

**MINUTES OF THE SUBCOMMITTEE OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
April 9, 2015**

The subcommittee of the Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:38 p.m. on Thursday, April 9, 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.

SUBCOMMITTEE MEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Cassandra Grieve, Committee Secretary

OTHERS PRESENT:

George Ross, Nevada Bankers Association
Jon Sasser, Legal Aid Center of Southern Nevada
Michael Kosor
Erin McMullen, American Resort Development Association

Chair Brower:

We will open the meeting with Senate Bill (S.B.) 321.

SENATE BILL 321: Revises provisions concerning real property. (BDR 9-728)

Senator Becky Harris (Senatorial District No. 9):

The Legislature has attempted many times to help homeowners by providing certain rights and protections. I am an attorney who regularly represents homeowners in a pro bono capacity or for a significantly reduced fee; I do not derive my income from this work. In this capacity, I see the challenges homeowners face.

There is not a process in place allowing homeowners access to protections or an ability to save their homes. In fact, all the so-called homeowner protections in this State were instigated by another party, putting homeowners in a reactive rather than a proactive status.

Because homeowners in distress cannot initiate a proactive process to save their homes, they are unable to act immediately or in a timely fashion. Often, homeowners must wait until notices of default are filed by their lenders before they can finally act. This situation is very frustrating for homeowners.

I often have clients who want to communicate directly with their lenders, mortgage companies or other parties with whom they are having difficulties; they are told to wait until they are in default to do so.

I have gone to lending institutions in my capacity as an attorney to work out solutions for my homeowner clients and have been told that until the homeowners default on their homes, they are not in a position to seek any remedies from the lenders. Senate Bill 321 provides a process whereby certain homeowners in distress can begin dialogue with their lenders.

Section 1 of S.B. 321 allows a qualified homeowner to initiate mediation through the Foreclosure Mediation Program. If a U.S. Department of Housing and Urban Development-approved housing agency certifies a homeowner has a documented financial risk and is in imminent risk of default, S.B. 321 allows mediation to begin with the goal of negotiating a loan modification. By imminent risk of default, we typically mean within 90 days of being unable to make a mortgage payment.

If qualified homeowners request mediation and pay the \$200 fee, they can proactively, before default, talk to lenders about resolutions with regard to their mortgages. Financial hardship is defined as death of a party to the loan—when a spouse dies, serious illness, a change in marital status or loss of job or decrease

in pay. A mathematical equation determines whether a homeowner is eligible to qualify for a loan modification.

I have clients who have had just enough of a decrease in income that they cannot afford their mortgage payments. If these homeowners had been able to proactively meet with their banks before the default fees and interest charges were added to their mortgages, they would have been able to qualify for loan modifications and still afford their homes.

I support and submit the Nevada Bankers Association's friendly amendment to the Committee ([Exhibit C](#)). The proposed amendment would be inserted after section 1, subsection 6. A homeowner would not qualify for mediation twice. If homeowners want to go into mediation predefault, they can, but they cannot go into mediation postdefault.

This is one of many tools; it is not mandatory. Senate Bill 321 is a choice for homeowners who wish to be proactive—homeowners who want to do something about their mortgages predefault, to access the dialogue and the process, to negotiate for what they qualify.

George Ross (Nevada Bankers Association):

We are pleased to support this meritorious legislation. The concept of S.B. 321 is fortunate and necessary. Up until now, the banks have essentially triaged, spending their resources helping those who, by the fact they have missed several payments, are most in need.

The banks recognize that many homeowners do not want to miss payments. These homeowners believe in keeping a good credit history and doing their best to be responsible people. This bill enables homeowners in a situation beyond their control to go through an appropriate and trained authority to initiate mediation processes so payments may continue in an orderly way.

Jon Sasser (Legal Aid Center of Southern Nevada):

We have a unit in our office that does nothing but help people facing foreclosure to save their homes and represent them in the mediation process. Senate Bill 321 is needed. People may ask, "Isn't the foreclosure crisis over? Why do we still need this today?"

We need this bill for a couple of reasons. First, the number of interest-only loans made in the boom 10 years ago are on the verge of resetting, and some of the early Home Affordable Modification Program modifications are also looking at resetting. Second, Nevada is still—despite huge improvement—No. 2 in foreclosures nationwide and No. 1 in homes being underwater.

We applaud this bill. We are often in the situation where we have to tell people they will not get anyone to listen to them at the bank until they fall in arrears in 2 or 3 months' time. Senate Bill 321 cures this situation.

Senator Harris:

I urge the Committee to pass S.B. 321. It is tool we can put in the hands of homeowners, helping them be proactive and stabilize their situations.

Chair Brower:

We will close the hearing on S.B. 321 and open the hearing on S.B. 320.

SENATE BILL 320: Revises provisions relating to time shares. (BDR 10-1034)

Senator Becky Harris (Senatorial District No. 9):

I brought S.B. 320 to the Committee at the request of a constituent. Senate Bill 320 is a consumer protection bill requiring disclosures be presented at the time of a time-share purchase.

In 2014, visitors to Las Vegas reached a record high. Many visitors stayed at time-share properties or visited one during their trip. Time-share sales attract visitors who are enjoying their vacations and are considering the possibility of purchasing places to stay on return trips rather than paying for hotel stays.

Despite the fact that time-share properties have been around for decades, misconceptions remain about what exactly constitutes a time-share. In my profession as an attorney, sorting out time-share ownership becomes a problem when people get divorced, when someone passes away or when someone is in bankruptcy.

