revised Statutes* (NRS). When you cannot turn off the utilities, you will need a way to pay for them.

Another idea that was presented to me is to allow the associations to recoup this as part of the maintenance abatement. This is addressed in statute for when units are abandoned or foreclosed. If there is a problem, the HOA can go in and fix it. It is not a super priority, but it is somewhat of a priority allowing them to get that money back at the time of foreclosure.

The second conceptual amendment is to define what adequate reserves are and require an actuarially sound approach to funding. To give you a little bit of background, the association has an operating budget and a reserve budget. The reserves are used for the assets that must be updated over time because of depreciation. If it is just a simple repair, the operating budget is used. If it is a capital project, that is part of the reserve budget, and is included in the reserve study. One of the things about reserves is that once the association allocates money from the operating budget into the reserve budget, it cannot

flow back to the operating budget. Therefore, during the downturn, when many associations were having financial problems, they were not funding the reserves adequately. We also heard some examples earlier this evening addressing what happens when you do not have enough money for your reserves. We will have some testimony later with ideas on how to do this in a way that is not so onerous for the associations. It allows them, in an actuarially sound basis, to get to where they need to be so that when they do need to replace the pool, change out all of the roofs, or redo the tennis courts, the money is there. If anyone has questions, I am happy to answer them, or we can bring up others to testify.

Assemblyman Elliot T. Anderson:

I want to talk to you about the amendments to NRS 116.3116 in section 6, subsection 1, which is the super priority lien section regarding the regulations for what can be collected. Your amendments look like a pretty big shift citing NRS 116.310313. That opens the door quite a bit, does it not?

Assemblywoman Spiegel:

Because I have been working on this since the super priority lien issue in 2009, I am pretty comfortable with these. In terms of the regulations you speak of, there were a number of people, including myself, who worked for several years on the agreement that was reached to cap the collection costs. The intent is to clarify that the collection costs can be done in addition to the super priority lien. I will give you an example. While working on Assembly Bill No. 204 of the 75th Session, which expanded the super priority lien from six months to nine months, I was familiar with an association in my former district, Assembly District No. 21. At the time, the association's assessment was \$10 per month. They had well over 1,000 homes and really needed that \$10,000 to take care of their obligations. At \$10 per month, they could not afford to hire a collections firm unless they could have a provision to recoup those monies separately. Obviously, the larger the assessments are, the magnitude of the problem increases, although they do have some resources. Looking at this as a matter of policy, we have to strike the middle ground to see what is right for as many people as we can get it right for. The major intent of this amendment is to clarify that.

In addition to the folks who are going to come up in support of the bill, I met with Jon Sasser of Washoe Legal Services and the Legal Aid Center of Southern Nevada. He has some concerns with this section, and we are having ongoing discussions. Jon was not able to be here tonight, but I told him that I would enter his concerns into the record.

Assemblyman Elliot T. Anderson:

I just want to acknowledge your bravery for opening up NRS 116.3116.

Richard Layton, CPA, Layton Layton & Tobler LLP, CPAs, Las Vegas, Nevada:

I have been an auditor in Las Vegas for over 40 years. I am also a certified fraud examiner for an international organization with over 60,000 members. I have served on my board for ten years, with two years as treasurer, and have been the president since then. I should also disclose that I am a certified public accountant (CPA) member of the Commission for Common-Interest Communities and Condominium Hotels. I am speaking tonight as a CPA and as a member of my board.

My concern is regarding the funding of the reserves. Currently, there are three methods allowed. They are the baseline, threshold, and full funding. I am a strong advocate of the full funding method. The baseline method allows the reserve balance of an association to be zero at some point, meaning they have no money even though they may be an association that is 20 years old, with deteriorating roads, roofs, et cetera. I do not think this is a good method. The threshold method is more stringent. To give you an example of the full funding method, let us say the HOA is required to maintain the paint on the units, and they need to be painted every ten years at the cost of \$100,000. In a reserve study, if the last painting was done two years ago, there would be eight years remaining before the next painting. In the reserve, there should be two-tenths of \$100,000, or \$20,000, set aside to repaint the units. I believe in full funding because the individuals who live in the community and have the benefit of the common elements, whether it be roads, buildings, or other amenities, should pay for their deterioration over a period time.

The problem is that with three methods, it is very easy to justify using a less efficient method. As a CPA and an auditor of an association, I have seen associations, with the hardships of the financial environment that we have lived under for several years, the reserve balances have decreased substantially. I am concerned that we are progressing to a point where, in the near future, there are going to be major costs that the existing homeowners will have to bear at that time because the people who had been living there for many years may have moved.

My suggestion is a consumer protection idea; I recommend full funding. I understand that we are in an extremely hard downturn, there are a lot of people struggling, and there are a lot of associations that have a number of vacancies. What I have recommended for consideration is adoption into law the full funding method with steps to progress to that. Reserve studies should be done every five years, although I do not think it is prudent if an HOA has

paid for one just three months ago. The association should not have to pay for another one outside of the normal processing time. Even though I am a strong advocate for the full funding method, I am recommending the bill consider a level of 70 percent funding, which is lower. Also, once a reserve study is done, the association should be required to add to the reserves 5 percent of what the reserve study recommends. Even if an HOA has no money in their reserves, it would allow for 14 years to get to 70 percent. If times were better, I would probably recommend 10 percent per year. One specific method should be adopted. [Also submitted a conceptual amendment ([Exhibit L](#)).]

Chair Seaman:

Thank you for your testimony.

Eric Theros, Vice President, Board of Directors, Nevada Association of Community Managers:

I want to thank Assemblywoman Spiegel for her hard work and the wide reach of this bill. I would like to focus on section 1 of the bill regarding water and sewage leaks in vacant units.

In condominiums and multifamily housing, each owner is responsible for his or her own unit. If you are a downstairs unit owner and the upstairs unit is vacant and has a toilet leak damaging your unit, unless that leak is repaired, you are unable to make your own repairs. The only entity that would be able to make those repairs would be the association. Anyone else would be trespassing on private property. Section 1 of this bill would allow the association to enter the unit, make the necessary repair, and remove anything wet to prevent mold. This would then allow surrounding unit owners to repair their own units. Without this portion of the bill, these owners would not be able to repair their own units.

