

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

**Eighty-Second Session
May 15, 2023**

The Committee on Judiciary was called to order by Chair Brittney Miller at 9:01 a.m. on Monday, May 15, 2023, 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/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Brittney Miller, Chair
Assemblywoman Elaine Marzola, Vice Chair
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Venicia Considine
Assemblywoman Danielle Gallant
Assemblyman Ken Gray
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Selena La Rue Hatch
Assemblywoman Erica Mosca
Assemblywoman Sabra Newby
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Toby Yurek

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

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

Minutes ID: 1105



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Devon Kajatt, Committee Manager
Connor Schmitz, Committee Secretary
Ashley Torres, Committee Assistant

OTHERS PRESENT:

Lynn Goya, Clerk, Clark County
Jeffrey S. Rogan, representing Clark County
Amy Burgans, Clerk-Treasurer, Douglas County; and representing Nevada
Association of County Clerks and Election Officials
Brian Mills, Private Citizen, Las Vegas, Nevada
Jessica Munger, Program Manager, Silver State Equality
Garrett D. Gordon, representing Community Associations Institute Nevada
Gregory Kerr, Vice Chair, Legislative Action Committee, Community Associations
Institute Nevada
Mark Leon, Private Citizen, Las Vegas, Nevada
Sharath Chandra, Administrator, Real Estate Division, Department of Business and
Industry
Michael Kosor, Private Citizen, Las Vegas, Nevada

Chair Miller:

[Roll was called. Committee rules and protocol were explained.] Good morning, everyone. Welcome to Assembly Judiciary. At this time in session, we have a few members all over the place. Assemblywoman Hardy is presenting a bill, and Assemblywoman Considine is also presenting a bill right now. On today's agenda we have two bills, and we will take them in order. The first bill we are hearing is Senate Bill 211 (2nd Reprint), presented and sponsored by Senator Harris. Members, I will let you know that an amendment was just provided [[Exhibit C](#)], and there is a copy of it on your desk. Please take a few minutes to review it. We also have Ms. Lynn Goya with us today to copresent. With that, Senator, your hearing is open, and please begin when you are ready.

Senate Bill 211 (2nd Reprint): Revises provisions relating to marriage. (BDR 11-656)

Senator Dallas Harris, Senate District No. 11

Let me just first quickly speak to the amendment [[Exhibit C](#)]. What you have before you is a bit of clarifying language. This amendment was meant to have made it into the bill before we left the Senate side, but there were some small tweaks from the Legislative Counsel Bureau language that we wanted to make sure we got right. That is what you see before you. It does not change any of the substance of the bill, but working with the recorders, they felt that we needed to make sure we got the language just right so that this could be implemented properly.

I am going to quickly give you a rundown of what the bill does and then turn it over to Ms. Goya for any comments or questions that the Committee may have. Senate Bill 211 (2nd Reprint) essentially says, if you get your name changed through a court order, for whatever reason, after getting married, we are now giving you an option where you can get an amended certificate that has your new name on it. Now, I do not know about you all, but I personally think it should be just as easy to change your name on a birth certificate as it is on a marriage license. But prior to this piece of legislation, we actually had no way to change your name on a marriage license unless there was an actual error, such as they flipped the letters in your name or made some mistake.

Thus, what you have before you is that mechanism. If you are married here in Nevada, likely in Clark County where we are the marriage capital of the world, and you get your name changed through a judge's order, you now have some avenue to come back and get an amended certificate with your new name on it. Chair, with your permission, I will now briefly turn it over to Ms. Goya to make a couple of comments, and then we will stand for questions.

Lynn Goya, Clerk, Clark County:

We support this bill. There is another section as well, where we want to remove the new married names portion on the marriage certificate at the time that you are applying for your license. The truth is that when couples come to get married, sometimes they cannot even spell their own name because they are so excited. We want to take that away from them because this is not a legal name change. You would still have to go to, in addition to the portion Senator Harris spoke to, the Department of Motor Vehicles (DMV) and Social Security Administration (SSA) to do a legal name change. This is just a name change on the document that you would need to show to the DMV and SSA.

We feel that the deletion of the new married name portion on the marriage license would facilitate it. In Clark County, we have had almost 400 people who wanted to change their name from the name they thought they wanted at the last minute; there was just too much pressure. Then we believe that with the court order, the clerk and recorder should be able to make a modification to the marriage certificate, so they can take that to the DMV and SSA to make a legal name change. If you have any questions, I would be happy to answer them.

