

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session  
May 12, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:05 p.m. on Tuesday, May 12, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Greg Brower, Chair  
Senator Becky Harris, Vice Chair  
Senator Michael Roberson  
Senator Scott Hammond  
Senator Ruben J. Kihuen  
Senator Tick Segerblom  
Senator Aaron D. Ford

**GUEST LEGISLATORS PRESENT:**

Assemblyman John Moore, Assembly District No. 8

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Nick Anthony, Counsel  
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

George Ross, Nevada Bankers Association  
Garrett Gordon, Community Associations Institute; Southern Highlands Homeowners Association  
Angela Rock, Southern Highlands Homeowners Association  
Mark Leon  
Mike Randolph, Manager, Homeowner Association Services, Inc.

**Chair Brower:**

I will open the hearing on Assembly Bill (A.B.) 240.

**ASSEMBLY BILL 240 (1st Reprint)**: Revises provisions governing liens of a unit-owners' association. (BDR 10-821)

**Assemblyman John Moore (Assembly District No. 8):**

This bill proposes a solution to inequities that often occur when a homeowners' association (HOA) forecloses under the superpriority lien provisions. The amount of the unpaid dues and charges that make up a superpriority lien are much less than the balance owing on the mortgage, yet Nevada allows foreclosure under the superpriority lien statutes to wipe out the first deed of trust. Assembly Bill 240, as it was amended in the Assembly, provides an avenue of relief to homeowners and banks by offering a 60-day right of redemption after a foreclosure under a superpriority lien.

The key provisions of the bill are in section 4.7, which sets out the rules for the redemption process. Section 4.7, subsection 2 requires the person conducting the sale to record a certificate including the whole price paid and the statement that the unit is subject to redemption.

Section 4.7, subsection 3 of A.B. 240 states that the unit owner or any subordinate lienholder and successors in interest may redeem the property at any time within 60 days following the sale. Subsection 3 also lays out what additional costs or liens must be paid by the redeptor based on the situation or relative priority of liens.

Section 4.7, subsection 4 of A.B. 240 lays out what notice must be given and what documents must be provided to the various affected parties.

Section 4.7, subsection 5 of A.B. 240 provides that the unit owner who redeems the property is immediately restored to his or her original ownership status, subject to any security interest existing at the time of the sale.

Section 4.7, subsection 6 of A.B. 240 covers what happens when the priority is redeemed by the holder of a security interest and clarifies that a security interest holder must wait the full 60 days before being given a deed based upon redemption.

Section 4.7, subsection 7 of A.B. 240 provides that if the property is not redeemed within 60 days, the buyer at the foreclosure sale takes title to the property, and the seller must deliver the deed to the buyer and a copy to the ombudsman within 30 days after the buyer receives the deed.

Section 4.7, subsection 10 of A.B. 240 states that after the redemption period ends, a failure to comply with the foreclosure provision in *Nevada Revised Statute* (NRS) 116 will not affect the rights of a bona fide purchaser or encumbrancer.

Section 8 of A.B. 240 clarifies that the provisions of the bill apply only to sales of units on or after July 1.

These provisions strike a balance between preserving the HOA's need for a superpriority lien and the need for homeowners and banks to avoid a catastrophic loss due to a foreclosure for a relatively small amount of debt.

**Chair Brower:**

We are working on this same issue in a variety of other bills on this subject. The idea of an HOA being able to foreclose and thereby extinguish the first mortgage pursuant to the superpriority laws is problematic.

**Assemblyman Moore:**

I agree. That was the motivation for this bill. There have been too many times when HOAs have foreclosed and extinguished a first lien, and that is problematic.

**Chair Brower:**

It is my understanding that typically, the amount owed to the HOA is a fraction of the value of the first mortgage.

**Assemblyman Moore:**

Typically. The first mortgage might be \$250,000, and the amount of the superpriority lien might only be \$10,000. There is a big gap there.

**George Ross (Nevada Bankers Association):**

We support A.B. 240. We feel it helps to remedy the significant problem of losing a first lien in the situation you described. This bill gives the bank, the first

lienholder and the homeowner the opportunity to remedy the situation if they act reasonably promptly and follow the procedures. We feel it is a fair bill.

**Chair Brower:**

I would describe this as a redemption bill, not an extinguishment bill. In other words, it does not affect the issue I referred to earlier involving the potential extinguishment of the first lien.

**Mr. Ross:**

I agree. However, when there is a potential extinguishment, it gives a remedy for it. That is the important aspect.

**Chair Brower:**

As I understand, it would allow the holder of the first lien to take action, thereby foreclosing the potential extinguishment.

**Mr. Ross:**

That is correct.