John Leach, representing Real Property Law Section, State Bar of Nevada:

While I am in support of the entire bill, I want to talk about sections 2 and 3. We appreciate Assemblywoman Spiegel including this subject matter in her bill. Section 2 would fix a problem with the current statute regarding elections by acclamation. It will reduce the costs of the process and it will streamline the process thereby making it quicker and more efficient. Currently, at the time the election is to be set, if the number of candidates is less than or equal to the number required, you would have to give another notice and mail out more material, which takes more time. By removing the second layer, the process would be completed more quickly and cost-efficiently. We are very much in favor of changing the statute. I believe the legislative intent was to do it this way years ago, but it wound up making it more expensive and time-consuming.

Section 3 specifically addresses a problem that has arisen because of the downturn of the economy. It addresses when property is transferred, properties to be developed have not yet been developed by involuntary means. Under the current statute, the special declarant's rights and the developmental rights, which are specific to a developer's ability to complete a project, oftentimes become extinguished or they lapse. This affects the declarant who owns the project and is trying to complete the project, or the successor who may no longer have the special declarant's rights which are essential to be able to complete the project. Things like model homes and advertising have been lapsing, making the property unable to be developed without membership approval to reinstate these rights. This proposed amendment would say that the special declarant's rights pass, even through an involuntary transaction such as a bankruptcy or foreclosure, unless the person that acquires the property identifies rights they do not want. The person can choose to not absorb all of the special declarant rights if they do not want to. We do not want to put them in the position where they do not have the ability to exercise those rights. We think this is a very favorable amendment which addresses both economic and developer issues.

**Barbara Holland, representing H&L Realty and Management Company,
Las Vegas, Nevada:**

I just want to talk about section 6, subsection 3, paragraph (c). This addresses fees, charges, penalties, late charges, et cetera. Everyone is acting as if all that is brand new. We know that the Nevada Supreme Court is going to make a decision as to what constitutes a nine-month super lien. I want to bring something to your attention. *Nevada Revised Statutes* 116.3102 addresses limitations of the powers of unit owners' associations. Subsection 1, paragraph (k) states, "May impose charges for late payment of assessments pursuant to NRS 116.3115." Also, in NRS 116.310313, regarding collection of past due obligations, subsection 1 states the following: "An association may charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation." Subsection 3, paragraph (a) goes on to say, "'Costs of collecting' includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee...."

You should also remember that in 2009, the Legislature asked the Commission to establish certain types of caps, which they have. The Legislature created a second super lien which pertains to the maintenance of the exterior of the unit as referenced in NRS 116.310312, subsections 4 and 6. This part of the law explicitly states that interests, late fees, reasonable fees, and collection costs are included. Why would the Legislature add all of these types of fees as

collectable items in the maintenance section and not within the primary source of income, which is the operation of the association communities? Also, NRS 38.300, subsection 1 defines "assessment" as follows: "(a) Any charge which an association may impose against an owner of residential property pursuant to a declaration of covenants, conditions and restrictions, including any late charges, interest and costs of collecting the charges; and (b) Any penalties, fines, fees and other charges which may be imposed by an association pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 or subsections 10, 11 and 12 of NRS 116B.420."

The purpose of me providing you with NRS history is because in current law, we have always had the right to collect late fees, collection costs, et cetera, for delinquent homeowners. When the law was created, somebody forgot to include in the super lien section all of those things that are already in the body of the law. Therefore, this proposed change is to include in the section addressing foreclosure what is already in the body of the law.

Michael Cohen, Private Citizen, Las Vegas, Nevada:

I appreciate the opportunity to speak this evening. I would like to acknowledge and thank Assemblywoman Spiegel for introducing this legislation. I am the common-interest community board president representing over 1,700 owners in three different communities. I would like to provide my support for this bill in its entirety. Common-interest communities have an abundance of challenges, and I am happy to see positive, sensible legislative changes submitted to improve our existing statutes. Assembly Bill 254 contains many enhancements in efficiency, the election process, emergency access, the remediation process, and tax-exempt common-interest community license fees, among other various changes and corrections to NRS Chapter 116.

One item in this bill specifically addresses the emergency entry into units when the unit is vacant or the absentee owner refuses to, or fails to, respond to water or sewer leaks. The issue becomes elevated when it exists in a multilevel condominium but can also negatively impact single-family units as well. The damage is generally covered by the homeowner's insurance, leaving the association free from the expense for the repairs. However, in many cases, the unit owner is on vacation, no one can be contacted, and the lender is unable to react. At that point, the association assumes community responsibility to make the repairs and bears the associated expenses. This failure can result in thousands of dollars in expenses to the association for repairs, remediation, and reconstruction. In many cases, for a variety of reasons, the expense is unrecoverable. In 2014, a community that I represent experienced expenses in excess of over \$25,000 for more than 13 units directly

attributable to these issues. These expenses can have quite an impact on financial budgets. This bill would allow the association to minimize those expenses by reacting quickly, effectively, and without delay. In some instances, failure to quickly identify the problem and act immediately can result in health and safety issues not only to the affected unit but to adjoining units as well due to water or sewer leaks. Assembly Bill 254 addresses that urgency and will help minimize the expenses to the association and its members.

Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies:

I will simply say, us too. We appreciate Assemblywoman Spiegel's legislative intent and her time. We will continue working with her on any language that may need tweaking before the work session.

Mark Leon, Private Citizen, Las Vegas, Nevada:

I support this bill for the reasons stated previously.

Chair Seaman:

Is there anyone opposed to A.B. 254?

Jonathan Friedrich, representing Nevada Homeowner Alliance:

I am a former commissioner on the Commission on Common-Interest Communities and Condominium Hotels. I am the legislative affairs director of the Nevada Homeowner Alliance.

I am here to speak in opposition of A.B. 254 for several reasons. Section 1, subsection 2, paragraphs (b) and (c) allow the HOA to enter a unit without indicating how entry will be made. Will the owner be contacted before entry? This change assumes that the unit owner is responsible for leakage and repairs at the location where the leak has occurred. The bill is not clear if the covenants, conditions, and restrictions (CC&R) require that the association is responsible for repairs to the lines. These lines can be common elements. There are many high-rise buildings that share common elements such as water and sewer lines that feed multilevel units. The bill does not address this type of situation and can be interpreted as holding a unit owner responsible even if the lines are common elements. This places the repair cost on an owner who is not responsible. If emergency entry to a unit is made, will a supervisory individual be present to ensure that private property is secure?

Section 1, subsection 4 allows entry to a vacant unit without giving notice or making an attempt to contact a unit's owner.

Section 1, subsection 10, paragraph (a), would allow a board to redo the exterior of a home, including repainting it or changing the exterior trim on windows. This goes beyond maintaining overgrown shrubbery or removal of snow or weeds.