Assemblywoman Newby:

As someone who has changed their name through a court order before, I really appreciate it. My question is for Ms. Goya. How is the clerk's office going to make the link between the old name and the new name? I am just thinking of genealogists or other researchers who may want to trace their family back through those changes.

Lynn Goya:

We would not be deleting the old, original marriage certificate. This would be an addendum that would be put in our files attached to the marriage certificate and therefore, that provenance would be kept.

Assemblywoman La Rue Hatch:

My question is regarding just taking out that language you said, about changing your last name when you are filing. Will this make it more difficult for people to change their name after they get married? Will they now need a court order, or can they still just be able to take their marriage certificate?

Senator Harris:

This will not make it any more complicated to get your name changed. In order for your name to be officially changed you need to, as of today, take that marriage certificate and go to the SSA. That should probably be your first stop, but what the SSA is looking at is the marriage certificate. They want to show that you were actually married. Not having the name that you want on the marriage certificate does not change the process by which you get that name change. No, you would not have to go and get a court order; in fact, it was former Assemblywoman Jill Tolles who, I believe in 2019, added this ability to be able to put a new name on the marriage certificate. Prior to that, there was a process in place where you would go to the SSA, go to the DMV, and in practice, that is what has happened even after 2019; you still must go to the SSA and to the DMV; it just had a name on it. Now, it would not have that name anymore and you would have to go through the exact same process to officially change your name to whatever you have decided you want to be known as after marriage.

Lynn Goya:

I would just like to add—as we get the most marriage certificates—what happens is, when that new married name is on the marriage certificate, then when you go to DMV and SSA, you have to match that name, and as I was saying, people really are not in the mindset to make those decisions. Therefore, if they change their mind, they have to go process an amendment and remove it or put in the new name. It does not make it more difficult to take this off, it actually makes it easier for people, because there was always a process that if you get married, this is one of the times you can legally change your name based on the names on the marriage certificate. It just makes it easier and less restrictive.

Assemblywoman Gallant:

I think we are talking about a lot of different departments here: SSA, the recorders, the courts, the DMV. I know with my marriage certificate and license, I have my maiden name, and then I took it down to the SSA, told them what I wanted to change it to, and that was fine. Then I had to take that to the DMV, and they did not need my marriage certificate or my marriage license to match my social security documents. Therefore, I am curious, how is this bill making this process better if we still have to go through all those steps? Maybe I am missing it, but I feel like we have lots of pieces out there currently, and I was hoping you could bring it together.

Senator Harris:

After this bill hopefully passes, the process will be exactly what you experienced. Your marriage certificate will have your maiden name and your partner's name; and then you go to

the SSA to get it changed to whatever you would like to be known as post-marriage. You will see a process that is exactly what you went through after this bill hopefully gets passed and signed. Here in Nevada, you currently have the option of putting whatever name you want your name to be changed to post-marriage on the certificate itself, and what we are doing is removing that because you do not need it, as you have just described.

Assemblywoman Gallant:

To clarify, that would make the social security process and the DMV process easier? However, I was also in California.

Senator Harris:

The complicated thing we currently have is that when you put that new name, if you decide that is not what you actually want to go by, then you are running into trouble. Therefore by removing that, we are going to make it a smoother process, similar to the one that you experienced in California where you just take the marriage certificate, and then you go to SSA and say, This is what I would like my new name to be. Then you go to the DMV, and they follow through with whatever you have got on your social security card.

Assemblyman Gray:

There is a lot going on in society these days, so I have to ask, is this only going to apply to post-marriage matters or, for example, what if a couple is married and one of them undergoes a sex change operation? Is this going to allow them to go and change their name in that aspect as well?

Senator Harris:

This will only apply to post-marriage because we are talking marriage certificates and when the need to amend it arises. However, it covers any time you would get a name change through a court order for whatever reason that may be, and you have decided you would like your marriage certificate to reflect what your new name is.

Chair Miller:

Not seeing any additional questions, I believe we can open it up for testimony. Is there anyone who would like to testify in support of Senate Bill 211 (2nd Reprint)?

Jeffrey S. Rogan, representing Clark County:

For the reasons stated by Senator Harris and Ms. Goya, we are in support of S.B. 211 (R2) and urge its passage.

