MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
April 26, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:07 a.m. on Friday, April 26, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

Assemblyman Ozzie Fumo (excused)

GUEST LEGISLATORS PRESENT:

Senator Dallas Harris, Senate District No. 11
Senator Ben Kieckhefer, Senate District No. 16
Senator Nicole J. Cannizzaro, Senate District No. 6

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Traci Dory, Committee Secretary
Lucas Glanzmann, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Kent Ervin, Private Citizen, Reno, Nevada
Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada
Jen Chapman, Recorder, Storey County; and representing Recorder's Association of Nevada
Rocky Finseth, representing Nevada Association of Realtors
Melissa L. Exline, Private Citizen, Sparks, Nevada
Matthew Digesti, Vice President, Government Affairs and Strategic Initiatives, Blockchains, LLC
Elisa Cafferata, Executive Director, Nevada Technology Association
Karen D. Dennison, representing the Real Property Law Section, State Bar of Nevada
Garrett D. Gordon, representing Community Associations Institute
Mike Kosor, Private Citizen, Las Vegas, Nevada
Adam H. Clarkson, representing the Real Property Law Section, State Bar of Nevada

Chairman Yeager:
[Roll was taken. Committee protocol was explained.] I will open the hearing on Senate Bill 117 (1st Reprint).

Senate Bill 117 (1st Reprint): Revises certain provisions relating to real property. (BDR 10-642)

Senator Dallas Harris, Senate District No. 11:
I am here to present Senate Bill 117 (1st Reprint). Let me give a little bit of a legal history on covenants, conditions, and restrictions (CC&Rs), and then I will turn it over to Mr. Ervin to go through the presentation on the Nevada Electronic Legislative Information System (Exhibit C).

In 1917, the United States Supreme Court prohibited racial zoning ordinances. In 1926, the U.S. Supreme Court ruled that private restrictive covenants do not violate the Fourteenth Amendment to the *United States Constitution.* In 1934, the National Housing Act was passed, which introduced the concept of redlining into mortgage policy. In 1948, the U.S. Supreme Court made racial restrictions unenforceable in court in *Shelley v. Kraemer*, [334 U.S. 1 (1948)]. However, racial restrictions could still be privately observed. In 1968, the Fair Housing Act prohibited racial or religious discrimination in housing.

Since that time, however, the roles of bankers, agents, and governments played into the enforcement of these racial covenants. If you have the time, I suggest you take a look at the book, *The Color of Law: A Forgotten History of How Our Government Segregated America* by Richard Rothstein, which was published in 2017. These private agreements and racial restrictions were effectively enforced by banks, federal housing authorities, and local government policies. For decades, the National Association of Realtors had a code of ethics rule against selling houses to persons of a race or nationality whose presence would be detrimental to property values in that neighborhood. Even after they have been struck down, restrictions have been used as a signal to continue these discriminatory practices.

Other states have taken various approaches to address this issue. For example, in 1999, Ohio county recorders were required to expunge discriminatory restrictions before issuing documents or duplicates. California, in 2006, implemented an administrative process whereby homeowners are able to strike out a provision in a modification document, that modification document is reviewed by a county attorney before recording, and the county recorder is allowed to waive fees. A single modification can apply to an entire subdivision. Oregon has a law whereby a homeowner files a petition in circuit court to remove the provisions from the title with no fees. Washington recently passed a law whereby the homeowner files a restrictive covenant modification document that references the original CC&Rs with no review by a county and no recording fees. At this time, I would like to turn it over to Mr. Kent Ervin.

Kent Ervin, Private Citizen, Reno, Nevada:
I would like to tell you a personal story about why I am helping with this bill. We bought our home in Old Southwest Reno a few years ago, and I am the type of person who reads all of the fine print. The old CC&Rs from 1927 started out sounding quaint: we cannot run a saloon, we cannot have a funeral parlor in our home, and we cannot sell moonshine. Then I read what is on page 2 of the presentation (Exhibit C):

> That it being designed to create and maintain in said Newlands Manor a settlement, community or neighborhood of persons who are on a social equality, the said lot shall not, nor shall any part thereof, or any estate therein, nor shall the improvements thereon, or any part of the same, be at any time sold, conveyed, demised, leased or transferred to or be permitted to be occupied, or used by, any person or persons other than those of the Caucasian or white race.

Naturally, we found that to be outrageous and offensive. With a little research, we quickly learned such restrictions have been illegal since the 1968 Fair Housing Act and unenforceable since the 1948 *Shelley v. Kraemer* decision. Nonetheless, the copy of the CC&Rs was stamped, "Read and accept," and we had to sign off on that. In our particular sales document, there was no disclaimer. Although, I have seen that some title agents do have a disclaimer on their sales agreements.

Just last year, this topic came up as a neighborhood discussion on our Nextdoor.com group. Most current residents are horrified at having these restrictions. I now know the CC&Rs run with the land and are very hard to change. Our CC&Rs in Newlands Manor in Old Southwest Reno have no expiration date. Changing them requires a new agreement of 50 percent or more of the lot owners in the subdivision—that is out of nearly 200 lots. The developers have passed on long ago, and there is no homeowners' association. To us, it is a kind of legal curse we will have to pass on to the next owners.

I went to a constituent meeting in Senator Julia Ratti's district and mentioned this problem. She brought this bill, which we are delighted to have carried on by Senator Harris. Senate Bill 117 (1st Reprint) aims to legally remove these racist provisions from future property transactions and provide a clear disclosure and disavowal to the new homeowner that these are void.

In the Senate, we were pleased to have Mr. Lonnie Feemster, president of the Reno-Sparks National Association for the Advancement of Colored People (NAACP), give a little bit of history and background of these locally. He could not be here today, but I will give a couple of examples from our presentation (Exhibit C). I have already read the one from my subdivision. Another subdivision, Clearview Heights in northwest Reno, from 1946, had very similar language: "Any person or persons other than those of the Caucasian or white race," but they start adding, "servants excepted." That particular covenant, in the very next section, says the City Council of Reno and "the Reno Planning Commission for themselves . . . have covenanted and agreed" to the covenants. Now, I could not get back to 1946 to find out if the Reno Planning Commission actually approved covenants of this type, but certainly a homeowner reading this document would assume the government was behind these covenants, including the racist part.

The next page [page 4, (Exhibit C)] is the Alameda Heights subdivision from 1947. I should mention these last two are post-war subdivisions. They are small homes with 1,000 square feet and single-car garages. These are not fancy at all, but these CC&Rs were just common for the period. This is where Mr. Feemster owns a home, and it says, "No portion of said property shall be used or occupied by any person or persons whose blood is not entirely that of the Caucasian or white race." So it says 100 percent white, whatever that means. We know race is really a social construct, and in the age of DNA tests, nobody could live here. It is clearly outdated, offensive, et cetera. So what can we do about it?

Senator Ratti, through some research from the Legislative Counsel Bureau, actually found that Nevada has a statute that partially addresses this issue. In 1965, *Nevada Revised Statutes* (NRS) 111.237 was enacted. It was pretty progressive for its time. We looked at the legislative history, and it was originally introduced to make these provisions void. However, somewhere in the legislative process it turned into "voidable." That meant the homeowner should file an affidavit with the county recorder to declare it void. So we did that. This document was recorded. To do an affidavit, we needed legal help. Besides the $41 recording fee, we paid our lawyer $150 to be able to file this because I would not have

known how to do the form. We are probably the only ones in 30 years who have actually filed that document. Probably nobody knew about it.