The deletion of the existing language, as shown on page 7, will lessen the opportunity for owners to run for their boards and to give a second notice that candidates are requested to run for the board. We have heard from a number of managers that it is hard to get people to run for the board. This would make it even harder.

Nevada is a signatory to the Uniform Common-Interest Ownership Act (UCIOA). The last revision to this act was November 11, 2011, which prevents what is being attempted in this bill. With regard to section 3 of the bill, the language in the UCIOA on pages 143 through 149 does not allow a successor to a special declarant to renege on the obligations of the original declarant, even after a bankruptcy, for the common elements promised in the original offering statement. Those owners who purchased homes in a new community that went broke would be screwed as they would not get the common elements that they were promised and have paid for. This is a bottom-feeder investment developer's dream.

In section 5 on page 14, this change was attempted with Assembly Bill No. 98 of the 77th Session, and it was rejected then. This would allow for possible embezzlement of smaller associations as audits would be four years apart. Theft would not be noticed for extended periods of time. This was offered in order to reduce costs for an association. In reality, it would cost more to hire an accountant who would spend more time verifying facts and figures.

In section 6, the inclusion of NRS 116.310313, which deals with past due obligations and costs of collections, conflicts with Assembly Bill 240. This is the heart of a case which is currently before the Nevada Supreme Court.

Section 7 of this bill was part of a long, hard fight for change in the costly arbitration trap which costs homeowners tens of thousands of dollars. Thanks to Assemblyman Ohrenschall's Assembly Bill No. 370 of the 77th Session, a dispute resolution bill, which this program is part of, there is a low-cost way of resolving disputes. It must not be dismantled or done away with. It has proven to be effective and worthwhile. Why would something that is working well be deleted?

Sections 8 through 17 all deal with eliminating the referee program. It must be retained. Regarding towing, the Department of Transportation requires 48 hours advance notice. A rainy day account may run amok with the Internal Revenue Service (IRS) because it would violate IRS Revenue Ruling 70-607, which says you cannot have excess funds without paying tax on it or giving the excess funds back to the homeowners.

Mike Aupperle, Private Citizen, Las Vegas, Nevada:

Please do not pass this bill. Senior citizens living in the over-55 communities are already paying to have the boards and community association managers hit us over the head with a sledgehammer. If you pass this bill, you will allow them to use a nuclear bomb on us, and we will have to pay for it through our assessments. Please do not pass this.

Robin Huhn, Private Citizen, Henderson, Nevada:

I would like to quickly share something with you. Those of us who are here today opposing this bill are homeowners. We are not professional attorneys or professionals in the HOA industry. We do not have that language and information available to us. We come across as very emotional because we are. I just want you to please take that into consideration when we speak. I am definitely not in favor of A.B. 254. This is a bill that is a disguise for unjust enrichment for the HOA industry. Audits are always necessary because if money is taken from an HOA with a \$45,000 per year budget, it will have the same impact as if it were taken from an \$8 million budget.

Bob Robey, Vice Chairman, Nevada Homeowner Alliance:

Jonathan Friedrich spoke eloquently. Dr. Robin Huhn spoke eloquently. We are passionate. We are not paid. We have no dues, and we do not collect money. We are here because we care. That is our only motivation. I would like to refer to section 20, subsection 2, paragraph (b), which I believe is a good measure in this bill. Of course, no one spoke to it because they are not familiar with NRS Chapter 81. I am; I was on my board, and we are not an NRS Chapter 81 entity. We are not able to do some things because of it.

I would like to point out two things that I find egregious. Where the bill talks about the audits and the split of the funds, it inserts the word "majority." An audit could be ordered if a majority of the owners vote. I am sorry, but I am really burning at the ears and if you had color television, you might see me turning red right now. We have heard the industry speak saying you cannot get a 50 percent or over majority. We put out ballots, and we are lucky if we get back anything. That is the industry lying. If you want an audit of your association, you cannot have it for 15 percent of the homeowners' votes.

You will have to have 50 percent. This was worked out very nicely a couple of years ago. It passed by 100 percent, which means Assemblywoman Spiegel voted for it. In fact, Assemblywoman Spiegel voted for almost everything that is in this bill.

The other thing that I find out of line is the towing verbiage found in section 21. It says the unit owner has to go along with subsection 2. Subsection 2 has nothing to do with a unit owner and the towing of vehicles. After towing a vehicle, it must be reported to the police so the owner will be able to locate his vehicle. They will tell him where it has been impounded. To have this kind of language, and the language above it, which allows for an unmarked spot to have a car towed, is ridiculous. [Also included as an exhibit was written testimony ([Exhibit M](#)).]

John Radocha, Private Citizen, Las Vegas, Nevada:

I am here to speak against A.B. 254. There are many moving parts to this bill, all of which are not homeowner-friendly; they are gifts to the HOA industry. The one that really bothers me is after many years of fighting for a low-cost dispute resolution process between homeowners and their boards, Assemblywoman Spiegel wants to eliminate that by doing away with the referee program from the Real Estate Division, Department of Business and Industry. Come on, who are we going to go to then?

The accounting process would be changed to make it harder to discover theft of association funds. Boards would be allowed to do extensive rehab to the exterior of homes rather than just maintain the grounds. The way this bill is written is confusing. It would lessen the opportunity for owners to run for the board, or letting them know additional candidates are being asked to submit their names to run. For these reasons and others, this bill should not be passed. It is not a homeowner-friendly bill.

Chair Seaman:

I am going to remind those testifying to be respectful or I will have to stop your testimony.

Gary Solomon, Private Citizen, Henderson, Nevada:

I am absolutely and vehemently opposed to A.B. 254, specifically looking at the concept of mediation and the change to that. In my research, I do everything that I can to relate personally. Therefore, I am going to relate a personal story to you. I filed a complaint through the Nevada Real Estate Division against my HOA for \$100. The arbitrator on the case awarded attorney's fees to the attorney in the amount of \$7,348.17, which is an amount 70 times greater than my original request.

Chair Seaman:

Sir, I am going to ask you to please testify to A.B. 254.

Gary Solomon:

The testimony I am giving to you is related to the change of mediation in the revision. Is that acceptable to you?

Chair Seaman:

I would like you to stick with the testimony regarding A.B. 254. This is not personal; this is about the bill.

Gary Solomon:

This is about the special mediation. My position is that I am absolutely opposed to this being removed. Specifically, as in my example where I was going for a \$100 claim, I was billed \$7,318 by the attorney because it was arbitration. If it were mediation, as it is now, it would have been \$250. Intuitively, you do not have to dust for prints on this, do you? This is stealing; it is grand theft. Leave mediation the way it is. Do not change it. It is the only hope for the homeowner to have some fair representation without having this money go into the hands of the attorneys.

