MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session
April 27, 2017

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:04 a.m. on Thursday, April 27, 2017, 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblywoman Jill Tolles
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senate District No. 17
Senator Donald (Don) G. Gustavson, Senate District No. 14
Senator Moises "Mo" Denis, Senate District No. 2

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Devon Isbell, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Cesar O. Melgarejo, Veterans Policy Analyst, Office of the Governor
Richard S. Carreon, President, Nevada Veterans Association
John E. Leach, Member, Committee on Common-Interest Communities, State Bar of Nevada, Real Property Section
Connor Cain, representing Nevada Bankers Association
Garrett Gordon, representing Community Association Institute; and Southern Highlands Homeowners Association
Jenny Reese, representing Nevada Association of Realtors
Kevin Burns, Chairman, United Veterans Legislative Council
Cary Demars, representing Veterans Association of Real Estate Professionals
Jonathan Friedrich, representing Nevada Homeowners Alliance
James Ringel, Intern, Senate Minority Caucus
Michael Kosor, Private Citizen, Las Vegas, Nevada
Himanshu Bhatia, Private Citizen, Las Vegas, Nevada
Gulab Bhatia, Private Citizen, Las Vegas, Nevada
Keith Kelley, Chair, Legislative Committee, Nevada Association of Realtors

Chairman Yeager:
[Roll was called and protocol was explained.] We have five bills on the agenda, and it is going to be interesting because we have legislative photos today as well. The Senators are having their photos taken right now, and then right before 9 a.m. we are going to recess our meeting so we can take our group photo. My hope is that the recess will be no longer than 30 to 45 minutes. Obviously, the presenters and our Committee need to hear the bills, but we are going to get through them in as timely a fashion as possible.

I will now open the hearing on Senate Bill 33 (1st Reprint), which prohibits the foreclosure of real property or a lien against a unit in a common-interest community owned by certain military personnel or their dependents in certain circumstances.

Senate Bill 33 (1st Reprint): Prohibits the foreclosure of real property or a lien against a unit in a common-interest community owned by certain military personnel or their dependents in certain circumstances. (BDR 3-164)

Cesar O. Melgarejo, Veterans Policy Analyst, Office of the Governor:
I am the Veterans Policy Analyst for the Office of Governor Brian Sandoval. Thank you for the opportunity to present an overview of Senate Bill 33 (1st Reprint) this morning.

Senate Bill 33 (1st Reprint) is a Governor's Office bill pursuing the Governor's goal of making Nevada the most military- and veteran-friendly state in the nation. The proposed changes would establish state protections similar to those in the federal Servicemembers Civil Relief Act of 2003 (Exhibit C) by providing mortgage foreclosure and homeowners' association (HOA) lien protections for deployed and active duty military members, to include the Nevada National Guard and Reserve component servicemembers, as well as establishing penalties on lenders who knowingly foreclose on those servicemembers' real property.

By way of background, the Servicemembers Civil Relief Act of 2003 (SCRA) amended and replaced the Soldiers' and Sailors' Civil Relief Act of 1940, and is codified in Title 50 of the *United States Code*, Section 3901. The Servicemembers Civil Relief Act protects members of the United States Armed Forces, including members of the National Guard, as they enter active duty service. The purpose of the SCRA is to strengthen national defense by giving servicemembers certain protections in civil actions, by providing for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect servicemembers during their military service. Some of the benefits accorded to servicemembers by SCRA are also extended to servicemembers' spouses and dependents.

The origins of SCRA can be traced as far back as the Civil War, when Congress passed a total moratorium on civil actions brought against Union soldiers and sailors. During World War I and World War II, similar acts were passed by Congress to protect the rights of our servicemembers while they were at war.

The intent in passing these protections was to protect both the national interests and those of its servicemembers. Congress wanted servicemembers to be able to fight the war without having to worry about the problems that might arise at home. Today S.B. 33 (R1) demonstrates the Governor's intent is no different.

Many believe that our current war is drawing down, yet last year—and in the current news—we witnessed more than 600 Nevada National Guard soldiers deployed to remote parts of the Middle East and Africa. These are servicemen and servicewomen who continue to be pulled away from their everyday jobs and lives to serve whenever they are called upon.

Therefore, S.B. 33 (R1) proposes codifying into Nevada law that a foreclosure should not be initiated during the period for which the servicemember is on active duty or deployment, or for a period of one-year following the end of such active duty or deployment, without a court order.

I want to provide you a little background on the "one year after." In 2012, SCRA was amended due to thousands of servicemembers and their families being evicted from their homes or foreclosed upon. Under the 2012 amendment, the period of time that banks were prohibited from foreclosure or eviction of servicemembers was extended from nine months to one year after military service or deployment. However, the first one-year extension expired on December 31, 2015, and was scaled back to a 90-day protection period.

In 2016, the Foreclosure Relief and Extension for Servicemembers Act of 2015 was passed extending through 2017 the one-year protection period after a servicemember's service. Effective January 1, 2018, the one-year protection period reverts back to a 90-day period. Senate Bill 33 (R1) does not have an expiration date to the time frame for these protections. The one-year, post-active duty military service allows servicemembers and military families sufficient time to get on their feet and to avoid the stress of potentially losing their home as a servicemember transitions from active duty and deployment.

I want to walk through some sections of the bill. I apologize for not going in chronological order, but I want to hit a couple of specific areas. Sections 1 and 5.3 establish the protections awarded to servicemembers and their dependents against foreclosure sales and foreclosure of a lien by sale, respectively. Both of these sections have similar language as they establish who is protected under this bill, the timeline for such protections, tolling of the statute of limitations governing a foreclosure during the protection of this bill, as well as procedures for a court proceeding for the foreclosure of real property. In both sections, a foreclosure could proceed if a court determines the member's or the dependent's ability to comply with the obligation is not materially affected by the reason of the member's military service or deployment.

Additionally, subsection 6, within both sections 1 and 5.3, outline the penalties towards a person who knowingly initiates or directs or authorizes another person to initiate a foreclosure sale in violation of their respective sections. Proposed language also allows for limited liability to a person or HOA taking into consideration any due diligence by the person before the initiation of the foreclosure.

Last, one of the initial concerns from the HOAs was that they do not have a mechanism for identifying who is a servicemember. The banks do have social security numbers, and they have more information as far as the employment of the homeowner; however, the HOAs do not have similar mechanisms. Therefore, there is language proposed in this bill that identifies steps that HOAs should conduct in an effort to identify military status, to include requesting information, such as social security number and date of birth of the homeowner. The U.S. Department of Defense provides a free website that allows any lender, organization, or individual to identify whether an individual is on active duty service and whether the last day of active duty falls under the previous 367 days. On my testimony that is uploaded to the Nevada Electronic Legislative Information System (NELIS), there is a link to that website (Exhibit C). Our intent is to first identify whether the unit's owner is a servicemember on active duty or deployment before an action is conducted that would initiate a foreclosure process.

Mr. Chairman and members of the Committee, thank you for the opportunity to provide an overview of S.B. 33 (R1), and I am happy to answer any questions you may have.

Assemblyman Pickard:
I would like to thank you and the Governor for bringing this bill forward. As I read through this, my initial thought was that the bill just makes sense. Then, as I was thinking about it,

a concern grew that we may possibly be hurting servicemembers inadvertently. My concern is that we are now including not only those who are deployed but those that are on active duty, and I do not remember this being part of the law before. We have 25-year veterans of military service who are sometimes deployed but often are not. If we are going to make a lender wait 25 years until a servicemember retires or goes on reserve status, and cannot foreclose, is that going to curtail or make it more expensive for servicemembers to get mortgages? I just want to make sure I understand that the intent is to expand protection from only those that are deployed to anyone on active duty, and that there can no longer be any foreclosures even if the servicemember is stationed in a particular place for a long period of time and otherwise able to make payments.