What this bill does is create a standard form that is very similar to a declaration of homestead form. You can download it and fill it out with the essential information. It does not physically alter the original deeds or covenants, which is important for the historical record. What it does is provide new homeowners with a clear declaration that these provisions are not valid; they are void. It also calls out the nondiscrimination statutes for the state of Nevada.

Section 1, subsections 1 through 3 of the bill instruct the Real Estate Division of the Department of Business and Industry to collaborate with the county recorders to create the standard form, which will be a declaration of removal of discriminatory restrictions [page 5]. The format of that section of the bill is taken from the declaration of homestead statutes.

Section 1, subsection 2 is key because it says this form has to identify the original recorded document with the discriminatory restrictions [page 6, (Exhibit C)]. That requires the document number—or book and page for these older recorded documents—and the legal description. We are told that is important because it is how title searches are tracked. The idea is, whenever a property is sold and a title search is done, the old covenants will appear, but this new recorded document will be linked to that document and will also appear.

Section 1, subsection 2(f) designates what the declaration will say on this form. The first part of it is, "The referenced original written instrument contains discriminatory restrictions that are void and unenforceable," according to this act, and the "declaration removes from the referenced original instrument all provisions that are void and unenforceable pursuant to NRS 111.237 [page 7]." This pretty much follows the Washington law. It is the easiest for the homeowner because there is a standard form. You just fill it out and record it. It does not require going back and striking out the original language. In the Senate, there was some discussion about a homeowner who wants to remove the restriction on clotheslines or recreational vehicles. Well, this form will not allow that. The second statement just repeats what is in NRS Chapter 118: the declaration of "equal opportunity to inherit, purchase, lease, rent, sell, hold and convey real property without discrimination, distinction or restriction because of race, color, religion, ancestry, national origin, disability, familial status, sex, sexual orientation or gender identity or expression." That is the Nevada fair housing law. We will have a declaration for everybody to know that is the law of the land in Nevada.

I superimposed those statements and the required 14-point font on top of a declaration of homestead form. I am not trying to do the recorder's job for them. They will be in charge of making sure the form has all the required information. That is just so you can see how it would look [page 8, (Exhibit C)].

Section 1.5 is the modification of the original language in statute from 1965 [page 9]. It changes "voidable" to "void and unenforceable." Just with passage of this bill, Nevada statute would say these are void. In principle, you do not have to do anything else.

This form is really to allow homeowners to say to their future owners or neighbors that somebody on this property cared enough to record a document that just states the law. It gives notice to everyone in the chain of ownership after that those provisions are void and unenforceable.

Section 1.5, subsections 3 through 6 authorize the owner to file these declarations. Section 1.5, subsections 7 and 8 are definitions. One clarification is that the "familial status" in the fair housing law does not restrict age 55-plus communities that are valid under other laws. Section 2 is conforming language [page 10]. Section 3 says it is effective immediately for the preparation of forms and on October 1, 2019, for other provisions.

In summary, the bill will formally and legally remove these discriminatory restrictions in state law. The existing historical records are not physically altered at all. The historical record is preserved. That is particularly important to our stakeholders at the NAACP. The action is triggered by an individual homeowner, so there is no review required by the county recorder, county attorney, title agents, et cetera. The form and declaration itself is benign; it really just states state law. It is really just a notice. It does not make any other changes to covenants. The indexing is very important because you have to identify the original document and the land it pertains to in order to make sure the title will be properly tracked. The standard recording fee is $41. That fee will apply, but you will not need to hire a lawyer to do it with the form. With that, I would like to thank Senator Harris and Senator Ratti, and we would be happy to answer questions.

Assemblywoman Krasner:
I just want to say thank you for bringing this bill and for giving a little bit of the history. I think back to the Civil Rights Act of 1964 and the Fair Housing Act of 1968 dealing with discrimination in employment and housing. Here we are in 2019, and we still have to bring a bill such as this. Thank you for putting in language that does not allow for discriminatory language to be in any of these instruments.

Assemblywoman Peters:
Thank you for bringing this bill. I know we talked a little bit about it before I jumped in here, and I am glad it made it to the table. I also want to acknowledge that all of the neighborhoods you identified are in my district along with Senator Ratti's, so I am glad to be taking these steps to make the statement that, even though this is our history, we do not accept it as the policy of our neighborhoods. I also know, when you receive these documents as you purchase your house and go through the title process, it can be quite overwhelming to get that stack of papers. Acknowledging the work the Washoe County Recorder has been doing to try to streamline the process of titles and things such as that, there may be some opportunity to keep the records through blockchain technology while reducing that paper load every homeowner gets. I just want to put that out there as an idea. Maybe we can work with the counties to try to streamline and identify this in a less tree-hazardous way.

Assemblywoman Cohen:
I am wondering if there is a way—and if we have the resources—to get free copies of whatever the recorder comes up with to the form stores for people who do their own home sales. Most of us do not even know this is an issue, and maybe if we saw it there, we would pick one up. We could make it a part of the packet when we do the sale and also get some to the companies that people turn to when they are selling their properties.

Kent Ervin:
If you look at section 1, subsection 3, it says the form must be made available free of charge by both the Real Estate Division of the Department of Business and Industry and on county recorder websites, so it will be just like a declaration of homestead form. It took me one search and a couple of clicks to find that form.

Assemblywoman Cohen:
I saw that. I appreciate that, but I am thinking of people who do not necessarily know to look for it. If they saw it at the form store when they pick up their packet or if it were available through their escrow agent, it would then occur to them that they should do it. They would not otherwise think of it. That is why I thought we should have it in hard copy at the form stores.

Kent Ervin:
That is a good idea. I know when we bought our house, the title agents helped fill out our declarations of homestead. I see no reason why title agents could not also help with this process. This law, though, does not require that; it just makes them available. Through the Federal Housing Association, governments would only give loans to neighborhoods that were "pure," and the National Association of Realtors, before 1950, said they would not sell houses to people of the "wrong" race. Given that all these institutions helped to segregate housing in America, I would hope those same institutions would now help with this tiny, symbolic piece of helping distribute the forms.

Assemblyman Edwards:
Did I understand you correctly, that this has actually not been used, enforced, or done in Nevada? There have not been people discriminated against using the CC&Rs?

Senator Harris:
I do not think we can answer that question because there is almost no way to know. I would say that the testimony was not that it has happened; the testimony was that there has been a signal sent by the discriminatory provisions remaining in these covenants. I do not think there is any definitive way for anyone to know that any particular person may have chosen not to move into a neighborhood with one of these restrictions or that these covenants have not had a continual dampening effect even though they have been voidable in Nevada for some time.

Assemblyman Edwards:
I take consolation in the fact that Nevada, 50 or 55 years ago, made them voidable. This is consistent with federal laws and court decisions. This would reiterate those?

Senator Harris:
I do not know that the signal can be sent enough times.

Assemblyman Edwards:
That was not what I was asking, though.

Senator Harris:
The form does reiterate the policy of the State of Nevada, which is in Chapter 118 of NRS. The form also reiterates that these are now void because this legislation would change it to "void" instead of "voidable" under NRS 111.237. Yes, those statements would be plastered on this new form and then placed along with every CC&R the homeowner chooses to file this with.

Assemblyman Edwards:
I guess I just want to make sure we do not miss the signals from the past that are already out there to correct this.

Assemblyman Roberts:
Thank you for bringing this bill forward. Who knew this stuff was out there? You already answered my question about how to get this information to people so they can get these out of their documents.