Robert Frank, Private Citizen, Henderson, Nevada:

I have listened carefully to all of the objections to the bill, and I have listened to all of the proponents of the bill. I have to say that this is a classic case of people with conflicts of financial interest who are wishing to change the law to make more profit from people and associations for no valid reasons. I cannot see anything of redeeming value. I agree with everything that Mr. Friedrich and Dr. Solomon have said. This is absolutely in the face against the homeowners. As a representative of our people, I hope you keep that in mind. It really is offensive.

I would also like to make a side comment. This evening there have been two or three people that have mentioned other people's names when they testify. I would like to encourage the Chair to discourage that sort of name-calling in order to simply deal with the issues. I am personally offended when I hear someone using someone else's name when they can just object to the point.

Chair Seaman:

We will now hear from anyone in the neutral position.

Jack Webb, Private Citizen, Las Vegas, Nevada:

I am a board member and treasurer for my HOA. I wanted to speak about sections 5 and 21 of the bill. Section 5 has to do with the audit. Currently, if the budget is \$45,000, they are never audited; from \$0 to \$45,000 is never audited. This will change it from \$0 to \$1,500 which is the next standard. There was concern that you could steal, but you could not with this change.

Regarding section 21, it was indicated that this would fall under the transportation section. The only chapter in the NRS for transportation is Chapter 408. However, NRS Chapter 408 is not in this bill. Towing is in the transportation chapter, NRS Chapter 706, which is also not in this bill. This bill points out NRS 487.038 which says that if it is a designated space, as opposed to someone's remark of it being unmarked, they can immediately tow. *Nevada Revised Statutes* Chapter 116 does not use the term "towing"; it uses the term "removal." Therefore, I am speaking neutral because I want the remark that was designated in the bill to also be included into NRS 116.3102, subsection 1, paragraph (s). I feel the association staff would not recognize the fact that you can immediately tow a vehicle that is in a designated space.

Pamela Scott, representing Howard Hughes Corporation:

I did not intend to testify at all, but I am going to testify as neutral because I think there does need to be some clarification on the auditing section. It makes it more stringent, not less. I think that people are misreading it. The gentleman who spoke before me did indicate that you do not have to have anyone look at your books if your budget is below \$45,000. If your budget is below \$75,000, all you ever have to have is a review. You do not ever have to have an audit. You will have to have an audit every five years when you reach \$150,000. This is more stringent, and will have more eyes on it, not less.

Jacqueline A. Gilbert, representing SFR Investments Pool 1, LLC:

I will speak specifically about section 6 of the bill. We appreciate any clarification of what would be included in the super priority lien. As for the remainder of the bill, we remain neutral.

Assemblyman Elliot T. Anderson:

Can you give me your opinion on what that section of the bill does?

Jacqueline Gilbert:

Specifically in section 6, subsection 2, paragraph (c), what I see is that there is an inclusion of the fees. The fees, costs, et cetera, would all be collectable on a foreclosure. The cost of collection is what we are looking at. It can be leveled as an assessment, and the cost of collection would have to be paid in order to take care of a super priority lien.

Assemblyman Elliot T. Anderson:

Do you think it goes beyond the current regulation?

Jacqueline Gilbert:

Yes, I do. Adding NRS 116.310313 into this section of the bill probably increases it. The remainder of it is addressed in NRS 116.3116, but the addition goes beyond that.

Assemblywoman Spiegel:

Thank you for allowing me to come back up. I just wanted to make a few additional comments for the record. Nobody from the opposition contacted me prior to this evening. Therefore, all of the concerns we are hearing are being heard for the first time. There are a couple of other points that I would also like to make.

As far as leaks in units when it comes to water and sewage, we have a number of residents who are snowbirds. For example, my mom is a snowbird in Florida. The laws are different in Florida than they are here. She lives in a condo and the unit above her had a sewage leak while she was away for the summer. Because her association was not able to enter her unit to begin remediation of the sewage that was leaking down from the ceiling, she wound up with tens of thousands of dollars worth of damage.

The audit issue has been addressed previously. However, I did want to talk about two other things. The first is the issue of towing. Mr. Jack Webb, who was here earlier and is one of my constituents, initially contacted me. His association is located near the intersection of Tropicana Avenue and Maryland Parkway, which is not the best area. Because it is near the university, many of the owners rent out their units. He told me stories about folks who own units and live there and who work late. Some of them work until 2 a.m. They would come home and some of the student renters would be parked in the assigned parking spot that belongs to these homeowners. If you live in a private house and somebody parks in your driveway, you have every right to have that vehicle towed. If you live in a unit of a condominium where you have an assigned spot, you do not have that right currently. For young women, it is unsafe getting home at 2 a.m. and having to park outside of the complex and walk home unescorted in an unsafe area because someone parked in their parking spot.

I was expecting another constituent to talk about assessments that are in arrears. The 154-unit complex that I spoke of earlier has \$53,000 of assessments that are in arrears. The HOA has been struggling to provide the services to the folks who are paying. It has created a severe hardship for them.

As far as mediation is concerned, as shown on page 25 of the bill, it is very clear that the mediation can still continue. The big piece in here is that the prevailing party would pay for it.

Regarding the collection costs of the super priority lien, those costs were capped, and it was part of the consensus agreement that is in regulations. I do not believe this expands it.

Finally, someone in opposition made allegations about me personally. I believe they said this legislation was brought forth by someone who had ulterior motives and personal profit motives. For the record, I want to state that I do not work in the HOA industry, and I do not serve on an HOA board. I do own two homes, both of which are in HOAs. However, there are 500,208 units in HOAs and my owning two of those really does not give me any special interests that anyone else does not have. My motives for putting this bill forth are to help protect homeowners and the assets they have in associations. I want to make things work better for Nevadans. I thank you for your consideration.

Chair Seaman:

At this time, we are going to close the hearing on Assembly Bill 254, and we will take a two-minute recess [at 9 p.m.]. The meeting is called back to order [at 9:05 p.m.]. We are going to open the hearing on Assembly Bill 329. Would the sponsor like to come up?