**Senator Ford:**

My understanding is that this bill borrows language from Senate Bill (S.B.) 306. Is that right?

**SENATE BILL 306 (1st Reprint)**: Revises provisions relating to liens on real property located within a common-interest community. (BDR 10-55)

**Mr. Ross:**

Yes, section 6 from S.B. 306.

**Garrett Gordon (Community Associations Institute; Southern Highlands Homeowners Association):**

We support the amended version of A.B. 240. We had some grave concerns with the original bill. We sat down with Assemblyman Moore and the Nevada Bankers Association on the concept of putting the redemption language from S.B. 306 in this bill. We can live with it; the bankers can live with it; the working group can live with it. We thought it was a good replacement and a good concept that addresses the concerns of a lot of people.

**Senator Ford:**

Is your support of A.B. 240 contingent on the passage of S.B. 306? There are other provisions in S.B. 306 that address this issue. Do you want the redemption provision to stand alone if S.B. 306 does not pass?

**Mr. Gordon:**

We would prefer that S.B. 306 passed as is, in which case A.B. 240 would be a companion bill and mirror the language. If S.B. 306 does not pass, we stand behind the language in A.B. 240. It is a good remedy. After nonjudicial foreclosure occurs, a lot of legal fees have been incurred by HOAs from quiet title actions. We believe redemption provides some certainty. After 60 days, if there is no redemption by either the bank or the unit owner, you have some certainty that the process is complete. Hopefully, title insurance can be issued for any subsequent purchaser, and we can all move on.

**Mr. Ross:**

I agree with Mr. Gordon.

**Chair Brower:**

When I hear the word "redemption," it suggests to me that the person who owes the HOA an amount of money, namely the homeowner, is the redeeming party. That person is afforded a chance to make good on an obligation that has not yet been satisfied. The lender, which has no obligation to the HOA, is not the redeemer. Are we straight on the nomenclature? Is that how you would describe it?

**Mr. Gordon:**

As the language contemplates, there would be potentially two redeemers. The first would be the homeowner trying to redeem the home. The first deed of trust holder could redeem its interest in the property as well. This language was also set forth in response to the case of *SFR Investments Pool 1, LLC, v. U.S. Bank*.

**Chair Brower:**

In that classic scenario, it is only the borrower who owes anything to the HOA. The lender, the holder of the first lien, does not owe anything to the HOA, but under this bill would be given an opportunity to avoid extinguishment. Am I following it correctly?

**Mr. Gordon:**

That is correct.

**Mr. Ross:**

Correct.

**Chair Brower:**

It is a curious position for the lender to be in. The lender has not defaulted on its obligations to the HOA and owes nothing to the HOA, nor could the HOA pursue the lender for what the homeowner owes to the HOA.

**Angela Rock (Southern Highlands Homeowners Association):**

There may be another way to look at it. It is the unit address that owes the money to the HOA. While there is a personal obligation to pay the assessment and the HOA may be able to seek that in certain circumstances, the obligation to pay is from the unit address. If a homeowner moves out and does not pay the assessments, that amount becomes a lien on the property and is paid through the sale. It is the property that is paying. If you look at it that way, the language makes sense.

**Chair Brower:**

It does, though it does not necessarily satisfy my curiosity as to why an extinguishment would make sense.

**Mark Leon:**

I support A.B. 240. I am a homeowner in Mountain's Edge and a volunteer board member of my HOA. This bill is almost identical to section 6 of S.B. 306, which was passed by the Senate on April 21. However, it is missing the companion piece in section 1 of S.B. 306, which authorizes a limited amount of costs of enforcing the HOA's lien to be included in the superpriority lien. I urge that the Committee include this crucial language, which would clarify that these costs are to be borne by the persons who caused the delinquency rather than burdening the good citizen homeowners who diligently pay their assessments.

**Chair Brower:**

Assemblyman Moore, Mr. Ross, Mr. Gordon, would you like to comment on Mr. Leon's issue?

**Mr. Gordon:**

Mr. Leon is referring to a section in S.B. 306 that dealt with collection costs, codifying certain amounts in statute. That was part of the global compromise of S.B. 306 to enable the bill to move forward. We would love to have it as part of this bill, but in the end we decided to stick with the redemption language and move forward with it as is.

**Chair Brower:**

Assemblyman Moore, it is a good bill, and we understand the issue. In the light of S.B. 306, do you have an opinion as to whether A.B. 240 is necessary if S.B. 306 is passed?

**Assemblyman Moore:**

I have not read S.B. 306 completely. My thought was in case something were to happen to S.B. 306, we would still have another vehicle in A.B. 240. I would like to see A.B. 240 move forward.

**Mr. Ross:**

I agree with the last comments by Mr. Gordon and Assemblyman Moore.