Assemblywoman Hansen:
As a licensed Realtor since 2007, my mind is blown. For real estate transactions, a paper trail is so vitally important. I really appreciate your finding that in your CC&Rs packet, Mr. Ervin. I love the idea of the page you gave an example of. Having just gone through my continuing education on fair housing, it sounds as though that is what you would transpose on there: we do not discriminate based on any of these categories and protected classes. When you hire a Realtor, we have access to those license forms. Access to that form would be important. If you do a for sale by owner, you cannot use those license forms that agents have access to. So yes, if the title agent could use them or if they are in stores, perhaps that would be good.

This probably has a bearing on the recorders or the clerk's office. I am sensitive to that, and I am sure you are. However, if it is wrong, it is wrong, and it is important that those records be corrected going forward, absolutely. The fee we are looking at on a homeowner is just the recording fee, correct? I am trying to understand what the cost is to the municipalities.

Senator Harris:
The recording fees have recently been increased. The fee structure has changed a bit. It used to be $17 as a basic fee with a per-page fee on top of that. It then went to a $41 fee. I do not want to speak for the county recorders, but I believe, with just the single page, the $41 will likely cover it.

Assemblywoman Hansen:
I cannot emphasize how important it is to have the language you have addressed here as "void," not "voidable." In real estate, that is a huge fix, so thank you for that.

Assemblywoman Backus:
I always like to try to get more for my dollar. Sometimes when I am doing mechanic's liens, I have been able to record a document that would reference multiple parcel members and would overlap. If Mr. Ervin wanted to do his whole neighborhood, obviously he would not want to pay $41 for each document that is filed like you would for a homestead. I was wondering if this could be amended—right now, the bill makes it seem so singular, almost like the filing of a homestead document—to broaden this whereby, if someone took the task of filing the document, you could put the multiple assessor's parcel numbers instead of specific ownership and describe the entire area. I was looking at the statutes to see how we could get there. If that is possible, would you be open to such an amendment to make it easier and so we could do it all for $41?

Kent Ervin:
We thought about that. The situation is, there are two ways in which these CC&Rs have been filed. In my very old neighborhood, when the developer sold each property, it was put into each deed, so there are actually individual CC&Rs for each property. Frankly, I think my neighbors can afford it. However, later on, one CC&Rs document was often recorded for the entire subdivision. The way we have done this by describing the legal property description of that whole subdivision—the same way we index to that original subdivision document—it would be tracked appropriately for any parcel in that subdivision. We believe it does take into account that this one rerecording would be properly linked to those CC&Rs for the subdivision. That is my understanding of how it could work.

Assemblywoman Torres:
For a lot of the presentation, we focused on how we segregated communities in northern Nevada. I want to make it abundantly clear that northern Nevada is not the only community that has been impacted by that. Las Vegas continues to be impacted by the segregation policies we put into place in the 1920s, and we have not seen those things be made completely fair and just. I think this is one way for us to take a step forward. It is not going to fix it. We still have a lot to do to ensure all people have access to housing, regardless of their sex, gender, or race.

Chairman Yeager:
At this time, I will open it up for support of S.B. 117 (R1).

Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada:
We are here today in support of S.B. 117 (R1). While we believe it is important to acknowledge our history, arbitrarily signing an agreement without notation of the racial discrimination is not the way to do so. This bill provides a simple solution, and we ask for your support.

Jen Chapman, Recorder, Storey County; and representing Recorder's Association of Nevada:
We are here in support of this bill. As you can probably tell, there has been quite a bit of work on this in order to work out issues on all sides. We would like to thank the sponsors for considering our concerns. It might not fix the problem, but it is a wonderful step forward. We live in what is called an "abstract of title" state, which makes it kind of hard in some ways. By recording something such as this, it puts a document in the chain of title that says we do not accept this language. We recognize what happens, and we are putting it on the title, right now, that we do not accept it. That is from an individual standpoint.

I know there has been some discussion about fees. All I can say is, I am sorry; we have to collect recording fees. We have to keep our records for hundreds of years. This is what enables us to get loans on our houses and buy, sell, or pass our properties onto our children. We are a little bit more careful with our records than you will see in other governmental offices because of that nature. We keep them on multiple formats. It is really important. We still have people coming back and doing that chain of title that goes back 150 years.

I will take a minute to address the raise in the recording fees we had to do a couple of years ago. It was actually important for the consumer to have a more standard approach to those recording fees. With the implementation of the TILA-RESPA [Truth-in-Lending Act; Real Estate Settlement Procedures Act] Integrated Disclosure Rules, any sort of discrepancy among counties in those recording fees stopped the lending process to many of these homebuyers. We did not want to see that happen, so we tried to come up with a solution. At one point, we collected a $25 nonstandard form, so it would be $17, and the $25 may or may not be added. That is what we wanted to get rid of.

As it pertains to the forms, most of our offices put those online and in the office. We also talk to our constituents and make sure they are aware of these forms and what they can do. I can guarantee this form would be the same.

Rocky Finseth, representing Nevada Association of Realtors:
We are here in support of S.B. 117. We want to thank the sponsors for working with us to address the concerns we had.

Melissa L. Exline, Private Citizen, Sparks, Nevada:
This is a thoughtful approach to address the issues that were, perhaps, thought long behind us. I think most of us, if not everyone, recognize that there is no more valuable use of this body's time than to work to remedy this type of issue. It may seem we have put some of this stuff behind us, but every time you address one of these things and it crops up—in 2019 no

less—it can be surprising. I had the pleasure of helping Mr. Ervin craft something to address this. One of the things we found particularly frustrating was, in order to make an affidavit to declare this void—since it was initially "voidable," which is an important distinction—I felt it was important to be very clear about exactly what we were taking issue with, and had to then type out the language. As someone who is not of the purely Caucasian or white race, it was one more cut to have to look at this and then put it in writing in order to help my client state it again, out loud, to the world, and declare it.

To Nevada's credit, we have had this longstanding history of attempting to address this. However, this is a very thoughtful approach. I think they were working with the stakeholders in order to come up with something that made sense given the cumbersome nature of property transfer, all of the things that go into it, and the due diligence behind everyone who has to sell the home and make sure the title is done properly. I am an estate planning and family law attorney, but I am here representing myself to make it clear I support this.

Chairman Yeager:
Is there anyone in opposition? [There was no one.] Is there anyone neutral? [There was no one.]

Assemblywoman Tolles:
In this Committee, we have talked about the sealing of records. I have never been to a record sealing ceremony, and at some point I would really like to. I understand it is quite an emotional and joyous experience for those involved. Some records really need to be sealed, and it needs to be celebrated that they are put away in the past. This is one of those. I commend you for bringing this forward.

Chairman Yeager:
I will invite our presenters back up for concluding remarks.

Senator Harris:
Frankly, I feel if we were where we should be, there would have been a proactive movement to remove these a long time ago. The fact that they still exist says something. This, in my opinion, is the most moderate step we can take to send the signal that this is not how we behave; this is not how we allow people to transfer their property in the state of Nevada. There are states that have required people to proactively strike them. We are not even going that far. We are making another statement. I just do not think that statement can be made enough until this language does not exist.

Chairman Yeager:
I will now close the hearing on S.B. 117 (R1). We will go to our second bill on the agenda. At this time, I will open the hearing on Senate Bill 163 (1st Reprint).

Senate Bill 163 (1st Reprint): Revises provisions relating to technology used by certain business entities. (BDR 7-877)

Matthew Digesti, Vice President, Government Affairs and Strategic Initiatives, Blockchains, LLC:
We have provided a handout (Exhibit D) that is basically intended to be a general explanation of how blockchain technology works from a very high level. There are different types of blockchain technologies and different types of architectures. This does not actually represent one particular kind of blockchain; it is kind of general. I would like to use this visual to walk you through an example to bring to life how the technology works.