Assembly Bill 329: Requires members of the executive board of a unit-owners' association to complete certain courses of instruction. (BDR 10-744)

Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1:

This bill is something that I am bringing on behalf of one of my constituents. In the past, before redistricting, I only represented about three homeowners' associations (HOA). After redistricting, two-thirds of my district is now HOAs. I have learned a lot along the way, and know that any time we talk about HOAs, it is very controversial, passionate, and emotional. I was looking for a solution among my constituents on something that would really help folks on both sides. Looking back at my own personal experience as a Girl Scout leader, training always seemed to make things better so that people knew what the rules were and how to navigate. There was also the possibility to ask questions of the people who were leading them. I apologize because I have not yet submitted a friendly amendment because I did not know about this hearing until 5 p.m. today. Although it has not been submitted to the Nevada Electronic Legislative Information System (NELIS), I do have the amendment with me.

Currently in statute, a member who is appointed to an executive board of the unit owners' association must certify within 90 days that they have read and understood *Nevada Revised Statutes* (NRS) Chapter 116, which is the Uniform Common-Interest Ownership Act. It is currently an honor system. It is very difficult to understand NRS Chapter 116 in 90 days, even for those of us who have been in the Legislature. I am proposing that they have some hands-on training as opposed to just reading it for themselves. We know in the Legislature that interpretation is everything. Our current law says that within 90 days you should certify that you read and understood the chapter. I am looking to provide some real education and training to the board members. I believe it is a service for the homeowners, the board, and the management companies. It is hard to get folks to serve on the boards, but it is a real service to allow them to have some real classes. Honestly, it may make the Commission on Common-Interest Communities and Condominium Hotels do a better job of ensuring that people get the real education they need. I am happy to answer any questions.

Chair Seaman:

I have heard a lot about how difficult it is to get people to serve on a board, and I think by telling them that they have to take these courses now is going to make it even more difficult. That is my only reservation. I agree with you that education is great, but these people serve for one or two years. To have to take these courses may deter a lot of good people from serving on the board.

Assemblywoman Kirkpatrick:

I respect that, but I will tell you the same can be said for any volunteer organization that you may be a part of. I know it is really hard to find leaders because they do not want to take the time for training. What I see as the real problem is many people serve on the board for the HOA and they do not know all of the rules. It takes us hours of discussions during session to even have this much of an understanding. I think people will want to serve more knowing that it is a little bit more structured and that there are real rules involved in doing so.

There is one HOA in my North Las Vegas district that was fining people for leaving their recycling trash cans out. The fine was \$250 for something that was not their fault. The City of North Las Vegas agreed to recycle with Republic Services who put big trash cans in everyone's yard expecting senior citizens to carry them across the hot rocks into the back yard. I went with my constituent to the board, and it appeared that no one could even understand that they could deviate from pieces of the law. I think that HOAs are great when they work. However, when they are bad, they are really

bad and people do not get any resolutions. A little bit of education can go a long way. I do not see what the harm is to see if we can do a better job on educating. It brings value to holding a certificate showing that you actually attended a class. We heard a lot of things tonight and it is hard to get volunteers, but I think it will do a service for the community.

Assemblyman Jones:

I have a concern about how it is going to be set up and how thorough it will be. That may need to be defined a little bit better. For example, you may say how many hours of education are required. I do agree that looking at this chapter in NRS is confusing and people who are informed will make better decisions. Hopefully, if people within the board are informed, it will prevent others from trying to railroad the board. I think it is a good bill, but we need some clarification regarding the educational aspect.

Assemblywoman Kirkpatrick:

I appreciate that and I know that you represent about 93 HOAs. I do not disagree with you and that is why I agreed to the friendly amendment in order to have some regulations in place. Homeowners can actually participate in the process because it helps to get feedback from people. I will submit my amendment to the Committee tomorrow.

Assemblyman Elliot T. Anderson:

I also think education is a good idea. Maybe we would not have heard about all the problems that we did tonight if people had some training.

Jonathan Friedrich, representing Nevada Homeowner Alliance:

I am ecstatic that this has finally come to the surface. I have been trying for years to get language like this into the NRS. My only concern is in section 1, subsection 15, paragraph (b), where it says within 180 days after appointment to the board. That is at least two board meetings, which are supposed to occur roughly every 90 days. An uneducated board member can do a lot of damage in two meetings. I would like to see it reduced to 90 days.

Currently, there is a program that the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels has available. They have a training officer and offer some different courses. I have attended all of them. They travel around to different parts of the state although most of them are held at the Grant Sawyer State Office Building or at the Bradley Building, both in Las Vegas. They are free of charge. They provide handouts, and individuals who take these courses get the bare minimum. However, it is already there and it is free.

Garrett Gordon, representing Nevada Chapter, Community Associations Institute; Southern Highlands Community Association; and Olympia Companies:

I want to thank the sponsor for accepting the friendly amendment which does address Assemblyman Jones's and Chair Seaman's concerns. It says the Commission will provide workshops which will include homeowners and members of the community to discuss how these courses should be set up. It will include the kinds of courses, the timetable, and a reporting mechanism. Therefore, when it is complete, it would be reported to the Real Estate Division, Department of Business and Industry, who will then be able to keep track of the board members that are complying with it. There will also be consequences for failure to comply. If you do not report appropriately, will you surrender your position, or will there be other appropriate consequences to ensure that the associations will still thrive but at the same time the board members will be getting educated? We will be sure the amendment is submitted.

Mike Aupperle, Private Citizen, Las Vegas, Nevada:

I am a strong supporter of this bill. It must pass. There is one thing that I think should be added to this bill. All of the HOAs should be required to invite the class into their HOA at least six times per year so that all residents can hear what is taught in the classes. The HOA that I belong to does not want anything to do with educating our members.

Bob Robey, Vice Chairman, Nevada Homeowner Alliance:

This bill is necessary. My HOA has invited the Real Estate Division out to our community to provide lessons. I have attended other classes very close to my home that were offered in other HOAs. I wish to add one thing. I attended a class and found out that my board has never obtained a permit for construction, and they were consequently fined. This bill is necessary.

John Radocha, Private Citizen, Las Vegas, Nevada:

I am a board member, and I go to Real Estate Division classes. After my first class, I knew that I had to go back. The instructor has always made it a learning experience for me. The way I see it, you cannot come away not learning something.

Delores Bornbach, Private Citizen, Las Vegas, Nevada:

I am a former teacher, and I believe these classes are absolutely necessary and they are free of charge. It takes effort and time, but we are all learning for the rest of our lives. If board members are going to be working with homeowners, they should know the laws because they are complicated.