Clients come to me with their time-share properties and tell me they have a valuable asset. They want to know how best to divide the time-shares, what they are worth, how the worth can be distributed to creditors, etc. My clients are chagrined when I tell them what they own is a vacation interest and not an

appreciable asset. Because of this confusion and the difficulty surrounding it, what consumers are purchasing needs to be clarified.

We still have consumers who think their time-shares will appreciate and can be sold potentially for a profit. Time-share interests were never meant to be a guaranteed return on investment. Time-share interests were meant to be investments in leisure and vacation time and places at which to stay.

The law needs changing. Under law, a time-share developer is required to disclose certain information concerning a project in a public offering statement (POS). I have an example of a POS here. The statement is lengthy. For an average person who is not a lawyer, a POS will most likely not be read entirely. A POS is filed with the Real Estate Administrator of the Real Estate Division of the Department of Business and Industry and approved prior to use.

Senate Bill 320 requires a single-page disclosure form the purchaser signs, stating a time-share interest is a vacation interest, not an interest in an asset. It states there may be challenges in reselling or transferring that interest in the future. The bill is an attempt to provide some consumer protections and dispel misconceptions consumers hold.

I envision a stand-alone form ([Exhibit D](#)). The prospective buyer states he or she has been made aware of certain facts regarding the purchase of a time-share. Upon reading the form, prospective buyers are asked to sign and date the form rather than go through the entire public offering statement to find those specific provisions.

Chair Brower:

Do other states require this sort of language or these types of documents?

Senator Harris:

I do not know. I want to address problems I see regularly in my practice in terms of finding out who holds interests in time-shares.

I was working on an estate where the decedent had a time-share interest. The heirs were curious of its value, so we attempted to find out more information, which was difficult, laborious and frustrating. The heirs thought they had some kind of tangible asset that was valuable, when in fact, what they had was a

vacation interest. Tempering expectations when purchasing a time-share interest is helpful for consumers and is my intent in bringing S.B. 320 forward.

Michael Kosor:

I am a time-share owner here to speak on behalf of other time-share owners. I support S.B. 320 and have submitted my testimony ([Exhibit E](#)). I have also submitted a proposed amendment ([Exhibit F](#)).

Erin McMullen (American Resort Development Association):

The American Resort Development Association (ARDA) is the national trade association for the time-share industry. Some of ARDA's members include Wyndham, Diamond Resorts International, Marriott and Disney Vacation Club.

In 2013, the Legislature enacted comprehensive amendments to *Nevada Revised Statutes* (NRS) 119A, which governs time-shares. One of the amendments was a requirement that the POS, which is given to a prospective purchaser prior to execution of the purchasing contract, contain various disclosures and, more specifically, an explanation of any restrictions which may limit the purchaser's resale of the time-share. Samples of a POS are highlighted in the last two pages of our proposed amendment ([Exhibit G](#)).

The public offering statement form is promulgated by the Real Estate Division, incorporates statute language and requires the summary of all restrictions which may limit the purchaser's sale of the time-share. Examples given, which are not exclusions of other restrictions, are rights of first refusal, rights of first offer and options to purchase. The disclosures included in S.B. 320 as written are already in the standard POS.

We are concerned over the first sentence of the amendment proposed by Senator Harris, [Exhibit D](#). We have worked with Senator Harris to address our issues, but a concern remains that this sentence could be a federal securities issue. Time-share developers have to be careful to state they are not selling an investment contract, and this sentence stating the future value is uncertain is an issue. The issue is in the vacation ownership or interest and not the value of the property, obviously. We want to remove the first sentence.

There is concern with the sentence, "Developer's continued sale of timeshare inventory, or the Developer may have limited your resale rights." While you are allowed to resell your own time-share, the developer may continue selling

shares of that same property. In some cases, you might have the upper hand because the developer's price might be higher and you could resell your interest at a lower price.

The proposed amendment, [Exhibit D](#), mentions in the final paragraph to check the public offering statement. We prefer the text state "other governing documents" because other documents govern the time-share than the POS.

We are concerned about the last sentence in the proposed amendment. It is a speculative statement. When you go to resell something such as a car, there is no guarantee someone will list or purchase it.

The amendment proposed by Senator Harris took care of many of our concerns, so our own amendment, [Exhibit G](#), might be somewhat outdated.

It was asked earlier if other states had documents such as S.B. 320. In most other states, large developers have something similar to S.B. 320 called a member understanding and acknowledgement agreement, which has additional disclosures.

I have an example of an agreement here from the state of Florida. It reads,

We understand our membership is for personal use and not an investment for profit or tax advantage. We understand that no representation of any investment potential has been made, including potential for rental income or resale at a profit. No state or federal agency has recommended or endorsed the membership benefits being purchased.

Such a document is not required by law, but its existence shows the importance of making sure the purchaser is aware of such elements. Buyers have to sign and initial this document.

Chair Brower:

Please clarify where your client stands on S.B. 320.

Ms. McMullen:

My client, ARDA, would be neutral if S.B. 320 incorporated our amendments or addressed the concerns I mentioned earlier in my testimony.

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Chair Brower:

I will close the hearing on S.B. 320 and adjourn the meeting at 2:08 p.m.

RESPECTFULLY SUBMITTED:

Cassandra Grieve,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	2		Attendance Roster
S.B. 321	C	1	Senator Becky Harris and Nevada Bankers Association	Proposed Amendment
S.B. 320	D	1	Senator Becky Harris	Proposed Amendment
S.B. 320	E	8	Michael Kosor	Testimony
S.B. 320	F	7	Michael Kosor	Proposed Amendment
S.B. 320	G	6	American Resort Development Association	Proposed Amendment