Before I have you look at the handout, I will generally describe blockchain. Blockchain is, in its purest form, a ledger. Humans and businesses have been using ledgers since the beginning of time to track different exchanges of value, whether it be real property, stocks, bonds, money, et cetera. Blockchain is a digital ledger, but it is kept in a different way than how it is normally kept today. Wells Fargo is a good example for how it is normally kept today. Wells Fargo has its own ledger to keep track of all the transactions Wells Fargo helps conduct. It is very centralized. Wells Fargo controls it; they tell you what the rules of the game are; they tell you who can access it and what you can see. Your bank account is a digital ledger that Wells Fargo keeps on your behalf. It is very centralized and siloed. If you want to send money to somebody from your Wells Fargo account, it can be somewhat difficult because Wells Fargo has to communicate with another bank or another party, and those rules have to be set up. It takes time, and it is kind of clunky today.

This is where blockchain comes in. Blockchain is also a digital ledger, but it is not centralized in the sense that one party controls the ledger entirely and tells you what the rules of the game are, what access you have, or what you can see and when. It is a distributed ledger whereby computers in that blockchain network all have a copy of the ledger. They share it, and they update it together in real time. Essentially, they vote on what the truth of that particular ledger is at that point in time, and you move forward in the process as you add transactions to it. It is truly a way of inserting trust into a system where peer-to-peer transaction trust might not already exist.

I will give you an example using this visual (Exhibit D). Starting on the left side, you will see there is a block. That block is where transaction data information is kept. It can be money you are sending to somebody. It can really be any exchange of value that two parties interact with. It could be exchanging property records. It could be exchanging consumer data that is generated from the Internet. It can be any type of data in which there is an exchange of value.

I will use a very simple example. We will use the Ethereum blockchain. Ethereum has a cryptocurrency called "Ether." It is just like Bitcoin, but it is a different blockchain. I will use an example in which I want to send one Ether from my account to Senator Kieckhefer's account. Starting on the left side of the page, at the very bottom of the first block—we always start at the bottom in each block and work our way up—you will see "Transaction 1."

If I want to send Senator Kieckhefer one Ether, the transaction data will show up in that box. It will show the Internet Protocol (IP) address of where I hold my Ether. It will show that I have a balance of one Ether in my account. It will then show Senator Kieckhefer's IP address—where I am going to send the Ether—and Senator Kieckhefer's account balance if it is necessary for the transaction, along with the date and the time that transaction is going to occur. That will appear in that first box, "Transaction 1."

As you move up to the second box, you will see what is termed as "Hash of Tx1." This is where the power of blockchain's security and encryption comes in. That transaction data is run through an algorithm called a hashing function. A hashing function is an algorithm. You take a bunch of data, you put it into the algorithm, and it will spit out a 64-character string of letters and numbers. This is how encryption works. When you send text messages on your iPhone today, your text messages are encrypted, and it goes through this same hashing function. The purpose of it is, once it goes through this hashing function, if somebody ever tries to go into the data for transaction 1 and manipulate it or try to defraud you or change it in any way, the 64-character output would change dramatically. Those letters and numbers would be completely different. That is how you know somebody is going back and trying to change the historical record. It protects it from being changed for all time.

So the transaction is hashed, and then you go up to the third box, and it says, "Hash value of all previous data." Again, it goes through the same algorithm, but rather than just the transaction data going through the algorithm, all of the data from the beginning of time in that blockchain is run through its own algorithm. Let us say this particular blockchain has 1,000 blocks of transactions that came before. All of that data would go through an algorithm and, again, you would get a 64-character string of letters and numbers that is inputted into that particular box. Again, the reason they do this—and the power behind it—is if anybody tries to go change any transaction data in those prior 1,000 blocks, this hash value would be dramatically different than what was previously recorded. It is another security check.

If you go up to the fourth box, you have the timestamp of the block. This particular block would have a timestamp of today's date and the date we were trying to validate and finalize that transaction.

Then you go up to the next box, and it says, "Previous block header hash." You will notice you have those five dots that connect to the left diagonally. That represents the "chain" in blockchain. This is the data that connects the previous transaction data to the current block we are looking to validate. This is how you create a chain that is, essentially, unbreakable. What this block has is the hash value from the previous block. When the previous block is finished, it runs through a third and final algorithm for that block, and you will get another 64-string of letters and numbers. That hash block is stored in the header of that particular block, and then it is reprinted in the block that is being considered. Again, that is what connects the two blocks together. If you move to the very top of this block at the top left (Exhibit D), you will see a block hash header that says "#0x00P5XK73V." If you move to the right and follow those five dots—the chain—you will see the next block has the exact

same string of numbers and letters. Again, it just gets repeated going forward, and that is how the blocks are connected.

Once this block on the left is finished, it is sent out to the network of computers, and the computers in that network go through all the information. They go through all of the hashes that have been produced from the beginning of time up until this current proposed block, and they check each one of those hash values to make sure they match the information they already have in their ledger. If any of those hash values from the beginning of time up until current do not match, the computer can reject that transaction or that block as being invalid. That is the security check. Every computer in that network goes through this process, and every computer, essentially, has a vote. They can say it is illegitimate because the hashing values do not match in one of the blocks, or they can say it is legitimate because they all match up and they were able to verify that I, in fact, have one Ether that I can send to Senator Kieckhefer. At that point, the computers vote. If 51 percent of the computers in that blockchain network vote to validate the transaction, democracy rules, and that block we are considering becomes part of the blockchain and gets added to the end of the existing blockchain. If you do not get 51 percent of the votes from those computers, it gets rejected by the network, does not get added to the blockchain, and the transaction will fail. It is incredibly powerful in that the cryptography secures all the information. Once it is recorded and validated, you cannot go back and change a single character in the entire blockchain.

I like to use an example to highlight the security feature. Everybody knows the Bitcoin network. It has been around for ten years. In 2018, an estimated $3.2 trillion worth of value was exchanged on the Bitcoin network, and not a single attempt to go back and defraud or change the record was accepted by the network. It was completely secure and absolutely flawless to the tune of $3.2 trillion. There are thousands of people trying to hack the Bitcoin network daily because it would be easy money to get, and it just does not work for them.

That should walk you through how it happens, and we just move forward as new transactions are added. If there are any questions, I am happy to answer them.

Senator Ben Kieckhefer, Senate District No. 16:
Senate Bill 163 (1st Reprint) does two primary things. First, it clarifies existing authority of private entities to maintain all of their internal corporate records and organizational documents on electronic systems, including blockchains. The bill has been amended in the Senate to ensure that if inspection of those records is needed, they be transmitted to that requestor in a manner they can use, including print. Ultimately, I think this is something that is primarily clarifying language. This is a process corporations and other entities are already allowed to do, but putting this into statute moves Nevada down the road of demonstrating our receptiveness to innovative technologies and encouraging business to become more efficient and technologically savvy. It tries to make sure our statutes demonstrate some level of sophistication when it comes to these emerging technologies.

The second update in the bill is primarily related to the definition of blockchain. We are updating *Nevada Revised Statutes* (NRS) Chapter 719, our Uniform Electronic Transactions

Act, to demonstrate a level of sophistication in the world of blockchain by bifurcating our definition into a recognition of the difference between public and private blockchains. In the system Mr. Digesti just described, there is a decentralized network of computers that would conduct this verification process; it is a public network. However, private entities can also create a blockchain and use it internally. For a lot of reasons, they may be—and are—doing that. It takes away that decentralized process that is recognized primarily when it relates to cryptocurrencies, as the most prominent example for now. I think including this new definition in our existing statute demonstrates our recognition of these different systems.