Cesar Melgarejo:
Current federal statute already protects all active duty members. The reason for the deployment-specific language has more to do with our Reserve and National Guard soldiers because I believe they are on Title 32 orders as one-weekend-a-month soldiers. When they are called upon to deploy, they receive Title 10 orders, and that is when they become active duty. The website that I spoke about earlier provides Title 10 information. Current federal law provides similar protections for all active duty, including those members who have served for 25 years.

I agree there could be servicemembers who are cheating and taking advantage of the system. There is, however, case law dating back to 1944—when these protections were enacted by Congress—where the judge clarified that that is not the intent of this law. We want to make sure our servicemembers are protected. The worst-case scenario would be where an individual goes missing in action—and they obviously are not paying their bills—to a simple glitch in the payroll system where an individual is not paid. Unfortunately, that scenario is very common in the Department of Defense. We want to make sure our people are protected, but, obviously, the court has the authority to decide whether a servicemember is materially affected or not. I hope that answers your question.

Assemblyman Pickard:
It does; thank you.

Assemblywoman Cohen:
I was not thinking of this last night while I was reading the bill so forgive me if this is more clear in the bill than I realize, but with the penalties portion of this bill, are we talking about penalizing the individual or the HOA? I want to make sure that if someone who works for the company that controls the HOA does something they should not, that the other homeowners who did not do anything wrong are not punished.

Cesar Melgarejo:
The penalties prescribed in this bill are directed more towards the lender or the HOA, whoever initiates the foreclosure process. I think, to answer Assemblyman Pickard's question as well, that is why we adjusted the language to add some limited liability. As I said, the HOAs were a little skeptical about their ability to identify active

servicemembers; however, with the website I mentioned as well as other information sources—if they do their due diligence—they will be protected by limited liability. In our original language, our intent was to mirror federal statute by adding the penalties. Federal statute already makes any violation by the lenders a misdemeanor.

Assemblyman Elliot T. Anderson:
I have a couple of questions about sections 1 and 5.3. There is a subsection 3 in both sections that talks about the loan being materially affected by the servicemember's active duty or deployment. Can you help me understand exactly what "materially affected" means? That seems like an important term that we ought to have some feedback around.

Cesar Melgarejo:
Thank you for the question, and I think it is important to clarify "not materially affected." As I mentioned earlier, the worst-case scenario is that someone goes missing in action or something happens while they are on deployment, or for whatever reason, the U.S. Department of Defense (DOD) just does not pay them. "Not materially affected" would be individuals who are stationed in the states and can make their payments because they are receiving their paycheck on the first and the fifteenth. Those servicemembers should be able to meet their obligations. For those individuals who are stationed in country, not deployed, just doing their 9 to 5 duties, their military service does not affect their ability to make their HOA or mortgage payments.

Assemblyman Elliot T. Anderson:
Is that in the federal law?

Cesar Melgarejo:
It is in federal law.

Assemblyman Elliot T. Anderson:
Thank you. My other question concerns *Nevada Revised Statutes* (NRS) Chapter 107. I see that in section 4 of S.B. 33 (R1) there is an attempt to rope in provisions of section 1 of the act to apply it to nonjudicial foreclosures as well. Maybe this is a question for legal counsel, but I think it might be more useful if we inserted a parallel section in NRS Chapter 107 as we have done with NRS Chapter 40 in section 1 of the bill, and NRS Chapter 116 in section 5.3. This would ensure that practitioners have more clarity, and it would be spelled out rather than directing them to a different section of the statute. In practice, I think most foreclosures are nonjudicial under NRS Chapter 107, rather than judicial foreclosures through NRS Chapter 40. If we were going to do it with a citation to a different section, I think it ought to be reversed where the language is in NRS Chapter 107 and then there is a citation to Chapter 107 in NRS Chapter 40. I say this as someone who has worked in that area, and I think it would be beneficial.

Cesar Melgarejo:
If the Committee feels that this would simplify the policy, I think we would be amenable to that.

Assemblywoman Jauregui:
Thank you for presenting this bill. I think it is great, actually. I used to work as a foreclosure mitigation lead for Senator Reid and actually dealt with HOAs that had foreclosed on servicemembers while they were away on active duty. If an HOA has to record a lien against an individual to ensure they will recoup monies owed, can the HOA still move forward with imposing late fees and attorney's fees, and can the HOA still charge interest?

Cesar Melgarejo:
I might have to get back to you on the specifics of that, but I believe that paragraph (a), subsection 4, of NRS 116.31162 would not allow HOAs to go past that point. I think that is the process, which initiates those interests and additional fees, and things like that. I will have to double-check that and get back to you.

Assemblyman Watkins:
My understanding is that the federal act is a tool servicemembers can use to alert the courts if something is brought against them, whereas this act seems to be automatic and require the person who is seeking relief to go to court to get permission to move forward with their claim. Is my understanding of the two acts correct, one being more passive and the other one being active?

Cesar Melgarejo:
I think, overall, SCRA has many active portions. I believe Assemblyman Anderson has submitted a bill, as well, that adopts similar protections under NRS, so if you want to cancel your gym membership or you want to cancel your cell phone contract, then it asks the servicemember to be proactive and submit deployment orders. I believe with the federal law, it is implied for the mortgage lenders that they cannot foreclose on a servicemember's real property unless they go to court. That way, the judge has the authority to decide whether the military service does materially affect the obligation.

Assemblyman Watkins:
Specifically regarding mortgages, the federal statute as I understand it says the foreclosure process could start and then the servicemember would make the court aware of their active duty or deployment. As I understand it, the court can enter a stay or not, at its discretion. Is my understanding correct?

Cesar Melgarejo:
That is correct.

Assemblyman Watkins:
If we were to enact this bill in the state of Nevada, it would be different in that the lender could not move forward with a foreclosure without first going to court and then getting permission.

Cesar Melgarejo:
That is correct.

Assemblyman Watkins:
As I understand the scope of the federal act—as it applies to the particular remedy we are discussing—it does not apply to members of the military who work 9 to 5 and are stationed in the United States full-time; it applies to people who are deployed overseas or are reservists who are moved into active status. Is that correct?

Cesar Melgarejo:
No. Both the federal statute and this bill would apply to all active duty, including 9 to 5 servicemembers. As I mentioned earlier, there are occasional payroll glitches at DOD as well as other situations that can happen. Unfortunately, a lot of our servicemembers who have passed away in the last couple of years have been through training accidents and similar situations. Including all active duty servicemembers allows protections for anything that can happen to an individual at any time while on active duty.

Assemblywoman Krasner:
Thank you for bringing this bill and thank you to all of our military who serve our country and keep us safe every day. I appreciate the intent of this bill. Section 1, subsection 1, states that this bill applies to not only servicemembers but also a servicemember's dependents. I looked up the definition of "dependent" on the SCRA website, and it said that a dependent is a servicemember's spouse—we certainly want to protect them—but also the servicemember's child. What are your thoughts on balancing the protection of the servicemember and his dependents—his spouse or his four children who are all dependent—and the rights of a bank, a lender, or an individual person who sold real property. Can you speak to that?

Cesar Melgarejo:
Senate Bill 33 (1st Reprint) defines "dependent" the same as described in Title 50 of the *U.S. Code* Section 3911. Unfortunately, I do not have that printout with me so I cannot quote it. Our intent with this bill is to protect dependents so that when a servicemember is deployed and the dependent is back home, they can do what they need to do to protect themselves on this component of this bill because not every servicemember has a spouse. The servicemember could leave the home behind to his or her children, so I think it would protect them under that. I think we just want to capture everybody who would be considered a legal dependent under the servicemember who is covered by law.

Assemblyman Elliot T. Anderson:
There are a few things we need to put on the record concerning this bill, and I wanted to comment on Assemblywoman Krasner's comment. My experience is that it can affect the servicemembers equally if someone is going after their family as the servicemembers themselves. I would urge the Committee to leave dependent protections in the bill and rely on the "materially affected" language to balance out the rights of the lender. I think that addresses Assemblywoman Krasner's point.