**Mike Randolph (Manager, Homeowner Association Services, Inc.):**

Homeowner Association Services, Inc., is a collection agency that does recovery work for HOAs using nonjudicial foreclosure. I am opposed to A.B. 240 solely because of the effective date of July 1. There are a number of new forms and new processes that need to be done, and an effective date of July 1 gives us one month to retool. All the forms I use as a collection agency must be approved by the Division of Financial Institutions, Department of Business and Industry, before I can use them. If we could change the effective date to October 1, it would make it easier and more timely for us to get all of our documents and processes in order so we could implement the provisions of this bill.

**Chair Brower:**

I will close the hearing on A.B. 240 and open the work session on A.B. 69.

**ASSEMBLY BILL 69 (1st Reprint)**: Revises various provisions relating to the Judicial Branch of State Government. (BDR 1-497)

**Patrick Guinan (Policy Analyst):**

I have a work session document summarizing A.B. 69 and describing the amendment that was proposed ([Exhibit C](#)).

**Chair Brower:**

The idea with the amendment is to address the following problem. We have two offer of judgment provisions in the law, one in Nevada Rules of Civil Procedure (NRCP) Rule 68 and one in NRS 17.115. They are not the same; they conflict slightly. It is the general consensus, as I have been able to ascertain it, that the Rule 68 version is preferable. It is generally considered to make more sense that it be in the NRCP rather than in statute. The amendment would simply delete NRS 17.115, thereby creating just one rule, taking away the inconsistency and leaving us with Rule 68 in the NRCP.

**Senator Ford:**

I am in general agreement with the proposal before us, but for the record, I would like to hear what the conflict was between NRS 17.115 and Rule 68.

**Chair Brower:**

We will take A.B. 69 off the agenda for today and reschedule it for tomorrow with an explanation of the differences between the two sources.

I will open the work session on A.B. 214.

**ASSEMBLY BILL 214 (1st Reprint)**: Makes various changes related to public safety. (BDR 16-568)

**Mr. Guinan:**

I have a work session document summarizing A.B. 214 and describing the conceptual amendment that was proposed by Assemblyman Michael C. Sprinkle during the hearing on May 11 ([Exhibit D](#)).

**Chair Brower:**

I have not seen this amendment before. We will reschedule the work session on A.B. 214 for tomorrow to give us a chance to review the amendment.



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**Senator Ford:**

I would be interested in knowing if adding that amendment has a fiscal effect on the bill. If so, we may need to rerefer the bill to the Senate Committee on Finance.

**Chair Brower:**

I will open the work session on A.B. 263.

**ASSEMBLY BILL 263 (1st Reprint)**: Revises provisions governing the custody and support of children. (BDR 11-199)

**Mr. Guinan:**

I have a work session document summarizing A.B. 263 and describing the conceptual amendment that was proposed by Assemblyman Lynn D. Stewart and discussed in the hearing on May 11 ([Exhibit E](#)).

**Senator Harris:**

A concern was brought up about unwed parents who might not realize they could be in danger with some of the kidnapping statutes. There was some discussion about making sure there was other clarifying language in the bill, or making sure there was not a conflict. I do not know if that conflict was resolved.

**Chair Brower:**

Would you like us to reschedule this bill to get some resolution on that?

**Senator Harris:**

Yes. We do not want to inadvertently put families at risk; we do not want innocent people to be subject to kidnapping penalties.

**Chair Brower:**

We will reschedule A.B. 263 for tomorrow. I will open the work session on A.B. 11.

**ASSEMBLY BILL 11**: Revises provisions governing reports of presentence investigations. (BDR 14-356)

**Mr. Guinan:**

I have a work session document summarizing A.B. 11 ([Exhibit F](#)). No amendments were offered.

**Senator Harris:**

It is my preference that the bill read "14 working days" rather than "14 calendar days." However, recognizing the budgetary considerations that were brought to my attention and the potential impact this could have, I have decided to go along with the rest of the Committee and allow for 14 calendar days, as opposed to other alternatives that were less palatable.

SENATOR ROBERSON MOVED TO DO PASS A.B. 11.

SENATOR HAMMOND SECONDED THE MOTION.

**Senator Ford:**

As I recall, the concern of the Division of Parole and Probation was that the Division did not have enough money to put this into place. The remedy is not to reduce the time period before the defense counsel gets the report and can thereby effectively represent the client but rather to properly fund Parole and Probation. I cannot support this bill under these circumstances.

**Senator Segerblom:**

There was also testimony that there is a vast difference between how these reports are handled in Washoe County and how they are handled in Clark County. Clark County has the major problem. Our presentence reports are much later than they are in Washoe County, and we should not be picked on because we do not have the money. I realize that it is Clark County's job to find the money, but we do not want to deprive our defendants in Clark County of rights they should have. I will be voting no on this bill.