**Barbara Holland, representing H&L Realty and Management Company,
Las Vegas, Nevada:**

I am also in favor of this bill. The one thing I would ask is about how many hours are required? Right now, if you were trying to become a community association manager (CAM), you would have to take 18 hours of training in NRS. That does not include the other laws regarding risk management, accounting, reserves, et cetera. Whatever you end up doing, it is very important for the Legislature to work with the Real Estate Division to determine how many hours of training will be provided. Remember we live in a 24/7 town, and we will have to be able to provide classes not only during the week but also possibly on the weekends or in the evenings. That may have a fiscal note as far as the Division is concerned. However, I do think you need to have some very specific direction.

I am in favor of this, but I do have the same concerns as the Chair has expressed regarding getting members to serve. There has not been a rush for someone to become a board member in most associations. That is a real problem. I am hoping that between the education and the content of the previous bill, we will still be able to find people to serve on the boards.

John Leach, Attorney, Las Vegas, Nevada:

Because the Real Property Law Section of the State Bar of Nevada has not had an opportunity to look at this yet, I am speaking on my own behalf as an attorney from Leach Johnson Song & Gruchow. I have been practicing law in Nevada for 30 years, 28 of those years focused on HOAs. The concept of education is appealing to all of us. In fact, we have been espousing that for decades. However, I am not convinced this bill goes where it needs to go in terms of being adequate and clear. There is a statute already in place. *Nevada Revised Statutes* 116.3103 defines fiduciary duty for performance of the board. *Nevada Administrative Code* 116.405, subsection 6, mandates when determining if a board member has fulfilled his fiduciary duty, and whether the officer or director has been kept informed of laws, regulations, and developments relating to common-interest communities. Therefore, there already is a mechanism in place whereby the Commission can evaluate the performance of an officer or director to determine whether it is adequate. If they fall below the standard of the Commission, there are certain penalties or sanctions that can be involved including monetary fines and the removal of the board member from the board.

We appreciate the fact that the Real Estate Division has developed many classes over the last decade. However, there are many programs in Las Vegas. The Nevada Equal Rights Commission has laws that are relevant to HOAs.

We have had the U.S. Department of Housing and Urban Development (HUD) come and teach classes. To think that the Division has the monopoly on who speaks, what the subject is, or the quality of the speaker suggests that every other educational system out there is subpar, and that is just not correct. I think if we are going to go this way by mandating education hours and topics, we need to make it broader and not just limit it to what the Real Estate Division approves because there are people out there with more experience with NRS Chapter 116.

To summarize, we are in favor of education but are concerned this bill does not get to where it needs to go. Hopefully, the friendly amendment that has been discussed will address that.

Assemblyman Elliot T. Anderson:

There is no reason that the Division cannot ask HUD to come and teach a class, right? It is not that they have to teach the class themselves. It appears they can bring in other experts because it says the Real Estate Division would administer it.

John Leach:

Currently, there are many entities such as law firms and management companies that have educational programs that are excellent. To suggest that I must have the content of a presentation approved because it has to do with interpretation of the law, does that mean a nonlawyer is going to indicate to us how we have to teach a class? My concern is that we should be given some latitude in being able to prepare classes on different subjects. To have the Division say whether it is acceptable or not is somewhat of a concern to me. There are so many classes available right now with no cost. Therefore, if people are getting certificates, which indicates that they are spending the time and getting the education, the certificates should be adequate evidence that they are staying informed.

Chair Seaman:

You say they can take these free classes but every year or two there are board elections, which means that thousands of people will need to be trained. Is this really going to remain free? There is going to be a fiscal note on this.

John Leach:

You are correct that if you run this through the Real Estate Division, there is going to be a fiscal note because they are not staffed to handle this. What I am saying is that in the private sector, there are significant classes available that would qualify for this training. Why put the burden back on the Division?

If a board member is being scrutinized because of his performance or lack thereof, the Division can evaluate the classes that the board member has attended in order to determine whether he has been doing what the law says. Rather than putting the burden and expense on the Real Estate Division, why not allow them to just recognize the significant classes already available in the private sector?

Chair Seaman:

I would like to bring the same question to Assemblywoman Kirkpatrick.

Assemblywoman Kirkpatrick:

One of the reasons the homeowner pays the assessment is so the board can be offered education. However, we do not do a follow-up to ensure the board is really getting that education. Right now it is an honor system and a board member can say they have read and understood NRS Chapter 116. Currently, the Ombudsman will come out and do any type of training that you may want and it is free. The problem is that many of the members are not utilizing it. I am trying to ensure that people actually utilize the system.

There may be a fiscal note and it may go to the Assembly Committee on Ways and Means. I have learned through past experience that it costs \$7,693 to have regulations written, which typically is something that the Division can absorb. If this is like any other session, there is always an HOA bill passed that requires regulation. It is a common practice to put a fiscal note on it. This will allow for folks to be trained at perhaps one community center. It is not saying they have to go to each individual HOA, but it is making them available so that the members can walk away with a certificate on specific topics. One good point was made that some classes are available in the private sector. It is no different than what we do with continuing education for nursing programs, attorney programs, et cetera. That is why I am not limiting it except for allowing the conversation to be had in order to get consistent information to HOAs across the state.

Chair Seaman:

I understand. The concern I have right now is they offer real estate classes for Realtors. If you are changing every year or two, and there are thousands of HOAs, and there are between three and six board members on each board, offering these classes is going to be a tremendous cost at some point, unless the HOA is paying for it.

Assemblywoman Kirkpatrick:

Currently, the way the statute works is different from the Real Estate Division where they charge you \$25 to go to a class. I have been to one of those continuing education classes where you can pick from one to six different topics within the field. There already is an assessment that is supposed to provide education so that HOAs can have that opportunity. They do offer education but it is not mandated or being utilized. This is a way to go a little bit further than the honor system so that we actually have people participating. Yes, there are elections every year or two, but that does not mean the board members change. There are many boards within my district that are very engaged and they do not see as much turnover as some of the others. We spend hours on HOA legislation because our constituents come to us. I have called the Office of the Ombudsman with no recourse. I attended a board meeting myself to try and fix it, and this is the result. It is a way to educate people so that they will know what the rules are. They can protest if they choose or they can work together.

Chair Seaman:

I agree with you that it is a fantastic idea to educate these people, and we probably would have fewer problems. I just wonder if we are going to create a bigger problem down the line because we will wind up with people who do not want to be elected because they do not have the time in their busy schedules for the education. It may deter them. The other thing bothering me is the huge cost somewhere down the line if we implement this.