There are two terms that I wanted to ask about, and they are related. In section 5.3, subsection 7; and section 1, subsection 8; the term "due diligence" is used. What qualifies

as "due diligence" under those sections to mitigate damages? Secondly, section 5.3, subsection 5, paragraph (b), uses the phrase, "the association must make a good faith effort." I think that those concepts are related, but can you help me understand the meaning of "due diligence" and "good faith"?

Cesar Melgarejo:
I agree and, to me, they constitute the same meaning. Both "due diligence" and "good faith" are defined under section 5.3, subsection 4, paragraphs (a) and (b), which outline the steps we want HOAs to take. We consider these the floor of what the statute proposes as far as the steps that the HOAs should take to be able to identify a homeowner's military status. As I said, the DOD provides a website where you can search individuals' military status. I have a unique last name so it was easy for me to find myself. Obviously, if you have someone with a last name like Anderson, there could be thousands of Andersons in the military. That is why we allow and want the HOAs to ask for social security numbers and dates of birth so they can really identify servicemembers who are on active duty or deployed, and if they are protected within the 365 days of their service. I think "due diligence" and "good faith" occur when the lenders and HOAs conduct procedures and do what they can to identify military status.

Assemblyman Elliot T. Anderson:
I think it is a canon of statutory construction and I do not think the courts will view the two terms as the same thing. The terms are found in two separate sections of the bill, and the courts are not going to read "good faith" to be superfluous. Perhaps it would be worth defining that a little more just to raise expectations. Perhaps the HOAs and veterans groups can come together to agree on more specificity. I feel terms like these need to be made crystal clear to everyone.

Assemblywoman Jauregui:
I want to make sure that we are covering all of our bases if our intent here is to protect servicemembers. Is there a protocol for repayment ability? If a servicemember faced some economic hardship, through no fault of his or her own, because they were deployed, I am concerned that we are only giving them 365 days to catch up on the payments in arrears. If a servicemember has a $2,000 mortgage and a $100 HOA, that would be $25,200 that they would have to pay back within 365 days; is there some sort of protocol or requirement that will make the HOA or bank put them on a payment plan? Who can come up with that kind of money? If they did not have the money to pay on a monthly basis, how are they going to have it to pay within one year?

Cesar Melgarejo:
Section 1 describes what the court can do, and one step is the obligation to preserve the interest of parties. We believe that would be more favorable to the servicemember and would allow lenders to adjust the payments to a reasonable amount. However, on the HOA side—or on the whole as a payment plan—we did not propose that in this bill.

Assemblywoman Jauregui:
So we are just giving servicemembers one year to pay the HOA everything that is in arrears, and if they cannot, the HOA can still foreclose?

Cesar Melgarejo:
The one-year protection exists because we do not want anything to be initiated during that one year, when everybody is getting back on their feet. Individuals come out of military service and try to find a job, try to stabilize their lives and readjust into civilian society. However, we would assume they would have found a job and would be able to meet their obligations after one year. I think your question goes beyond the scope of this bill. I understand where you are coming from; however, I do not think that we want to hold servicemembers' hands after the one-year period. We just do not want anything to happen during that year of transition. After that, servicemembers need to make sure they meet their obligations.

Assemblywoman Jauregui:
That is correct, but during that first year upon their return home, are you saying that HOAs cannot foreclose? If you are putting that in statute, can you say or include that the HOAs or the banks are required to offer a payment plan to come up with the monies owed? If the servicemember cannot come up with a huge, lump-sum payment, perhaps they could catch up and make monthly payments during that year.

Cesar Melgarejo:
I will have to look into that with our legal counsel and see if we can do something like that.

Chairman Yeager:
Thank you for your presentation. At this time, we are going to open the meeting to testimony in support of S.B. 33 (R1). Anyone who is in support, please make your way to the table in Carson City or Las Vegas. My only request—obviously, with the number of bills on our agenda today—is to please keep your comments as brief as possible. We will take testimony from Las Vegas first, since we started up here in Carson City.

Richard S. Carreon, President, Nevada Veterans Association:
I would like to address a couple of things, and I would like to answer a number of the questions that have been asked by the members of the Committee. The Uniform Code of Military Justice speaks to Assemblyman Pickard's question. Any servicemember—whether National Guard, reserve, or active duty—is required by military statute to follow any and all regulations in accordance with the Uniform Code of Military Justice. One of those regulations, Article 134, addresses debt and dishonorably failing to pay. Servicemembers, whether or not they are on active duty or National Guard Reserve, are required by regulation to pay any debt. The chain of command is actually obligated, under Field Manual 7-22.7, to help servicemembers pay down their debt. It is part of the due process that occurs on the military side.

To answer Assemblywoman Krasner's question, any time a servicemember or their dependent has indebtedness, that servicemember is still responsible to repay the debt. For example, if I have a spouse—stateside—I am overseas, and she is not paying the bills, even though I have given her the money it is still my responsibility as a servicemember to pay for that bill. This would have to be a negotiation between the servicemember's chain of command and the HOA or the financial institution.

The other thing I wanted to mention is that the reason why dependents other than spouses are important is the Exceptional Family Member Program (EFMP). Dependents that fall under the EFMP program are those who require special medical needs, including anything related to mental health. If a child is unable to care for his- or herself because of medical conditions, that servicemember can then petition the DOD or the district attorney to keep that person, even though that person has become an adult, as their dependent.

I support S.B. 33 (R1), and I am happy to answer any questions you have.

John E. Leach, Member, Committee on Common-Interest Communities, State Bar of Nevada, Real Property Section:

We are in favor of this bill, and I just have an additional comment or two. Section 5.3, subsection 5 states that before an association can send out a certain notice under subsection 4, certain things must take place. The problem is that that is the first communication from the association to the homeowner. I think an appropriate modification would be to require that notice be given to the homeowner that they or their family may be entitled to certain benefits under this act. Associations truly do not have the mechanism to get individuals' birth dates and social security numbers. Lenders include that information in their loan applications; HOAs do not. If we were to request this information from the person along with this very first notice, it would give HOAs and homeowners a minimum of 30 days to address the request for that information.

Pertaining to Assemblyman Anderson's comment, the concern is that the reference to "good faith effort" in subsection 5 is if the association has not been provided with that information. While what materially affects the servicemember is addressed in subsection 3, subsection 5 says that before the association notifies the servicemember it should seek the homeowner's social security number and date of birth. Once the HOA gets that information it can go out and verify whether that person is entitled to protections. Then, subsection 5(b) says that if date of birth or social security has not been provided, the HOA must still make a good faith effort. To be honest with you, having worked with common-interest communities for the better part of 30 years, there really is not a mechanism for HOAs to obtain this information other than to request it from the homeowner.

Assemblywoman Jauregui raised some very good questions. First, as I am reading the bill, the late fees and the interest under the HOA have nothing to do with and would not be affected by this bill. It appears that if an assessment is due and it is not repaid—regardless of whether the person is in the military—late fees and interest would theoretically continue to accrue. As far as attorney's fees or collections fees or costs, even if this bill was modified

as I suggested—allowing HOAs to send out the first letter—the HOA could not even get to this step, which is the notice of delinquent assessment. I believe our Nevada Supreme Court has recently concluded that this is the first step in the foreclosure process. As far as the collection fees and costs and/or attorneys' fees, those fees and costs should not exist at all. Under this bill, during the first year upon the servicemember's return home, the fees also could not occur. While the late fees and interest are something that we need to talk about, the collections and attorney's fees cannot be added to that account.

Last, the very statute that is referenced in section 5, which is paragraph (a) of subsection 4 of NRS 116.31162, already requires an association to make an offer of a payment agreement to the delinquent homeowner under current Nevada law. If HOAs want to make this offer to servicemembers upon their return from active duty, HOAs are already mandated by law to extend an offer to that person and enter into a payment agreement. My hope would be that that payment agreement option would be used judiciously to get these individuals back, so that they are not overwhelmed when they get home. If the HOA could include the request for information needed to verify military status in the notice that is required by subsection 4 of NRS 116.31162, I think it would streamline the process and make it easier for HOAs.