There are a lot of pieces of the bill that mirror each other. It is ultimately intended to ensure consistent language is recognized throughout our statutes for various entities. If you look, for example, at section 8 of the bill, it relates to private corporations. This is language that is ultimately going to be mirrored in all of our different sections relating to different entities. Flip to section 12 of the bill, which is NRS Chapter 82, relating to nonprofits. Section 12 will, after the adoption of this legislation, mirror what is in section 8 for private corporations. Then it flips back and forth between different corporations that are already encumbered by NRS Chapter 78, such as close corporations in section 9 and foreign corporations in section 10. That language will control all of the different organizations. When you piece all of these different sections together, the language you see in section 8 and section 12 relates to private corporations, close corporations, benefit corporations, foreign corporations, miscellaneous organizations, nonprofit corporations, sole corporations, limited liability companies, partnerships, limited partnerships, business trusts, and professional entities and associations. It is sort of a piecemeal bill because of the way the statute is currently constructed. Ultimately, the same language will apply to all of those organizations. Finally, the language updating the blockchain definition in our Uniform Electronic Transactions Act is in section 25.

Matthew Digesti:
There are two points I would like to highlight. The first is the definition for public blockchain and why it is important. The second is our perspective on the economic development benefits of this bill. First, Senator Kieckhefer has proposed a definition for public blockchain. As he has also said, there are really two types: public blockchain and private or permissioned blockchain. Public blockchain is truly public; anybody with a computer or a mobile phone can download the software for public blockchain, join that network, and participate. There is no central administrator or authority that can prevent that from happening if you choose to do so.

When you hear about the benefits of blockchain technology, you will hear about its potential to remove middlemen from many transactions. Middlemen typically serve a trust function. When two parties want to transact and do not necessarily trust each other, middlemen jump into that transaction. However, that slows the process down and costs money. Public blockchain technology has the potential to remove the middlemen from a lot of transactions and make transactions not only quicker, but more efficient and less costly for the consumer.

Bitcoin is a really good example. Bitcoin is a digital money that does not have any central bank or central government controlling it. I met a software developer in Prague last year, and he has family in South America. He supports his parents. Traditionally, he would send money to them every month through the Western Union Company, which would take about five or seven days and cost about $55 per transaction. He was able to convince his parents to download Bitcoin on their phone, and he now transfers those monthly payments through Bitcoin. It costs about $2, and it takes about 15 minutes to accomplish. That highlights the potential of blockchain technology.

The reason we have the definition is twofold. One is to signal to the ecosystem that we understand and embrace the nuances of this technology, which is very important. The second is that public blockchain technology has different policy considerations than private blockchain technology. There are different consumer protection issues that might come up and different economic development policy considerations. Separating the definition is very important to set the foundation for potential additional legislation or policies on public blockchain itself.

The second point I would like to make is on economic development. When I met with the Nevada Tech Caucus earlier this year, I discussed this, and I think it is important to reiterate for those who were not a part of that conversation. There are really three states that are leading the charge on blockchain legislation: Delaware, Wyoming, and Nevada. Coincidentally, those three states are also the three states that have the largest number of blockchain business filings through their respective secretary of state offices. Delaware is obviously number one. Some estimate that 54 percent of all blockchain businesses file in the state of Delaware. That state revenue to Delaware is well over $1 billion. I do not know the number, but it is significant. My understanding is that Nevada is number two, and those state filings are a big source of revenue for us. Wyoming is number three, but they are catching up to us. I have been told they have a website that actually targets businesses to get them to file in Wyoming instead of Nevada. They are calling us out specifically in order to beat us to the punch.

Wyoming has done an incredible job passing blockchain legislation for the private industry to spur economic development. Delaware has done an incredible job of passing legislation at the secretary of state level. Their secretary of state has a program to accept filings on blockchain technology. Through its corporate code, Delaware also allows private businesses to use blockchain technology with minutes in voting—very similar to what Senator Kieckhefer is proposing here today. I think it is clear that Delaware, in particular, understands this type of legislation is incredible from an economic development perspective. If we want to hold our position as the second most popular state to file in and continue to generate those filing fees, I think this legislation is a very important step.

Assemblywoman Tolles:
Thank you for continuing to put us out there in front of the nation in terms of innovation and legislation regarding this technology. This body passed Senate Bill 398 of the 79th Session, which enabled blockchain. Sometimes it is helpful to look back in order to look forward and

make predictions about the impact it would have on our economy and business transactions. I do not know if you can quantify the impact from S.B. 398 of the 79th Session, buy maybe you can give us a few examples of what kinds of business opened up here or what the impact looked like, and then some examples of what we can expect to change moving forward with this legislation.

Senator Kieckhefer:
Senate Bill 398 of the 79th Session was a bit of a flyer. I do not think we really knew exactly what was coming. However, we knew this was an emerging technology that had generated a lot of interest, and we had an opportunity to create economic development through a very natural and organic means: making our state friendly to this technology by embracing it, recognizing it, giving business some security in this area, and making sure it was going to be recognized in our statutes and in our courts. That security, I think, meant a lot to innovators in this space as they were looking to find a home. I will let Mr. Digesti speak to the decisions his company made and how they arrived at those.

I am not going to put a number on it, but I do know the companies coming to Nevada based on the passage of S.B. 398 of the 79th Session are significant. They have jobs that far exceed average wages. They are bringing high-tech opportunities to Nevadans. They are hiring Nevadans as well as bringing in new people from out of state who are highly skilled. The benefits of that legislation have far exceeded the expectations I had when I sat here two years ago presenting that bill. I think we have an opportunity to continue moving that ball forward. I will let Mr. Digesti speak to his corporate decision-making on this front.

Matthew Digesti:
By my informal estimates from just keeping track of the investments I know about that have been made since the passage of that legislation, well over $250 million of direct investment—not counting indirect economic impact—has occurred in Nevada over the last two years. Of course, that is with no tax incentives, abatements, or anything other than one piece of legislation that was incredibly well received by the ecosystem.

As for my employer, Blockchains, LLC, prior to the passage of S.B. 398 of the 79th Session, our founder and chief executive officer, Jeffrey Berns, was actually beginning the process of developing a smart city and hiring people in the state of Washington in a small city outside of Seattle. They had started to purchase property, so they were well on their way, and then they saw that S.B. 398 of the 79th Session was passed, and they said, Wait a second. We need to take a second look at Nevada. When they did, they came out and saw the land that was available at the Tahoe Regional Industrial Center; they saw the neighbors they would have if they moved out there—Tesla, Google, Apple, Switch; they saw Nevada's welcoming business climate and the wonderful job done by the economic development folks; and they saw the easy access to lawmakers, which was a huge plus. They switched from Washington and came to Nevada immediately. We employ just under 100 people at this time with plans to grow significantly.

Figure Technologies, Inc., another company that is led by Mike Cagney—the former founder and chief executive officer of Social Finance, Inc., a multibillion dollar financial technology company out of San Francisco—is headquartered in San Francisco, but it is a home lending company that is using blockchain on the settlement back end process. The company recently announced it has plans to hire up to 240 people over the next two years in Reno, and it has already hired about 25 people here, I believe. That company just received an award for being one of the top-five best financial technology companies in the country, largely due to its use of blockchain. It has raised well over $200 million in venture capital. It would not be here in Nevada without that legislation.

Titan Seal, Inc. is another startup that is working with the Washoe County Recorder's Office, the Clark County Recorder's Office, and Elko County Recorder's Office. They are running a pilot program to store and maintain marriage certificates on blockchain technology. Our state was the first in the country to have county recorder's offices use this technology for public records. I know they are discussing what that will look like next with property records, which is very exciting.