Amy Burgans, Clerk Treasurer, Douglas County; and representing Nevada Association of County Clerks and Election Officials:

I just want to start by saying thank you to Senator Harris for all her willingness to listen to our concerns, not only from the clerks but also from the recorders, with the amendments that you see before you. It has been an honor to work with her and Senator Ohrenschall on getting this so that it is implementable, and we are in support of the changes.

Brian Mills, Private Citizen, Las Vegas, Nevada:

[Read from written testimony, [Exhibit D](#)] I am a wedding officiant here in Las Vegas. I have performed almost 20,000 ceremonies to date, and I am president of the Las Vegas Wedding Chamber of Commerce, a collection of over 200 wedding professionals, from small business owners like myself to some of the biggest hotels in Las Vegas, working to promote the wedding industry in southern Nevada. Today, I am here to support S.B. 211 (R2) and its two main parts.

First, section 6 of the *Nevada Revised Statutes* on obtaining marriage licenses needs to be repealed. I have witnessed firsthand the difficulties some couples encounter trying to decide, in a rushed and pressured situation, what they would like their permanent name to be after they get married. Many couples are not aware of this option ahead of time, and this has led to some uncomfortable and even testy exchanges inside the Marriage License Bureau at the counter. For example, a bride is forced to reveal to her groom for the very first time that she does not intend to take his name post-marriage. This is not the place or time for this discussion, and existing federal law allows for name changes to be declared at the SSA and the DMV.

I have also advocated for the LGBTQ+ community my entire career. I ran the only LGBTQ-owned wedding chapel in Las Vegas as general manager for eight years and participated in countless marriage rights events and media interviews, advocating for the rights of every individual to be legally married in our state. In this coming weekend, my wife and I will officiate all of the weddings at the Electric Daisy Carnival; 150 couples over three nights, many of whom identify in this community. Individuals who legally change their names should be able to amend their marriage certificate to reflect their new name.

With that being said, I applaud the amendment to S.B. 211 (R2) stating that both parties to the original marriage must complete notarized affidavits requesting the name change and that the original certified marriage certificate with the officiant or religious leader's solemnizing signature remaining intact and part of public record. I am so proud of our elected officials who have worked on this important legislation and have compromised, showing the rest of the country what working together to protect the interests, viewpoints, and values of all individuals affected by this bill can accomplish.

I hope to see S.B. 211 (R2) passed with unanimous consent, and I thank you for your time.

Jessica Munger, Program Manager, Silver State Equality:

Silver State Equality is a Nevada statewide LGBTQ+ civil rights organization, and we are in support of S.B. 211 (R2).

Chair Miller:

With that, is there anyone wishing to testify in opposition to Senate Bill 211 (2nd Reprint)? [There was no one.] Then I will open it up for neutral. Is there anyone wishing to testify in neutral? [There was no one.] I will welcome the bill sponsor up for any final remarks.

Senator Harris:

I just want to thank the Committee for its time, and if any additional questions come up, you know where to find me.

Chair Miller:

With that, I will go ahead and close the bill hearing for Senate Bill 211 (2nd Reprint). Our next bill is Senate Bill 378, which is sponsored by Senator Cannizzaro. The bill will be presented by her and Mr. Garrett Gordon from Lewis Roca. I also see that there appears to be another copresenter down in Las Vegas. Senator, your bill hearing on Senate Bill 378 is open. Whenever you are ready, you may proceed.

Senate Bill 378: Revises provisions relating to common-interest communities. (BDR 10-1059)

Senator Nicole J. Cannizzaro, Senate District No. 6:

I am here today to present to you Senate Bill 378. I appreciate the Committee's indulgence while I ran up here from our Senate Finance Committee downstairs, and I am very excited to be here to be able to walk you through this particular bill. Senate Bill 378 revises the requirements for a common-interest community when providing a website or online portal for their association. It also establishes guidelines a homeowners' association (HOA) must follow if they allow unit owners to make payments electronically through their website or online portal and allows an association to purchase a unit at a foreclosure sale.

Madam Chair and members of the Committee, this bill did largely stem out of another piece of legislation from last session that does require some cleanup in order to allow for our common-interest communities and HOAs to accurately communicate with their members. Madam Chair, with your permission, I would like to turn the presentation over to Mr. Gordon for his remarks, and then to Mr. Kerr down in Las Vegas as well, to share additional comments before doing a brief walk-through of the bill.