As Assemblyman Anderson said, I am concerned about the "good faith effort" included where it is in NRS. Good faith appears to be different in the section that determines "materially affects," and we are just not aware of other things that could be done to actually find it out, unless it is a unique name, as the sponsor pointed out earlier. Thank you very much for allowing me to comment.

Connor Cain, representing Nevada Bankers Association:
We are in support of this bill. We think it is a great opportunity to help servicemembers who are on active duty or deployed. We would like to thank the Office of the Governor as well as Mr. Melgarejo for working so diligently with all the interested stakeholders. We think it is a great bill.

Garrett Gordon, representing Community Association Institute; **and Southern Highlands Homeowners Association:**
I want to thank the Governor, the Nevada Bankers Association, and Mr. Melgarejo for working with us. It was kind of a unique concept of putting HOA liens into the statute. We rolled up our sleeves and worked with everyone. I think Mr. Leach made a number of needed clarifications. I am going to go back to our client and see if the legislative history, today, is sufficient. If not, we may suggest a couple of tweaks to Mr. Melgarejo. Overall, however, I think this is a good bill and I am happy to answer any questions.

Jenny Reese, representing Nevada Association of Realtors:
We are in full support of S.B. 33 (R1), and we appreciate the Governor's Office for working with us on this bill.

Kevin Burns, Chairman, United Veterans Legislative Council:
I represent a majority of the national veterans organizations within the state of Nevada. We wholeheartedly support S.B. 33 (R1). Having served a career in the Marine Corps from Desert Storm, to wintering over on the Korean Demilitarized Zone, to the jungles of South America, I can tell you that, disproportionately, my time spent deployed was dealing with problems like this while I was gone. My wife probably ended up doing more work than I did while I was gone, because she was running my unit's wives and helping them deal with their problems.

There is no organization that can look at anybody and say there will never be any pay problems. The DOD is notorious for pay problems, and those problems magnify when you are dealing with someone who is deployed in a combat or war zone. Why? The focus of that individual, the focus of the first sergeant and the company commanders, is taken up with worrying about dealing with those issues, because the servicemember's focus is not 100 percent on the job. When a servicemember's focus is not 100 percent on the job, they make mistakes and people die in combat. Anything that we can do to help alleviate that and to let us say, Okay, we will worry about it when we get home from deployment, will improve the combat-readiness of any kind of unit. I thank you.

Cary Demars, representing Veterans Association of Real Estate Professionals:
I am a Marine Corps veteran and our organization wholeheartedly supports S.B. 33 (R1). As an active duty member who served overseas, I acknowledge the former speaker's words and sentiment because there are a lot of stressors overseas. We wholeheartedly support anything we can do to alleviate those issues for our veterans.

Jonathan Friedrich, representing Nevada Homeowners Alliance:
We support this bill. I want to mention a couple of minor items, but I will be brief. The bill talks about the courts of competent jurisdiction throughout its text. Assemblyman Anderson, I believe, addressed one of our concerns, which is that most foreclosures concerning HOAs are nonjudicial, so I would like to see that addressed. The other issue I want to bring up is identity theft. Providing HOAs with social security numbers and dates of birth leaves individuals vulnerable to identity theft. There is no way to know what the management company or the board may do with that information. I would suggest that when the servicemember is deployed overseas, he submit his deployment papers to the management company or to the board; that would give clarity to the situation. Those are my only two comments, but we do support this bill.

Chairman Yeager:
Thank you for your testimony. Is there anyone else in support of S.B. 33 (R1)? Seeing no one, is there anyone in opposition? [There was no one.] Is there anyone who would like to testify in the neutral position? [There was no one.] At this time, I will invite the sponsor back up to the table to make concluding remarks.

Cesar Melgarejo:
First, I want to thank the gentleman down south as I think he answered some of Assemblywoman Jauregui's questions about payment plans. I also want to thank all the stakeholders, the banking associations, HOAs, and everybody for coming to the table and working with everybody. Obviously, we want to protect our servicemembers and their best interests, and I believe this bill, as it stands, is actually stronger than when we first introduced it. I think this bill will help us get closer to reaching the Governor's goal of making Nevada the most military- and veteran-friendly state in the nation. Thank you.

Chairman Yeager:
Thank you again for joining us here and presenting the bill. I will close the hearing on S.B. 33 (R1). At this time, I will open the hearing on Senate Bill 476, which makes changes relating to the Commission for Common-Interest Communities and Condominium Hotels.

Senate Bill 476: Makes changes relating to the Commission for Common-Interest Communities and Condominium Hotels. (BDR 10-554)

Senator James A. Settelmeyer, Senate District No. 17:
I am from Senate District No. 17; however, I am not representing them in that capacity today. Today I am here on behalf of the Sunset Subcommittee of the Legislative Commission, presenting Senate Bill 476. The Sunset Committee is charged with going through boards and commissions, looking at them and figuring out if they should be continued, consolidated, or terminated. There is a recommendation to bring up this committee, the one dealing with the Commission of Common-Interest Communities and Condominium Hotels, which has nothing to do with homeowners' associations (HOAs), let me assure you. I did an HOA bill; I suggest everybody do one and never do any more, but that is my personal opinion.

Before we get into the bill's provisions, the Legislature established the Common-Interest Communities and Condominium Hotels Commission in 2003 to settle disputes. As you know, they do not ever have any disputes, so they are not busy at all. The Commission consists of seven members appointed by the Governor; four members representing the business side of common-interest communities, developers, a certified manager of a common-interest community, a certified public accountant (CPA), and an attorney. Three members must be unit owners, including one who must have experience serving on the executive board of an HOA. The composition of that commission is why we are here today, specifically the changes recommended by the Sunset Committee which relate to that structure.

The Commission was reviewed on February 23, 2016. At that meeting and several times during the interim, the Subcommittee heard from members of the public who expressed concerns about the operations of the Commission. It was at our final work session in June 2016 that the recommendation came forward that is before you now. Former Assemblyman Glenn Trowbridge, who was the Vice Chair of the Sunset Committee last interim, moved to revise the membership of the Commission. He has lived in common-interest communities for some time and has first-hand experience with the issues.

I do not believe he is here today, at least I do not see him in the Las Vegas audience, so let me summarize the reasons for the recommendations.

The Commission's opinion was that unit owners are the minority interest on commissions; business representatives—the CPA, the attorney, the developer, and the manager—are already the majority. Under existing law, there is the possibility that the unit owner could actually be an absentee landlord who owns and rents out the units. In that case, that person represents a business, not the occupants. The Sunset Subcommittee voted unanimously to approve the recommendation that unit owners on the Common-Interest Communities and Condominium Hotels Commission must be owner-occupants, not landlords. That, in a nutshell, is S.B. 476. I consider it to be a fairly simple bill, but I will gladly entertain any questions you have. Again, this is not about HOAs, so please do not ask me questions about the colors of trashcans, the colors of the solar panels, or any of that stuff. This is about the Commission, which was formed to settle disputes.

Chairman Yeager:
Thank you, Senator. Are there any questions from the Committee? [There were none.] I think you got off the hook today, Senator. Thank you for being here and presenting S.B. 476. I will open the meeting for testimony in support. Is there anyone in support of S.B. 476? Seeing no one, how about opposition? Mr. Friedrich, are you in support or opposition of the bill?

Jonathan Friedrich, representing Nevada Homeowners Alliance:
I am not quite sure how to answer that. I would say more neutral.

Chairman Yeager:
Mr. Friedrich, if you can hold on for one second I will take your testimony under "neutral." Is there anyone in opposition to the bill? I do not see anyone, so we will now take neutral testimony.

Jonathan Friedrich:
Nevada Revised Statutes (NRS) 116.600 describes the requirements of the commissioners—I have been a commissioner. Subsection 4 says ". . . or have been actively engaged in the business or profession related to common-interest communities. . . ." Would the proposed change to the statute in S.B. 476 create a conflict?

Chairman Yeager:
Thank you, Mr. Friedrich. We will look into that. I do not have an answer for you right now, but I appreciate your bringing that concern forward in the testimony.

Jonathan Friedrich:
Thank you, sir.