**Chair Brower:**

I have been dealing with this issue on the Advisory Commission on the Administration of Justice for the last couple of years. The required number of days has gone from zero to 21 working days, which has proved to be problematic for a variety of reasons. I think 14 calendar days is a more than adequate compromise and will be workable. We are trying to deal with a budgetary reality. I would not be supporting this bill if it was simply a budgetary issue. If I thought this would be unfair to defendants in any way, I would ask

Parole and Probation to go back to the drawing board to come up with something that is workable. I am confident that this will work for all considered, including, most importantly, the defendants.

THE MOTION PASSED. (SENATORS FORD, KIHUEN AND SEGERBLOM VOTED NO.)

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**Chair Brower:**

I will open the work session on A.B. 244.

**ASSEMBLY BILL 244 (1st Reprint)**: Provides an enhanced penalty for committing certain repeat graffiti offenses. (BDR 15-736)

**Mr. Guinan:**

I have a work session document summarizing A.B. 244 ([Exhibit G](#)). No amendments were offered.

SENATOR ROBERSON MOVED TO DO PASS A.B. 244.

SENATOR HAMMOND SECONDED THE MOTION.

**Senator Ford:**

I cannot support this bill. Three Strikes rules in general offend my sensibilities. This is too harsh of a penalty for the problem we are addressing here. In addition, Three Strikes statutes have a disproportionate effect on persons of color. I cannot support this bill.

**Senator Harris:**

I spoke to Clark County about amending the bill to make the penalty a Category D felony instead of a Category C felony. I will propose that as an amendment to the bill.

SENATOR ROBERSON WITHDREW HIS MOTION.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 244.

SENATOR ROBERSON SECONDED THE MOTION.

**Senator Ford:**

I do not know enough about the felony categories. Could we get some information on the effect of this amendment?

**Chair Brower:**

Changing from a Category C to a Category D would decrease the potential penalties. Regardless of the penalty, a person who violates the law under this bill would not necessarily be subject to prison time. That would be an option and up to the discretion of the judge. It would be a probationable offense, potentially. This differs from a classic Three Strikes law, which imposes a life sentence for a third offense. This bill does not necessarily impose any prison sentence, whether it is a Category C or D felony.

**Senator Ford:**

I appreciate the effort, but I will still be unable to support this bill

THE MOTION PASSED. (SENATORS FORD, KIHUEN AND SEGERBLOM VOTED NO.)

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**Chair Brower:**

I will open the work session on A.B. 108, A.B. 192 and A.B. 267.

**ASSEMBLY BILL 108 (1st Reprint)**: Revises provisions governing victims of sex trafficking. (BDR 14-750)

**ASSEMBLY BILL 192 (1st Reprint)**: Makes various changes relating to common-interest communities. (BDR 10-661)

**ASSEMBLY BILL 267 (1st Reprint)**: Revises provisions concerning the sentencing and parole of persons convicted as an adult for a crime committed when the person was less than 18 years of age. (BDR 14-641)

**Mr. Guinan:**

I have work session documents summarizing A.B. 108 ([Exhibit H](#)), A.B. 192 ([Exhibit I](#)) and A.B. 267 ([Exhibit J](#)). No amendments were offered for these bills.

SENATOR ROBERSON MOVED TO DO PASS A.B. 108, A.B. 192 AND A.B. 267.

SENATOR KIHUEN SECONDED THE MOTION.

**Senator Ford:**

I would like to say that I am particularly excited about A.B. 267. The testimony on this bill was compelling, and I am delighted that we are doing this. It is the right thing to do.

**Chair Brower:**

I agree. The testimony was excellent. I was impressed by the efforts made by the stakeholders to come together and come up with something that could have such universal approval.

THE MOTION PASSED. (SENATOR SEGERBLOM WAS ABSENT FOR THE VOTE.)

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**Chair Brower:**

We are adjourned at 1:44 p.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Greg Brower, Chair

DATE: \_\_\_\_\_

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	2		Agenda
	B	5		Attendance Roster
A.B. 69	C	1	Patrick Guinan	Work session document
A.B. 214	D	3	Patrick Guinan	Work session document
A.B. 263	E	2	Patrick Guinan	Work session document
A.B. 11	F	1	Patrick Guinan	Work session document
A.B. 244	G	1	Patrick Guinan	Work session document
A.B. 108	H	1	Patrick Guinan	Work session document
A.B. 192	I	1	Patrick Guinan	Work session document
A.B. 267	J	1	Patrick Guinan	Work session document