Assemblywoman Kirkpatrick:

I would be willing to put a sunset on it for two years to see if it works, which would start when the regulations are adopted. That way the Real Estate Division can come back to the Legislature and let us know if it is working or not. However, if we do not try something different, we are not getting anywhere. We are getting worse. I do not live in an HOA for all the reasons stated here tonight, but I think we have to do something. We have to think outside the box and try something different.

Kathie Chism, Private Citizen, Las Vegas, Nevada:

I am a retired schoolteacher, and I am for this bill. I want you to keep in mind that when the gentleman talked about free classes given at the Grant Sawyer Building, I live out in Mountain's Edge. I do not think you may realize the distances that we would have to travel. There is no way that I would have driven here today if I had not ridden in with someone else. I am a widow, and I do not drive at night. I do not drive on freeways, and I would never come here for a class unless someone brought me. I have been on our HOA board for three and a half years, and I have been very active. The only class that I have

been to is the one offered at my association. I am not traveling clear across town to attend a class. I will go if the class is offered nearby. Please keep that in mind.

Norman McCullough, Private Citizen, Henderson, Nevada:

I am very much in favor of this bill, and I would like to elaborate. I live in a very large HOA which consists of 7,144 homes. We have a \$1 million budget. You can probably understand that the larger HOAs will probably demand a more sophisticated knowledge. I think it is a very good idea for this bill to be passed. I am very familiar with my HOA procedures. I talked to the board members and one of them told me in a private conversation that they made a lot of mistakes. That is okay as long as you recognize it and make corrections along the way. The more knowledge the better.

Chuck Niggemeyer, Private Citizen, Las Vegas, Nevada:

I have been a board member for the last 11 years. I believe in education, and I like this bill. My only concern is the pool of people that we have that volunteer to be a board member. I think that once you put the mandatory label on it, the pool may be reduced somewhat. Other than that, it is a great bill. My association is small; our board consists of only three members. With mandatory education required, I do not know where that will go.

Joyce Patterson-Rogers, Private Citizen, Las Vegas, Nevada:

I am an owner and a board member. I am in favor of this bill but have the same concerns that others have mentioned about getting enough people to volunteer when education is required. I have taken every class that the Real Estate Division and the Community Associations Institute (CAI) offers. I have taken many of them more than once. Frankly, I am lonely on my board because I am the only one to ever take any classes. My fellow board members do not even know what I am talking about sometimes or the laws that I refer to. I know we are risking not getting enough people to serve on boards, but they really need to be educated. If your Committee is not willing to require HOA boards to take education courses, maybe you should consider not grinding out so many laws.

Chair Seaman:

Is anyone else in favor? Seeing no one, is there anyone in opposition?

Robert Frank, Private Citizen, Henderson, Nevada:

I find myself in a very unusual and contrary position on this subject. I really congratulate the Committee for trying to deal with this issue. Without getting carried away, after 40 years of management, I have spent many hours with people who come to me with complaints about people needing training.

The next thing you know, after spending time giving them training, they are no better than they were before because training was not the problem. It could be motivation or other barriers to success. We have talked about people not wanting to serve on the board. Why is that? We kiss that off too easily sometimes. I have tried to recruit members for our own board for many years. The most common reason why people do not want to serve is because they do not understand the statutes. They say that it seems too complicated or they are not willing to serve on a board where they have to do everything the lawyer says. There are other people who work and cannot spend the time the board requires. My point is there is a problem. After six or seven years working on this problem, we have not yet defined the problem. Can we try to force people to take courses and learn the almost impossible task in 90 days? It has taken me almost five years to really feel like I can deal with NRS Chapter 116 easily. Five months is not enough time for anyone to learn NRS Chapter 116 if they start from scratch.

Secondly, one of the frustrations that I have had is that most of the CAMs that apply actually take and pass the license test. One of the problems with the board member training is there is no testing, confirmation, or validation that you have learned anything. It is really insulting that someone can sign a statement that says he understands NRS Chapter 116, but there is no way to prove that he even opened the book or knows anything. It is really condescending. When you see how people perform, by the time they finish their two years on the board they are finally starting to understand the fundamental issues. I worry because board directors are responsible from a fiduciary point of view from the first day they take the oath for the board, and not 90 days or six months later. They are responsible and accountable on the first day. The ideal situation would be to say they should take the courses before they even get elected, but nobody would put up with that, although I have suggested that they ought to consider it. I do not think we have defined the problem well enough to define the solution.

This bill is well-intentioned, but I do not think anyone will do any better after six months than they do after three months regardless of training. What frustrated me on the board is the CAMs have to take many courses and tests and they are paid to know the rules, yet they are not required to train the board members. Why not? Why are they not sufficiently prepared to train new board members to do their jobs? Those of you who have heard me at the Commission meetings know how frustrated I get with the lack of quality of many of the courses. The courses are given by companies that have agendas on what they want to teach because they are for-profit companies and they have a reason for wanting to give those courses. However, none of the junior colleges, financial institutions, or professional trainers are actually engaged.

At the end of the day, we are trying to solve a problem without sufficient facts on what the problem is. We need more professionals involved. How would you take a person who has just been appointed a director and turn them into an effective director in less than 90 days? Only a professional educator could answer that question.

Chair Seaman:

Is there anyone in the neutral position for A.B. 329?

Mark Leon, Private Citizen, Las Vegas, Nevada:

I am neutral on this bill. I see tremendous value in board member education. I have found the various classes that I have attended over the last four years have boosted my knowledge of the process. I believe I am a much better board member because of it. However, CAMs are licensed by the state and have successfully completed mandatory education. I would argue that they can and do provide proper guidance to the board, especially for new members. What is the sponsor's stance on online education for board members?

Assemblywoman Kirkpatrick:

I do believe there are some online classes that work just as well. I am not in favor of the honor system any longer. Some courses make sense to take online because there is typically some type of test at the end of the course. I think that is the reason I am trying to allow for regulations to be established in order to be effective. Some online courses are much harder and longer than those taken in person. As long as we have the right balance, I am not opposed to it. I am definitely not opposed to someone coming out to the association to provide training. I think it would be great if associations could group together and have some conversations on a regular basis.

John Radocha:

As far as expenses go, maybe the Administrator of the Real Estate Division can collect \$2 per door, which would help cover the educational costs.

Assemblywoman Kirkpatrick:

Trying to do the right thing always brings different perspectives. I will reach out to each of the Committee members in an attempt to hear all concerns. I will address them and discuss them with you. I will ask the Committee Secretary for the names of testifiers so I can reach out to them as well to address their concerns.

Chair Seaman:

I will now close the hearing on Assembly Bill 329. We will open the hearing on Assembly Bill 359.