Chairman Yeager:
Is there anyone else who is neutral on S.B. 476? Seeing no one, do you have any concluding remarks, Senator Settelmeyer?

Senator Settelmeyer:
This bill, if passed, would only affect future appointments. It was my job to bring this bill forward to you on behalf of the Sunset Subcommittee. It is not my own, so in that respect have fun with it. It is yours now, and I hope it is the simplest HOA bill you have.

Chairman Yeager:
Thank you again for being here this morning, and for your patience. We will go ahead and close the hearing on S.B. 476. I wanted to let everyone know that we are going to go ahead and reschedule Senate Bill 195 (R1). I know it is on the agenda for today but it is pretty clear we are not going to be able to get to that bill, due to other obligations and an early floor session today. I apologize in advance, but if you are here for S.B. 195 (R1) we will be rescheduling that bill.

Senate Bill 195 (1st Reprint): Revises provisions relating to common-interest communities and time shares. (BDR 10-470)

As noted earlier, we are going to be in recess to take our group photo, we will be back here as soon as we are done, and we will take the remaining two bills on the agenda. Please bear with us, and we are in recess at this time [at 8:57 a.m.].

[The meeting was called back to order at 9:23 a.m.]

I am going to call the meeting back to order. Thank you, everyone, for your patience this morning. At this time, we are going to open the hearing on Senate Bill 258, which revises provisions governing common-interest communities.

Senate Bill 258: Revises provisions governing common-interest communities. (BDR 10-994)

Senator Donald (Don) G. Gustavson, Senate District No. 14:
It is great to be back on this side of the house. I sat on this Committee for several sessions and really enjoyed it. First, I would like to say I agree with Senator Settelmeyer, that everybody should have at least one homeowners association (HOA) bill, just for the experience. They are great and I have had a couple myself, so I know. As I said, I sat on this Committee so I well know how those bills go.

I am here today to present Senate Bill 258. I actually have my Senate minority caucus intern, James Ringel, here with me, and he will present the bill. He ran our presentation on the Senate side and did a great job, so I thought I would let him try it again to get experience.

Chairman Yeager:
That would be fine. Thank you.

James Ringel, Intern, Senate Minority Caucus:
Thank you, Chairman and members of the Committee, for letting me speak to you about and present this bill. Senate Bill 258 is before you today to enforce the legislative intent of Senate Bill 130 of the 77th Session. In the 77th Session, Senate Bill 130 passed unanimously out of both houses and was signed by the Governor in May 2013. The passage of S.B. 130 of the 77th Session was necessary because many HOAs were sending notices of alleged violations that were vague and unclear, and often left property owners confused as to what the actual, supposed violation was. Senate Bill 130 of the 77th Session instructed that notices sent by an HOA to a homeowner in regard to alleged violations needed to include detailed information and include a clear photograph of the alleged violation if the violation was associated with the physical condition of the unit or the grounds of the unit.

The change in statute worked well until the Real Estate Division, Department of Business and Industry, was asked to issue an advisory opinion. In their opinion, they stated that S.B. 130 of the 77th Session did not need to be adhered to until such time that a fine was being imposed. This was not the intent of the original piece of legislation that passed in 2013.

If a homeowner is going to be accused of a violation regarding their property, then I believe it is reasonable that the owner actually be properly informed with a notice that provides specific details of the violation and a photograph of the alleged violation if it concerns a physical condition. After all, should not homeowners have the right to know exactly what rules they are violating and what they need to correct? Anybody who lives in an HOA—and many Nevadans do, especially southern Nevadans—understands that an HOA is going to levy a penalty in regard to a notice of violation that goes uncorrected. If a notification of an alleged violation is sent to a property owner by an HOA, then S.B. 258 makes clear that any of these notifications must specify, in detail, the alleged violation and include a clear photograph of the violation even if there is no fine attached.

I want to point out on the exhibit (Exhibit D) from the Real Estate Division, it states that their advisory opinion is only an opinion, and not a rule, regulation, or final legal determination. This is why it is so important that we pass S.B. 258, so as to strengthen and clarify the legislative intent of S.B. 130 of the 77th Session and to try to bring some peace of mind to all Nevadans who choose to reside in HOAs. I am happy to take any questions that the Committee may have. Thank you.

Assemblyman Elliot T. Anderson:
Before I ask my question I just want to note, Senator Gustavson, it is really not appropriate to encourage freshman legislators to take on HOA bills when they do not know what they are getting into. We do not allow hazing here.

I wanted to ask a couple of questions to clarify the meaning of a couple of the terms in the bill. The first term is "written notice." Does that include both email and physical copy? As to "a reasonable opportunity to cure," is there a specific time frame that you have in mind? If so, might it be better to put a time frame in the bill rather than leave that ambiguous?

Senator Gustavson:
As to the first question, I am not sure if emails are used. I think emails may be used on notices; if they were, it would apply to those also. This bill came about mainly because homeowners were receiving notices saying that, if there is an alleged violation, a fine might be involved. Someone discovered a loophole in the law that passed in 2013 that allowed HOAs to send out a courtesy notice. There is nothing in the NRS about courtesy notices, so the Real Estate Division opined that courtesy notices were okay to send out and did not need to include photographs. We brought this bill to close that loophole. What was your second question?

Assemblyman Elliot T. Anderson:
The second question pertains to the language on page 3, lines 14-15. It says, "Provide the unit's owner or tenant a reasonable opportunity to cure. . . ." When you have that language "reasonable opportunity to cure," are you anticipating a specific time frame? What exactly is contemplated by that language?

Senator Gustavson:
"Reasonable" is language that is used throughout NRS when there is no time limit; it is something we have been using for years in the statute. We did not want to put an exact time limit in the bill because it depends—especially in the north. Homeowners need to have a reasonable amount of time to correct a violation. If the violation occurs in the winter, it may not be possible to correct the problem right away. That is why we did not want to put a time limit in there.

Assemblyman Elliot T. Anderson:
I really like spelling things out as much as possible. Homeowners' association law is often litigated, so I think the more specificity and certainty we have, and the more problems we can avoid, the better. Maybe it could be worded as "time frame reasonable under the circumstances," or something else that provides more certainty. I will move on, however, and we can talk about that offline.

Senator Gustavson:
I might be open to this, if the Committee decides there should be a time limit included. I might be fine with that as long as it is reasonable.

Assemblyman Pickard:
I do not need to sponsor an HOA bill to know how difficult they can be. I have set several up as a developer, so I know how difficult that can be. I guess the one thing that is missing from this is trying to keep the violations reasonable or the rules reasonable. When I first moved

into my current HOA, I received a notice that my drip line was an inch too long, sticking out of the ground.

I actually have the same questions as Assemblyman Anderson. With "reasonable opportunity," however, I was thinking that we might want to make sure the time frame is not too short. I would suggest that we use language such as "a reasonable opportunity not less than 15 days" or something like that, to give people an opportunity—even when they should be able to address it promptly—in summer conditions.

The last question I had was about photographs, on page 4, lines 2-3, of alleged violations, "if the alleged violation relates to the physical condition of the unit or grounds." I am having a hard time thinking about a violation that would not be related to a physical condition, because HOAs are generally concerned with making sure that homeowners are following the guidelines, whether from the paint color to the maintenance of the yard. Is there something outside of the physical condition that is contemplated in this bill?

Senator Gustavson:
I had that same thought myself when we introduced this bill in the Senate and I am trying to remember the answer. Some issues would fall under this category, whether it is a time limit that you had to do something in or something like this here. I wanted to leave it open because I am sure there are violations out there that would not require a photograph.

Assemblyman Pickard:
Thank you. I support this bill. I think notice to the homeowner, and making it very clear what you are looking at, is critically important to enforcement.

Assemblyman Thompson:
I want to piggyback off Assemblyman Anderson's questions as well. Being that we are in the electronic age, we should make the language very specific around electronic communication, and include that electronic communication has to have the ability to reply. Some HOAs send electronic communications that do not allow users to reply, so it is really not communication. If an HOA informs a homeowner about violations and the owner wants to reply and ask for clarification, but they cannot do so, the homeowner has to scramble around and find a phone number or some other method to clearly communicate. That is just my suggestion. It is a good bill, but I think this will help it along the way. Many people prefer electronic communication, and it is a cost-saving measure too. If HOAs have to mail, they send certified letters, and the Committee knows that is quite expensive.