To answer your last question about visualizing what the future looks like, on the government side, we will see incredible efficiencies. The Washoe County Recorder's Office's pilot program has reduced the cost for a customer to request and obtain a marriage certificate by between 27 and 30 percent according to the Washoe County Recorder, Kalie Work. What used to take 7 to 10 days now takes 24 hours for our consumers, which is fantastic news. As government continues to look at this technology and adopt it, I see dramatic efficiency and cost saving across the board.

On the private side, I will speak to what my employer plans to do. We plan on building a smart city out at the Tahoe Regional Industrial Center. We believe it will shine a global spotlight on northern Nevada as the global destination for blockchain technology. We are having great discussions with our partners out there. There is an appetite from other global branding companies to partner with us to experiment with new and emerging technologies such as blockchain, artificial intelligence, and three-dimensional printing. It will all be here in northern Nevada, which I think is going to be incredible. It is a very exciting time.

Assemblywoman Cohen:
I have a question about the Uniform Electronic Transactions Act. Given the concerns the Uniform Law Commission has about the uniformity of various chapters in different states, would you consider placing blockchain language in a new chapter of NRS Title 59 and then just referring back to NRS Chapter 719 rather than amending NRS Chapter 719 itself?

Senator Kieckhefer:
This is a conversation I have had with your co-representative on the Uniform Law Commission, Senator Ohrenschall, as well. We changed the Uniform Electronic Transactions Law last session when we amended NRS Chapter 719 to include blockchain in the first place. It has proven to be incredibly successful. Our lack of uniformity, perhaps, is what has made us stand out. If there is a way to sort of thread that needle, I would be happy

to have the conversation, but I worry that we have found a language that has taken us out of uniformity and has made us very attractive to companies looking to locate in Nevada. While I recognize the power of uniformity when it comes to legal applicability across the nation, from an economic development competitive landscape perspective, I think there is value in us putting our best foot forward. Does that make sense?

Assemblywoman Cohen:
Yes, I certainly agree with that, and I do understand we put ourselves ahead of pretty much every other state thanks to your bill last session. However, I would ask you to continue to consider it because I do not think we would be changing that, we would just move it to a different place in our statutes so we continue to make the changes and be ahead of the curve on this.

Assemblywoman Hansen:
This is exciting. I am kind of a wannabe tech nerd. I have an Apple IIe that my brother gave me back in the day, and at the time I thought, Wow, we are on the cusp of something exciting here. I feel that same way with blockchain as I try to wrap my lay brain around it. I am still trying to understand its possibilities. It quickens transactions, it eliminates the middleman, and I would assume one of its greatest assets is the security side of it. Am I correct in understanding that? If that is the case, and it is for transactions, could it also have a place in other areas that are not transactions, such as defense, secrets, or privacy? Does it translate into any use other than transactions?

Senator Kieckhefer:
The applicability, I think, is incredibly broad. We probably have not yet envisioned all of the powers it can wield. Security is certainly one of the most important functions of the technology because the security is what leads to the trust that can be established between two parties that may not know each other and may be in different parts of the world. That security is, perhaps, its most powerful function. Other uses that currently exist outside of transactions include record keeping and access to that record keeping. Health records can be stored on centralized databases that are controlled by health systems, and can be given directly to the true owner of those records—the consumer, the patient, the individual—through this technology while utilizing the strength and power of that security system. That is one example. Maintenance of secure records is a critically important use for the technology. For me to speculate on what all of the uses may be would take a long time.

Chairman Yeager:
I will now open it up for testimony in support of S.B. 163 (R1).

Elisa Cafferata, Executive Director, Nevada Technology Association:
I was part of the team that supported S.B. 398 of the 79th Session, and I have seen what a benefit it has been to Nevada businesses and how it has attracted innovative companies. We learned we were the only western state that did not have a trade association for technology companies, and that is one of the things that came out of the bill. We do support

this light-touch legislation that encourages innovation in technology in our state, and we think it continues the good trend we started last session. We urge you to support this bill.

Chairman Yeager:
Is there anyone opposed? [There was no one.] Is there anyone neutral? [There was no one.] Thank you. [(Exhibit E) and (Exhibit F) were submitted but not discussed and will become part of the record.] I will now close the hearing on S.B. 163 (R1). I will ask everyone to hold tight for just a few minutes; we will open up the next bill as soon as our presenter arrives [at 9:29 p.m.].

[At 9:35 a.m.] Okay, we are going to come back to order in the Assembly Judiciary Committee. At this time, I will open the hearing on Senate Bill 382 (1st Reprint).

Senate Bill 382 (1st Reprint): Revises provisions relating to real property. (BDR 9-1067)

Senator Nicole J. Cannizzaro, Senate District No. 6:
I am here today to help present Senate Bill 382 (1st Reprint), which makes various changes to some of the laws that govern the Real Property Law Section of the State Bar of Nevada. That is from where this bill and the impetus for it came. With that, I have a number of individuals with me who are subject matter experts. I am going to turn it over to Ms. Dennison. She is here to do a walkthrough of the bill, and then we will go through some of the particulars we have heard with respect to the common-interest community portion.

Karen D. Dennison, representing the Real Property Law Section, State Bar of Nevada:
We have adopted a friendly amendment to section 30.5 of the bill. Garrett Gordon brought that amendment and will be speaking to that section. This is a long bill, but I would like to cut it in half. The first 21 sections deal with the deed of trust statutes, *Nevada Revised Statutes* (NRS) Chapter 107. Primarily, they are technical corrections and corrections to inconsistency in terminology. I would like to talk about two of those sections. Section 1 brings together all definitions that are scattered throughout the various provisions in the bill through amendments. They have been stuck in one provision or another, and we are bringing them all into one new section. We are not changing any definitions. We are simply bringing them all into one section. That is the reason for the length of these first 21 sections; a lot of the strikeouts are sections in themselves.

The other section I would like to point out is section 5, which deals with deed of trust covenants. The statute now provides for covenants, which can be incorporated by reference into a deed of trust. There are certain blanks in several of the covenants. What we have done is provide customary provisions in case the drafter of the deed of trust forgets to fill in those blanks. The default would be the customary provisions.

Chairman Yeager:
I have a quick clarifying question. You mentioned a friendly amendment from Mr. Gordon. Was that amendment already adopted in the Senate?

Karen Dennison:
Yes.

Chairman Yeager:
I just wanted to make that clear for Committee members because there is another proposed amendment that is not from Mr. Gordon on the Nevada Electronic Legislative Information (Exhibit G). The amendment that was discussed is already in the bill that appears before us, just to avoid any confusion.

Karen Dennison:
I will now go to section 22, which deals with NRS Chapter 108. That particular section has to do with the mechanics' lien law. The purpose of section 22 is to streamline the mechanics' lien waiver of the notice of nonresponsibility. For some background, the notice of nonresponsibility is filed by a landlord when a tenant is doing work on the landlord's premises. What the notice of nonresponsibility does, basically, is protect the landlord's fee interest from the mechanic's lien. In order for that notice of nonresponsibility to become effective, the tenant has to post security. Posted security provisions are pretty onerous: a bonding one and a half times of the general contract or providing a construction control account, which is 100 percent funded, which never happens. Many times, tenants will ask a landlord to waive their right to file a notice of nonresponsibility. That waiver is now in the statute. All this section does is say that a landlord may waive for more than one work of improvement. Right now, each single work of improvement requires a separate waiver of a right to file a notice of nonresponsibility. Basically, this is just a streamlining amendment.