**Assembly Bill 359: Revises provisions governing common-interest communities.
(BDR 10-910)**

Assemblyman David M. Gardner, Assembly District No. 9:

There have been some conceptual amendments that are not yet available on the Nevada Electronic Legislative Information System (NELIS). I will do that before we have the work session. Sections 4 and 7 of the bill have been removed. This bill previously required judicial foreclosures, but that part has been taken out, allowing for nonjudicial foreclosures. To start, I will discuss the amendments. I could go over what is in the bill, but it is going to change. Therefore, I will just summarize.

The first section is in regard to due process rights for homeowners that have fees levied against them. I have talked to people in homeowners' associations (HOA) and businesses such as the Community Associations Institute (CAI). We are reviewing some of the issues they have with the bill. We will be doing amendments regarding the due process for homeowners.

Section 6 is similar to Assemblyman Munford's bill requiring homeowner approval when a percentage of the budget is paid. I am going to probably remove this section and we will address it in Assemblyman Munford's bill. We will come to some sort of agreement either way.

Sections 9 through 20 are basically an alternative to our current system. When you have a problem now, you have to file an affidavit with the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, which is part of the Real Estate Division, Department of Business and Industry. They investigate, mediate, and they can refer it to the Commission for Common-Interest Communities and Condominium Hotels. This would leave the Division out of it altogether. Basically, it would say that if your HOA board does something that you dislike, the Commission would have a subpanel for you to appeal to. There would be a fee to cover the cost of the subpanel. I am estimating it would cost between \$30 and \$40. You would be able to escalate from the subpanel to the Commission itself if you are not satisfied with the results. From there, you would go the litigation route, which is already in place from what I understand. If you have any questions, I will be glad to answer them.

Assemblyman Jones:

There are a lot of changes, and I notice there is a big fiscal note on this as well. Will your changes be eliminating that?

Assemblyman Gardner:

That is the plan, but I will be talking to the Division to double-check that the changes will eliminate the fiscal note.

Jonathan Friedrich, representing Nevada Homeowner Alliance:

One of the amendments ([Exhibit N](#)) that we worked on would create an appeals hearing panel (AHP). The panel would be composed of three appointed members of the Commission representing homeowners. The amendment provides that the AHP shall meet monthly in open session to review previous Division actions on intervention affidavits and statements of facts against licensed community managers, and to hear requests for reconsideration and/or requests for further actions by individuals dissatisfied with prior Real Estate Division rulings. [Continued reading from proposed amendment ([Exhibit N](#)).]

That amendment would be included in Assemblyman Gardner's bill. There are a couple of other issues that will be addressed in testimony from Las Vegas.

Robert Frank, Private Citizen, Henderson, Nevada:

I would like to ask Assemblyman Gardner what guidance he would like to give me before I start on the other two items. Basically the three proposed friendly amendments to this bill would probably be better if they were separate bills, but it is too late to submit them as separate bills. They fit within the framework of this bill but it makes it bigger and more complex. The issues were about due process. As a member of the Commission, I was one of the advocates for due process regulations, which has been worked on for more than a year.

Chair Seaman:

Mr. Frank, have you spoken with Assemblyman Gardner about the proposed amendments?

Robert Frank:

Yes, I have. The due process recommendation would be helpful because the regulation style that he used as a result of input from prior work might be best served if it was more process-oriented at the policy level as opposed to the regulation level. My friendly amendment was to try to deal with policy issues as opposed to regulation.

Chair Seaman:

I am going to ask Assemblyman Gardner if he would like to bring this back once it is worked out with all of the amendments.

Robert Frank:

I think that is a good idea because the work that I have done seems to be a little out of sync with what he was doing. I would really like to have a chance to synchronize it better.

Assemblyman Gardner:

Yes, that is fine with me.

Chair Seaman:

We are going to close the hearing on A.B. 359 and bring this bill back at a later time. Thank you for your testimony. In a moment I will ask for public comment. Before we adjourn, I want to mention that we will be having a work session on Thursday, April 2, 2015. You are welcome to come to it, but this is a working session with the Committee and will not be a public hearing at that time. We are now ready for any public comment.

Marilyn Brainard, Private Citizen, Sparks, Nevada:

I just think it is very important to know that the due process part of the violation hearing was soundly defeated by the Commission for Common-Interest Communities and Condominium Hotels. I believe Commissioner Frank was ready to share that information. It was a unanimous vote to not take this up with all of the details that are in there. I am sure that Mr. Garrett Gordon can share the results with Assemblyman Gardner. It has been defeated, it is not necessary, and it is overkill.

Jonathan Friedrich:

Due process is the basis of our judicial system in this country and is being denied to thousands of homeowners in HOAs. To say that it is not necessary is wrong. Furthermore, NRS Chapter 116 currently requires a due process regulation to be initiated by the Commission, which they have failed to do. It is long overdue.

Chair Seaman:

Thank you for your comment. The meeting is adjourned [at 10:01 p.m.].

[Also submitted were written comments from Terra West Management Services on Assembly Bill 238, Assembly Bill 254, Assembly Bill 317, Assembly Bill 329, and Assembly Bill 359 ([Exhibit O](#)).]

RESPECTFULLY SUBMITTED:

Linda Whimple
Recording Secretary

Lenore Carfora-Nye
Transcribing Secretary

APPROVED BY:

Assemblywoman Victoria Seaman, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary Subcommittee

Date: March 26, 2015

Time of Meeting: 6:03 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 192	C	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 301	D	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 317	E	Jonathan Friedrich, Nevada Homeowner Alliance	Misused Funds Chart
A.B. 317	F	Real Property Section, State Bar of Nevada	Proposed Amendment
A.B. 238	G	Assemblywoman Dooling	Consanguinity Chart
A.B. 238	H	Assemblywoman Dooling	Proposed Amendment
A.B. 238	I	Assemblywoman Dooling and Jonathan Friedrich	Amendment
A.B. 238	J	Bob Robey, Nevada Homeowner Alliance	Written Testimony
A.B. 254	K	Assemblywoman Spiegel	PowerPoint Presentation
A.B. 254	L	Richard Layton, Layton Layton & Tobler LLP, CPAs	Conceptual Amendment
A.B. 254	M	Bob Robey, Nevada Homeowner Alliance	Written Testimony
A.B. 359	N	Jonathan Friedrich, Nevada Homeowner Alliance	Proposed Amendment
A.B. 238 A.B. 254 A.B. 317 A.B. 329 A.B. 359	O	Terra West Management Services	Written Comments