Assemblywoman Cohen:
Doing a triple piggyback off of Assemblyman Thompson and Assemblyman Anderson, if you do decide to include an electronic communications provision, I would also request that a provision include that people be made aware that an address that they give is going to be used for electronic communication. The language should be more specific than, "What is your email address?" so that the homeowner understands this is the email address that will be used for communication with the HOA.

If I may make a brief comment, we joke about HOAs—and they are an easy target and it is often quite deserved—but I find it surprising how many people are passionately in support of their HOAs. Many people do feel that they serve a purpose. Many people want to live in an HOA and they want their HOA to be strong. People choose to live there and they choose to have that type of community. Thank you.

Senator Gustavson:
I have been on both sides of this issue. I live in an HOA now, I have lived in HOAs before, and I have been the president of an HOA before. I understand both sides of the issue. I brought this bill, not because I hate HOAs or anything, but because this is an issue that needs to be worked out. I have received notices personally, with a photograph, but the photograph was very unclear and it was a cut and paste from the Covenants, Conditions, and Restrictions (CC&Rs). The violation was so vague that I did not know what it was. The notice said my fence was in disrepair so I went out and looked at my fence. I looked at it for quite some time, with the photograph, which did not show anything. I could not see anything, but I think some of the boards were different colors. I could never really figure it out, and that is what started this bill to begin with. I like and dislike HOAs just like everybody else. There are good points and bad points to HOAs; our job here is to try to protect the citizens, first of all, and the HOAs too. We want to do what we can.

I agree that electronic mail should be an option, and if we want to do something, I will let legal take care of that. I am open to that and I think it is a good idea.

Assemblywoman Cohen:
I am sorry, Senator Gustavson, I was not trying to imply that you were saying that you dislike HOAs. I have also received notices, too, where I thought, "What the heck are they doing?" I was surprised by how many people support their HOAs; it was really eye opening for me.

Assemblywoman Krasner:
From my understanding, this bill is just a clarification on existing law that helps people who receive a notice of violation but do not know what the violation is for because the notice just says there is a violation on the property. This bill would require that a photograph and a specific description of the violation is included so the owners know exactly what they are violating and they have a chance to cure the problem. Is that correct?

Senator Gustavson:
Yes, you are basically correct, but the law as it was originally enacted in 2013 also required a clear photograph, and that is not the issue right now. The issue is that HOAs started sending out "courtesy notices" so they did not have to send out a photograph. This bill is trying to close that loophole so that any notice of alleged violation would have to come with a photograph and a clear explanation of the violation.

Assemblyman Watkins:
I was warned against bringing an HOA bill during orientation. I was told, "Whatever you do, do not open NRS Chapter 116 because if you do, everybody is going to jump in." I wondered if you had the chance to see my proposed amendment to your bill (Exhibit E), in which I jump into your opening of NRS Chapter 116 for the purposes of addressing the turnover from a developer to the owners of the property for management of the property. Last session there was a bill that changed the threshold from 75 percent to 90 percent for the declarant turnover, and I think it had some unintended consequences and maybe some intended consequences. My proposed amendment would keep that in place so long as it is consistent with the declaration itself. If the declaration provided for turnover at any other percentage, then turnover would occur at that percentage because that is the deal that was made with homeowners when they bought the house.

Did you get an opportunity to look at it? If you have, I would love to talk to you about it.

Senator Gustavson:
Yes, I did see a copy of your amendment. As you know, if you can get an HOA bill through the Legislature clean and not add something else to it that could poison the bill, we would rather do that. I know this has been attempted a few other times and it has not passed, so I would not really be open to your amendment at this time. I do appreciate the thought, though.

Assemblyman Ohrenschall:
I was just thinking that if we are hanging ornaments on this Christmas tree, I have an HOA bill from a few sessions ago that addressed hanging laundry on a clothesline. It is still looking for a home and maybe I could try to make sure that in an HOA you can dry your laundry on a clothesline. I had a professor from law school, and that was a very important issue to her. I started on that bill and a lot of ornaments got hung on it, and I am not sure we got that to the Governor's desk.

My question has to do with the amendment and the electronic notice provision of your bill. I frequently receive emails that send a read receipt to the person who sent the email, so they can see that I actually opened the email and that it is not just sitting there in my inbox, and that they do not have the wrong email address, or that I am sick in the hospital and not checking my email. Would you consider requiring a read receipt in your amendment to show that the person who is allegedly in violation actually opened the email, read it, and is aware of what is going on?

Senator Gustavson:
I appreciate your thoughts and you bring up a good issue. Many people—maybe most of us—understand email completely, but not everybody does. If we start sending emails to people, or if you sent one to me, and you wanted it to be flagged, I would not know how to do it. We have to keep that in mind. Sending emails in place of written notice could be a problem, too. I do not think we should do email in place of mail, but we could send

both a written notice and an email. That way, if the person wanted to communicate with email they would have that option, but I would not want to replace written notice with email.

Assemblyman Elliot T. Anderson:
When I started this line of questioning, my question was that I wanted to figure out exactly what the term encapsulated. I think if we are going to be specific, the right call would be to use written notice, by mail, to the owner's address in the association; and any email that the association has on file. I hate paper and I hate opening my mail; I just do not like paper. I communicate better by email, but there are some people who really do not do email at all. I think if that language specifically said "written notice to the owner's unit in the association via U. S. Mail and any email on file," that would solve the issue nicely. I think the purposes you are trying to go after would be well served by ensuring that no matter which medium people like to use, they will get that notice. That is my suggestion.

Senator Gustavson:
Thank you for bringing that up. I understand that there is an amendment in existence that I might be amenable to, and that would clear this issue up.

Assemblyman Pickard:
I have a question for legal. I do not mean to belabor the point, but it seems to me—and I did not check NRS Chapter 116 to verify—that the notice requirements, particularly when associated with a fine, require written notice sent through certified mail. I am concerned that if we start touching some of these things in the periphery, we may be creating a double standard. Can you speak to the existing requirements?

Brad Wilkinson, Committee Legal Counsel:
Page 4, lines 7-10, address the existing requirements. This bill is actually patterned after existing law relating to imposition of a fine, although there is a slight difference in the new language. Existing law says, "For the purposes of this subsection, a unit's owner shall not be deemed to have received written notice unless written notice is mailed to the address of the unit and, if different, to a mailing address specified by the unit's owner." We do not have that provision in the new language so it does not make it clear whether written notice would require electronic notice. There are statutes that say you can receive notice by mail or you can opt in to electronic notice, if that is what you desire. It could certainly be crafted in whatever way so that you get both, that you get one or the other; you could opt in or something.

Chairman Yeager:
Do we have any other questions from Committee members? [There were none.] Thank you for your presentation on S.B. 258. At this time, I will open up the hearing to testimony in support of S.B. 258.

Jonathan Friedrich, representing Nevada Homeowners Alliance:
I do not know if you can see it or not, but this is a notice of pending violation from The Howard Hughes Corporation in Summerlin; it does not include a photograph. This is

a notice with a photograph from Siena HOA. I worked with Senator Gustavson, and I want to thank him for bringing this bill forward. Bob Robey and I were in contact with him prior to this session. Unfortunately, I was the one who had the Real Estate Division issue this advisory opinion because I got into an argument with Summerlin when they did not supply a photograph with notice of violation. I think it is incumbent that if an association claims there is a pending violation, that it be shown. What if the owner of the property does not live on site? How is he going to know exactly what is being addressed? The violation could be stated in a very ambiguous way where an owner does not understand what has to be done to correct it.

I wanted to address a couple of other issues. If electronic communication is going to be included in written notice, it should be an option; mail or electronic. In addition, there is nothing in statute that requires a courtesy notice. The Summerlin West Community Association letter says, "This is a friendly reminder," and the Siena document says "courtesy notice," neither of which exist in current law. Senator Gustavson is correct that the associations have found a way around doing what is needed.