The next section, section 23, deals with a very old statute that was adopted in the early 1900s, NRS 40.050. It has to do with a lender entering into a premises prior to foreclosure of the property. All we have done with that particular section is incorporate, by reference, later adopted statutes which allow for the appointment of a receivership. It is really a clarification that NRS 40.050 does not supersede any of the receivership statutes, including the Uniform [Commercial Real Estate] Receivership Act and other receivership statutes that are currently in the law.

Sections 24 through 27 are basically technical definition corrections. Sections 28 and 29 deal with the fact that, in the law right now, there is an incorrect reference that has to do with nonresidential common-interest communities—commercial subdivisions, for example. The current law incorrectly incorporates, by reference, the commercial condominium statute when referring to a commercial planned community or commercial subdivision. They are really two different animals. What we have done is basically combine two laws. Subsections 1 and 2 of section 28 incorporate what was in the prior statute on commercial subdivisions and repeat what was incorporated, by reference, in subsections 3 and 4 of section 28.
Section 30 deals with the common-interest community law. Basically, current law requires unanimous consent for an amendment that deals with an occupancy restriction. Changes to occupancy restrictions, in current law, basically require unanimous consent of the unit owners that are affected by the restriction. For example, if you have a restriction on pets or

transient rentals or want to incorporate one into your CC&Rs, that would require unanimous consent of all the owners, which is totally onerous in a common-interest community. We are basically consistent with the Uniform Common-Interest Ownership Act (UCIOA) by removing that requirement. I do want to point out that current law protects existing owners. Owners may have bought into a common-interest community with a particular restriction that is allowed or a particular covenant, and if that covenant is changed, the person is protected from having to abide by that. So there is already protective language in the law.

I think the last thing I would like to do is turn it over to Garrett Gordon to go through the amendment that was adopted in the Senate for section 30.5. I would like to point out that the last two sections are just technical corrections as well.

Senator Cannizzaro:
I just want to clarify that the amendment that was adopted in the Senate is now reflected in the bill in section 30.5.

Chairman Yeager:
Before Mr. Gordon comes up, I do have one question. I noticed one of the exhibits that was uploaded is prepared testimony from Michael Buckley in support of the bill (Exhibit H). He mentions in the first sentence of his letter that the bill is "presented by the members of the Executive Committee of the Real Property Section, not the Section itself and not the State Bar." I am wondering if I can get some clarification. Is it unusual to have that happen? What circumstance led to this being brought forth by the executive committee and not the section itself or the State Bar itself?

Karen Dennison:
The Board of Governors of the State Bar of Nevada reviews all of our amendments before they are brought forward as a bill. The Board of Governors requires that every section that brings a bill before the Legislature states that it is not the position of the State Bar, just the position of the executive committee and members of that section of the State Bar.

Chairman Yeager:
The letter says it was presented by the members of the executive committee of the Real Property Section, but not the Section itself. I think I understand the position of the State Bar, but I do not remember seeing a bill before in which it was not from the actual section itself. Is there some reason why it is just the executive committee, not the entire Real Property Section?

Karen Dennison:
We have over 100 members. They have not all had an opportunity to vote on this. However, they have all had the opportunity to have input on it. We have had no opposition from our section members who are notified of all of our meetings, and they do participate in the legislation we bring forward if they want.

Garrett D. Gordon, representing Community Associations Institute:
I want to thank the Majority Leader and the State Bar for allowing me to pitch the idea of this amendment in the Senate. It was incorporated and is reflected in section 30.5. It is a clarification. It adds approximately 14 words to NRS. Under current law, if a homeowners' association wants to institute litigation, that proposal has to go to the homeowners for review and approval. However, there are currently four exceptions in state law. Under section 30.5, subsection 1, you will see paragraphs (a), (b), (c), and (d). Those paragraphs provide situations that do not require the association or the governing board to go out to a vote of the unit owners because those are typically day-to-day litigation matters. Paragraph (a) is a payment of assessments. Paragraph (b) is enforcement of covenants, conditions, and restrictions (CC&Rs). Paragraph (c) says a dispute over a contract with a vendor—the landscaper does not do what he is supposed to or a snowplow hits a sprinkler—does not require a vote of the membership. If you go to section 30.5, subsection 2, current state law also requires that, prior to commencing a civil action, some due diligence is done: "A reasonable estimate of the costs of the civil action, including reasonable attorney's fees," and "An explanation of the potential benefits of the civil action and the potential adverse consequences" is set forth in a written statement that is normally prepared by an attorney at the cost of the unit owners.

What has typically happened since this was put into law years ago is that section 30.5, subsection 2 would only apply to litigation matters that require a vote of the membership. In other words, if there was no vote needed by the membership—paragraphs (a) through (d) of section 30.5, subsection 1—there was no reason for them to go through the time and expense of creating this written statement that would go to the homeowners even if there was no need to have a vote by the homeowners. That is typically what has been done for years. A clarification was needed because there is not a specific reference to subsection 2 only applying to the non-exceptions in subsection 1. In other words, the language we are adding is that a reasonable estimate of the costs of civil action and an explanation of potential benefits are only required if the "owners of the units are entitled to vote" on the matter. That is how it has typically always been done. This just clarifies that point.

I know I am going to get the question, how does a unit owner know if their association is, in fact, commencing a civil action under section 30.5, subsection 1, paragraphs (a), (b), (c), or (d)? There are three ways that currently happens under state law. First, there are quarterly updates required by state law to all homeowners for all litigation matters. You can attend your board meeting on a quarterly basis and understand what, if any, civil matters are ongoing. If you are not able to attend that meeting, the quarterly update is available to all unit owners through written minutes, and the audio is also provided. If a homeowner cannot attend that meeting, they can understand what litigation matters are pending on a quarterly basis through minutes or audio. Secondly, on a monthly basis, associations send out financial statements under NRS 116.31175. Through that financial statement, a homeowner has a right to review and understand what, if any, attorney fees are being expended on behalf of the association. Third, in all resale packets—if I am buying a home in a homeowners' association, I am entitled to a resale packet—there is a disclosure of all pending litigation.

If they are buying a home in an association, all buyers are fully aware of what litigation matters may or may not be pending.

Again, I think this clarifies an issue of standard practice. Also, what the Community Associations Institute always tries to do is make sure we are minimizing costs to homeowners as well as the time of volunteer board members. We think this does that. I am happy to answer any questions.

Chairman Yeager:
Section 30.5, subsection 2 essentially says you are only going to have to provide written statements under the way the law is currently drafted if the litigation falls under section 30.5, subsection 1(e). Is that right?

Garrett Gordon:
Yes, but also for any litigation other than the kinds in paragraphs (a), (b), (c), and (d) of section 30.5, subsection 1. Section 30.5, subsection 1(e) is an exception. However, it only gives you a delay before you have to go to a vote if there is a health, safety, or welfare issue, so it still requires a vote.

Chairman Yeager:
I will open it up for testimony in support of S.B. 382 (R1). [There was none.] I will take opposition testimony.

Mike Kosor, Private Citizen, Las Vegas, Nevada:
I am here representing myself as a homeowner and board member of a homeowners' association. My opposition is strictly to sections 30 and 30.5 of the bill. I think you have a copy of my prepared testimony (Exhibit I). I will not read it, but I would like to hit on a couple of items. First of all, I have heard that the reason for the change is that the original language in the statute was adopted in 1991. I will point out that in 2009, the very same language in this bill was adopted and passed. However, in the very subsequent session in 2011, it was removed and now resembles the same language that was there in 1991. It is, arguably, onerous to change a user right. I think that is intentional. Case law, even for governmental bodies, creates high hurdles for an agency or someone to come in and remove someone's property rights. I think that should also carry over into a homeowners' association.