I wanted to address Assemblyman Pickard's question about situations where photographs might not be taken. This was discussed at some point a few years ago. Children should not be photographed because you do not know if the person taking the photograph is a pedophile. The other issue that came up involved people swimming naked in their back yard. Those are two situations where you would not want to take photographs.

As far as Assemblyman Anderson's concern about time frames, in NRS Chapter 116, the allotted time is usually 14 days. However, as Senator Gustavson stated, if the HOA claims a homeowner has to go paint the house or fence and it is in the winter, that is not the proper time of the year to paint. In that situation, a reasonable time could be 30, 60, or 90 days.

Assemblyman Anderson stated that he hates paper; I love it. I have loads and loads of filing cabinets; I am not computer savvy and I can find something much faster in my file cabinet than I can online. Those are my comments and I do appreciate Sentor Gustavson having the courage to bring this bill forward. It is needed and it eliminates abuses to homeowners. That is what this bill is all about. I will be glad to answer any questions.

Assemblyman Elliot T. Anderson:
I just have a comment. I think the right language is "a reasonable time under the circumstances of the violation," something like that to account for what the violation is. I do not know, and we can leave that open. Anyway, because you are going after my email and you love paper so much, I am just a no now.

Garrett Gordon, representing the Community Association Institute; and Southern Highlands Homeowners Association:
I am representing the Community Association Institute, which is made up of HOAs, as well as Southern Highlands, a master-planned community in southern Nevada. I have been doing HOA work here in Carson City, and this is my fifth session. I remember

Assemblyman Ohrenschall's laundry bill. I also remember Assemblyman Hansen's bill, last session, to repeal NRS Chapter 116 in its entirety. I appreciate working with Senator Gustavson. I worked with him in 2013 on the language where he was concerned that any violation letter that could result in a fine should have a picture. Today we are here to argue that if an association sends a courtesy notice—some do, some do not—that courtesy notice must also include a photograph. That was very important to Senator Gustavson, and we worked with him to draft the language.

I may suggest one tweak to the bill. I talked to the Senator about a cross-reference to make sure the current law on violation notices is consistent with the proposed law on courtesy notices. I think he will be agreeable to the amendment, but I will get him the language before a work session, if there is one.

As far as electronic mail, this issue has come up numerous times over the last three or four sessions and there has been testimony on both sides of the argument. Some of the senior, master-planned, communities were opposed to it. We ended up with language in the current law that not only requires a mailing to the unit, but any other address the unit owner may provide. If the homeowner is renting the home, and lives in California, the notice goes to both addresses. I think we left email on a case-by-case basis per community. I believe you can go to your association and opt in for electronic mail if you would like, but there was always the backstop of mailing to the proper addresses. I will work with the Senator on a possible tweak, but I am here for any questions. Thank you for your time.

Assemblyman Watkins:
Have you had an opportunity to look at the amendment that I submitted (Exhibit E) on this bill? If you have, what are your thoughts about the policy decision behind it, which is changing the declarant control to the earliest of a number of different factors? The last factor that we would add in would be that if the declaration says it will be turned over in a certain amount of time, then that is what rules. For instance, the Southern Highlands HOA is in my district, and their declaration says it will provide for turnover at 75 percent of owner occupied. Then, in the 2015 Session, the law was changed to move it from 75 percent to 90 percent. Southern Highlands and the developer interpreted this to mean that they can now turn it over at 90 percent even though the declaration says otherwise. What are your thoughts on the policy behind that?

Garrett Gordon:
I have not seen your amendment, but I would be happy to sit down and look at it with you. My recollection of last session was that an amendment was proposed to declarant control for a number of reasons. One reason was to bring it more in line with the Uniform Common-Interest Community Act. Second, it was a balancing act, where homeowners were able to join the board earlier in exchange for the declarant, and communities could only stay on later for a number of reasons. Maybe we can talk offline about that. It did pass both houses unanimously, and my understanding from the Real Estate Division, and many emails and comments from associations on many different issues, is that this has not been a problem. Let us get together and talk about it.

Chairman Yeager:
Are there any other questions for Mr. Gordon? [There were none.] Is there anyone else in support of S.B. 258? [There was no one.] Is there anyone who would like to testify in opposition to S.B. 258? [There was no one.] Is there anyone in the neutral position? I do not see anyone here in Carson City but it look like we have some people coming to the table in Las Vegas.

Michael Kosor, Private Citizen, Las Vegas, Nevada:
I live in the Southern Highlands district of Las Vegas. I am a homeowner there and a member of a sub-association board. Assemblywoman Cohen, I am one of those big supporters of the HOA. I recognize that it is not perfect, but again, if it is handled correctly there must be a balance between what it gives and what it does not give. I am a big supporter and would love to see this continue.

I am here today in the neutral position because I have no opposition to the bill as it now stands. Since declarant control has been proposed as an amendment, I would like to address that. Let me quickly address the issue that was brought up just recently in testimony, as far as concurrent or in track with the Uniform Code Act. I want to make it clear that this bill, moving from 75 percent to 90 percent will put Nevada as the only state that exceeds 75 percent (Exhibit F). I am not sure how that is consistent.

I am one of the people unhappy with this change, and I can say there are a number of people in Southern Highlands whose declarations actually stated 75 percent. We purchased in that community with the expectation that it would be 75 percent, only to find that Assembly Bill 192 of the 78th Session, originating in this very Committee, changed that from 75 percent to 90 percent. Not only did it change it, it made it retroactive, so that my declaration is no longer applicable and, in fact, defaults. The intent of the statute, as I understand it, was to make it a maximum, but what we have done is make it the standard.

In theory, the current statute provides for developer control of an HOA board until the developer's stated interest in the association falls below 10 percent. It defers the interest of the majority homeowners in deference to the developer's minority interest. We live in a democratic country and these are HOAs, not developer associations. As I noted previously, 10 percent is in theory. In practice, it can get worse. Developers who are so inclined can extend control of an HOA board practically forever. Nevada law allows the developer, at his or her sole discretion, to establish the maximum units in the declaration, the denominator in that computation. There is little statutory guidance and no regulatory oversight, approval of the declarant content, nor is there any rational test that is required in any plan necessary in setting the maximum units. Nothing precludes a developer from establishing a purely arbitrary maximum number of units. As a result, a developer can easily retain control indefinitely, if not permanently, until the 90 percent threshold criteria transferring the control over to a board whenever they see profits or it make sense to them to do so.

Furthermore, the Real Estate Division does not ask, nor does it monitor, the percentage of units not in developer control. Determination of control change is solely the duty of the association board, controlled by the developer and/or the developer's interests. Essentially, the fox is monitoring the hen house.

Earlier I emphasized that the change threshold is based on a stated interest, not necessarily an actual or quantifiable interest. Thus, a 10 percent interest granting the developer control rights need only be stated. It need not be one the developer actually has an investment in. What is most egregious, and I think it has been raised here, is that the developer control issue in the language of A.B. 192 of the 78th Session affected declarations of homeowners such as myself who purchased their homes in years prior expecting 75 percent control change.

As for the significance of that change, Nevada's statutes have long prohibited adjusting upward the maximum number of units contained in a declaration once it is sold to homeowners. The maximum units identified in a declaration may not be increased, per statute. That is effectively what this legislation did last session, extending developer control by allowing an arbitrary maximum in the denominator. I strongly believe the entire 2015 piece of legislation should be repealed, but I am a realist who recognizes that getting a complete reversal of a prior-year effort is a hurdle too high.

I ask this Committee to adopt an amendment as a fix to the retroactive effects of last year's legislative session. For all but possibly the developer, last year's change was never intended to be retroactive. I also point out that the statute was intended to set a maximum point of developer control. A lesser changeover could, and should, be available. However, as the statute now reads, that is not possible. The bottom line is that the statute is flawed, and I ask this Committee to fix it.

Chairman Yeager:
I just wanted to make sure the record was clear. The testimony you provided was in support of the amendment mentioned by Assemblyman Watkins.

Michael Kosor:
Yes, that is correct.

Chairman Yeager:
In terms of S.B. 258, on the bill as drafted, you are in the neutral position with respect to the language of the actual bill.

Michael Kosor:
That is correct.

Chairman Yeager:
Thank you for those clarifying remarks.

Himanshu Bhatia, Private Citizen, Las Vegas, Nevada:
I live in Southern Highlands as well. I have lived here for three years, and before that, I was a part of HOAs in Miami, Florida, in California, and have lived in several different communities. This is a unique HOA where the control, as Mr. Kosor mentioned, has been raised to 90 percent, which I totally disagree with. I think it should be 75 percent because that is how we bought our home and were expected to agree with the rules that we had signed in the CC&R. I would just like to echo all the comments that Mr. Kosor mentioned. We agree on all those things and really would like to thank Assemblyman Watkins for proposing this amendment. Thank you.

Gulab Bhatia, Private Citizen, Las Vegas, Nevada:
I also live in Southern Highlands. We bought a home there three years ago, and we are greatly disturbed by this change in declarant control from 75 to 90 percent. We believe it provides grave injustice to homeowners who are unable to govern their own association, even when 90 percent of the homeowners are bought into the subdivision. I strongly support Mr. Kosor's comments and I hope we are able to be heard today. Thank you.

Chairman Yeager:
Thank you for your testimony this morning. Is there anyone else in the neutral position on S.B. 258? [There was no one.] Senator Gustavson, I invite you back to the table to make your concluding remarks.

Senator Gustavson:
I appreciate the Committee taking the time to listen to this simple little HOA bill. Now you see why we talk about HOA bills the way we do. I appreciate the comments and suggestions that were put forth. I believe there might be one amendment I would be amenable to; I just have to get a closer look at that, and I will get that to you before the work session. Thank you very much, and if you have any other questions, I would be happy to try to answer them.

[A letter in support of Senate Bill 258 was submitted after the hearing by Bob Robey (Exhibit G).]

Chairman Yeager:
Thank you, again, for being here this morning and thank you for your patience. I know it has been an interesting morning, schedule-wise. If we do have any other questions, we will reach out to you. We will close the hearing on S.B. 258 and the Committee will be at ease for just a moment before we take our next bill. We will now open up the hearing on our fourth, and final, bill Senate Bill 255 (1st Reprint), which revises provisions relating to common-interest communities. I would like to welcome our MVP of yesterday's stunning victory in basketball, Senator Denis, to the Committee.

Senate Bill 255 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-789)

Senator Moises "Mo" Denis, Senate District No. 2:
I appreciate the opportunity to be here before you this morning. I represent District No. 2 in Las Vegas, and I thank you for your patience. We were trying to finish up some voting and we were missing some people, so if I walked out, my Committee would have had to stop. I appreciate that you scheduled me last.

When a person purchases a home in a common-interest community, the seller is responsible for ordering a resale package from the homeowners association (HOA). The resale package contains important documents.

Let me quickly walk you through the content of the bill. I would like to point first to the first reprint, page 2, lines 38-40, that existing law requires a seller or their agent to furnish the purchaser of a home in a common-interest community with a resale package. Once receiving the resale package, the purchaser has five days to review the package and cancel the contract for purchasing the home. Existing law requires the buyer to cancel the contract for purchase by hand delivering the notice or mailing the notice.

Many homebuyers and realtors use electronic means to communicate on various issues during a transaction. By only allowing the homeowner the ability to cancel the contract because of something included in the resale package seems archaic. Giving the homeowner or their agent the ability to cancel by email is the proper addition to keep up with our changing times. This change could assist the seller in obtaining notice sooner, being able to put the property back on the market more quickly. With that, I would like to thank the Committee for their time and introduce Keith Kelley, who is with us in Las Vegas.

Keith Kelley, Chair, Legislative Committee, Nevada Association of Realtors:
I am testifying in support of this bill. We approached Senator Denis and asked him to bring forth this bill because we, as Realtors, have seen a lot of problems surrounding this issue of cancellation. We use electronic means a great deal during the course of our transactions and often cancel contracts and escrows the same way. This proposed change would allow for the cancellation of the resale package to be uniform with the ways that we do our business. I thank you for your time and am available for questions.

Chairman Yeager:
Thank you for your testimony, Mr. Kelley. Did you want to provide additional testimony? Are there any questions from Committee members?

Assemblywoman Jauregui:
I just want to thank you so much for bringing this bill forward. It is going to be great for our industry. Is there anything we can add to the bill to make it so that there is no expiration date for the resale package?

Senator Denis:
The original version actually had that in there, but there are some issues associated with it, so that is why we took it out. However, yes, I agree that would be a very good thing to do.

Assemblywoman Jauregui:
Is there anything we can do to add some uniformity to the cost of the resale packages?

Jenny Reese, representing Nevada Association of Realtors:
We are going to work with the management companies during the interim to try to figure out if we can come to a consensus on that issue.

Assemblywoman Jauregui:
Thank you so much. That is something I would love to see next session.

Chairman Yeager:
Are there any other questions from Committee members? [There were none.] We will now open up for testimony in support of S.B. 255 (R1).

Garrett Gordon, representing the Community Association Institute; and representing Southern Highlands Homeowners Association:
Thank you to Senator Denis and the Realtors for working with us on the Senate side. We support the bill as written, and I am here for any questions. Thank you.

Chairman Yeager:
Are there any questions for Mr. Gordon? [There were none.] Is there anyone else in support of S.B. 255 (R1)? Seeing no one, is there anyone opposed to the bill? [There was no one.] Is there anyone who would like to provide neutral testimony on the measure? [There was no one.]

Senator Denis:
As you have seen, this bill is just a way of trying to bring the real estate industry into alignment as more and more things are done electronically. I think this will really help streamline some things that sometimes can delay what people are doing. Thank you very much.

Chairman Yeager:
Thank you again for your patience this morning and for joining us here in the Assembly Committee on Judiciary. We will go ahead and close the hearing on S.B. 255 (R1). We will open up for public comment. Would anyone like to give public comment, either here in Carson City in Las Vegas?

Assemblyman Ohrenschall:
I have brief public comment. Unless my eyes are playing a trick on me, I think we have a former chairman of the Judiciary Committee in the room. I just thought you should recognize former Chairman Humke from the 1995 Session when the house was evenly split. Chairman Anderson and Chairman Humke took turns chairing the Judiciary Committee and got a lot done, even though the Committee had a Republican chairman one day and a Democratic chairman the next day. He is a graduate of the college of law in Reno and I think he served on the Washoe County Commission after that, and he is now a member of the Judiciary.

Chairman Yeager:
Welcome to the Judiciary Committee, and thank you Vice Chairman Ohrenschall, for that recognition. I am sure that the 1995 Session was an interesting one. We came somewhat close to having a repeat scenario in the 2015 Session but it did not quite get there. Is there anything else from the Committee? We have a Judiciary Committee meeting tomorrow morning. We will be starting at 8 a.m. and taking up three bills. We are adjourned [at 10:19 a.m.].

RESPECTFULLY SUBMITTED:

_____
Devon Isbell
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a written testimony, dated April 27, 2017, in support of Senate Bill 33 (1st Reprint), submitted by Cesar O. Melgarejo, Veterans Policy Analyst, Office of the Governor.

Exhibit D is an Advisory Opinion dated September 3, 2014, issued by the Real EstateDivision, Department of Business and Industry, presented by Senator Donald (Don) G. Gustavson, Senate District No. 14.

Exhibit E is a proposed amendment to Senate Bill 258 presented by Assemblyman Justin L. Watkins, Assembly District No. 35.

Exhibit F is written testimony submitted by Michael Kosor, Private Citizen, Las Vegas, Nevada, regarding Senate Bill 258.

Exhibit G is written testimony submitted by Bob Robey, Private Citizen, Las Vegas, Nevada, in support of Senate Bill 258.