A statement was made that the language is consistent with the UCIOA. Let me point out that the UCIOA, as I understand it, does provide for—if it is seen as necessary—allowing a user change to occur only after a supermajority vote, not a simple majority. I think that is intended to protect the minority interest of a homeowner that may be part of a community, and that is not part of this bill.

As far as the grandfather protection, this bill does provide some grandfathering for the use of the current owner. However, as I am sure we all recognize, anytime you change a user right for a property, it is going to lower the property values associated with that piece of property,

and that value loss is not protected. You may be able to use your property as you originally thought you could. However, the value you may have lost as a result of that change is not compensated for.

What was not addressed is that there is also a provision in the UCIOA that the developer cannot come in and reserve a right to veto the potential of a community to change the users right going forward, even after the developer has departed. With the change, it is possible for the developer to establish a majority or supermajority requirement that would give the developer a veto vote on any rights, even after that developer has departed.

As far as section 30.5, which has to do with the information available to homeowners, I concur that it is rather expensive, and if the homeowners have no right to vote, the association should not necessarily be required to push information out to homeowners related to the decisions they are going to make. However, this bill, as proposed, would then restrict homeowners who would be interested in, subsequent to a decision, what the costs were, whether or not due diligence was done, and whether or not the decision to engage in litigation was useful or potentially a misuse. It has been noted that you can go to the monthly financial statements and understand it, but the monthly financial statements available to homeowners are an aggregate of all legal costs. As an example, my master association, prior to 2015, as part of a superpriority lien, expended close to $1 million in legal expenses. The ability of a homeowner to then go in and find out whether or not all those cases—and there were multiple cases—were all done properly with a cost-benefit analysis and whether or not there were any conflicts of interest is not possible. The information is typically done in executive session. Discussions are made there, and those discussions are not accessible to homeowners. As the bill is currently written, that would not be available.

I have proposed an amendment (Exhibit G) that would not change what is currently out there, but would add the ability of a homeowner who did want to go forward and ask for the cost-benefit analysis of a particular case or why an association is pursuing that particular element to get that information from the association. Currently, that could be rejected. I would be happy to take any questions or clarify any of my comments.

Chairman Yeager:
I have a couple of questions. One of the points in your written testimony is that the UCIOA requires a supermajority, and only after providing protection for those affected. Is the protection for those affected the grandfathering, or is there some other protection that would be provided?

Mike Kosor:
As I understand it, the UCIOA does not specify what those protections should be. Yes, the grandfathering would protect the current users. However, my point was that the protection is still limited and any property value that may have been lost to the homeowner as a result of a use change they were not aware of would not be recouped under the statute. There could be a requirement that there be compensation somehow, as there might be if government action was taken and I lost the use of my particular property as a result.

Chairman Yeager:
Is there a scenario in which changing a user right would actually increase the property value? I know we are talking about potentially decreasing property values depending on what the change to the user right is, but I wonder if there could be restrictions lifted that might increase the property value. Do you think that is a possibility?

Mike Kosor:
That is a very good question. I have not looked at it from that perspective. I suspect it is possible. Let us say there is a restriction in your community, and after the developer leaves, the community decides it wants to lift the restriction. It is possible that would also help increase the values. However, as the bill is proposed, it is possible for the developer to have that veto power. Under current law, it precludes a developer from establishing anything more than a majority vote of homeowners. If that is no longer a protected element, it is possible for the developer to say you need to have a supermajority or unanimous consent to change a user right. That was the point I was trying to raise. I suspect there probably is a way the value could be increased by eliminating or actually adding something.

Chairman Yeager:
Is there any neutral testimony? [There was none.] At this time, I will invite our presenters back to the table for concluding remarks.

Karen Dennison:
I would like to clarify my testimony with respect to the 1994 amendments to the UCIOA as it pertains to section 30 of the bill. We are consistent with the UCIOA in that we have removed the unanimous requirement that all affected owners must consent to a change in a use restriction. I acknowledge that the UCIOA does suggest a supermajority. We feel that the CC&Rs, as they are written, whether they have a simple majority or a supermajority, should control. We feel the benefits to removing this section outweigh the burdens.

Adam H. Clarkson, representing the Real Property Law Section, State Bar of Nevada:
I will give some clarification on the background of the deletion of the use restriction. The use restriction was deleted in 2009 after *Red Hills Homeowners Ass'n v. Knopp*, 122 Nev. 1719 (2006), which was a Supreme Court of Nevada decision that was not published. In that decision, the Supreme Court looked at a set of CC&Rs that were basically analogous to NRS Chapter 116, and looked at a provision that addressed use restriction as if it applied to leasing. Leasing would actually be alienation, not use. As identified by Mr. Buckley's prepared statement (Exhibit H), use is really between commercial and residential. Whereas occupancy goes into things such as pets and parking requirements, alienation goes into short-term leasing and things of that nature. Those are all separately required to be delineated in said CC&Rs under NRS 116.2105.

The reason it was deleted in 2009 is, following the *Red Hills* case, there were a lot of questions as to whether or not that use restriction now applied to leasing, which is not what was intended. Of course, it was an unpublished decision, so that was deleted in 2009. In 2011, there was a large, omnibus set of changes that were processed. Those were also set

forth by the Real Property Law Section's subcommittee for common-interest communities. I would say, most likely, it was simply a clerical error. If you look at the minutes, it was not something that was addressed; it was not something that was considered; it was probably a "cut and paste" problem more than anything else. There have been so many issues with NRS Chapter 116 since 2011. No one has gotten around to cleaning it up, which is why the State Bar looks at this as a cleanup amendment. So does the National Conference of Commissioners for Uniform State Laws, which adopted the UCIOA. This provision, as we are presenting it, is consistent not only with the 1994 amendments, but also with the 2008 and 2014 amendments to the UCIOA, which deleted the use restriction because that made it inconsistent with NRS 116.2105, which required use, occupancy, and alienation. It just creates confusion with respect to the use restriction problem, which was the issue back in 2006, and why it was cleaned up in 2009.

Chairman Yeager:
I will now close the hearing on S.B. 382 (R1). Is there any public comment? [There was none.] We will start at 9 a.m. on Monday. I hope everyone has a great weekend. The meeting is adjourned [at 10:09 a.m.]

RESPECTFULLY SUBMITTED:

_____
Lucas Glanzmann
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 copy of a PowerPoint presentation titled "SB117," dated April 26, 2019, submitted and presented by Kent Ervin, Private Citizen, Reno, Nevada.

Exhibit D is a graphic explaining blockchain technology, submitted by Matthew Digesti, Vice President, Government Affairs and Strategic Initiatives, Blockchains, LLC, regarding Senate Bill 163 (1st Reprint).

Exhibit E is a letter dated April 26, 2019, to members of the Assembly Committee on Judiciary, submitted by Matthew Digesti, Vice President, Government Affairs and Strategic Initiatives, Blockchains, LLC, in support of Senate Bill 163 (1st Reprint).

Exhibit F is a letter dated April 25, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, submitted by Elisa Cafferata, Executive Director, Nevada Technology Association, in support of Senate Bill 163 (1st Reprint).

Exhibit G is a proposed amendment to Senate Bill 382 (1st Reprint), dated April 26, 2019, submitted by Mike Kosor, Private Citizen, Las Vegas, Nevada.

Exhibit H is written testimony, submitted by Michael E. Buckley, representing the Real Property Law Section, State Bar of Nevada, in support of Senate Bill 382 (1st Reprint).

Exhibit I is written testimony, dated April 26, 2019, submitted by Mike Kosor, Private Citizen, Las Vegas, Nevada, in opposition to Senate Bill 382 (1st Reprint).