Garrett D. Gordon, representing Community Associations Institute Nevada:

As mentioned, this is really a cleanup bill from Senate Bill 186 of the 81st Session. Senate Bill 186 of the 81st Session created the ability for the HOAs to create an online portal where information would be put on the portal, but also homeowners could pay fees electronically rather than sending in or dropping off a check. I think we all can appreciate paying electronically is a great option. Section 1 of the bill today goes a little further and says if associations are going to allow electronic payments, they are going to have private information of unit owners—maybe their checking account number or their ATM [automated teller machine] card number—so we are implementing a requirement to have cybersecurity insurance, to make sure if there is a breach, the homeowner can be made whole in the event there is a loss of their information. Therefore, it is really a consumer rights provision in that first section.

Senate Bill 186 of the 81st Session also moved forward with a national trend of allowing homeowners to receive information from their associations electronically; rather than getting a big stack of papers in their mailbox, they can now receive it electronically. There was an interpretation concern out of the bill last session where it was not an "or"; you can opt in for mailing "or" you can opt in for electronic; it was an "and" so associations were saying, Wow, now we have to not only email it out to homeowners, but also mail it, and that certainly was not the intent. To clarify, the language remains that if a homeowner does not want to receive electronic mail but wants to receive a hard copy, they can still opt into that. They absolutely can receive hard copies if they want, but the trend nationally and, certainly, what we are seeing in Nevada, homeowners would prefer to have information emailed to them.

Then the last piece of this bill: Senate Bill 186 of the 81st Session created a list of prohibited persons who could not purchase a home at a foreclosure sale. It is really a conflict of interest provision; if you are part of the management company or if you are a lawyer on board, et cetera. It was a good, robust, I would say, prohibited persons list. However, at the very end of that section, there was some language removed that really provided for the option of what happens at a foreclosure sale if no one shows up to bid on it and there is no one there at the auction; that would allow the association the ability to have a credit bid. Therefore, that language, which is being put back in through Senate Bill 378, was always law and that came out, I think inadvertently, in S.B. 186 of the 81st Session. There has never been any data, or I think real testimony, to say why it should have come out, so we are just asking to put that back in.

Thus, there is a little overview and, Madam Chair, there is an HOA lawyer in Las Vegas who can get into the weeds a little bit more if you would like as far as section by section. Again, thank you for the time for the hearing and the Committee's time this morning.

Gregory Kerr, Vice Chair, Legislative Action Committee, Community Associations Institute Nevada:

I am a practicing attorney specializing in representing HOAs. I just want to touch on a few other points about the various sections covered under this bill, and I am certainly available for questions or clarifications. I do not want to spend too much time rehashing what Mr. Gordon raised, but just to add a few points; section 1 deals with the payment portal option. I think this is an important aspect of this bill. It also provides certain protections be put in place so the homeowners who opt to pay assessments or other obligations through the portal, their information is protected pursuant to the various provisions of section 1.

Section 2 of the bill is just a conforming change to make it clear that this also applies to residential communities of more than six units. Section 3 is the provision that discusses the email option for various notices. I do want to clarify that this section of the bill does not authorize associations to provide electronic notice for everything that an association sends out. There are certain exceptions that are stated in the bill that are stated in existing law as well, such as notices that relate to the nonjudicial foreclosure process—those still have to be sent out pursuant to the methods prescribed in statute; or notices or letters dealing with

governing document violations—those still have to be sent by regular mail. Therefore, this bill would not impact those particular provisions. It is only the other types of notices that are not otherwise expressly prescribed by statute.

Section 4 is also another portion of cleanup, so to speak, from S.B. 186 of the 81st Session. Section 4 of this bill specifies the types of documents that an association must make available on its website or its Internet portal. Under S.B. 186 of the 81st Session, the way that the language read was that virtually every kind of communication that dealt with an association matter had to be placed on the association's website. Obviously, that would be tremendously burdensome, and there is some ambiguity as to exactly what should or should not be on such a website. Therefore, this section of the bill cleans that up and specifies the particular documents that need to be made available on an association's website. Then for other documents, owners, of course, still have various rights under *Nevada Revised Statutes* (NRS) Chapter 116 to request, inspect, and copy various association records, so that still exists as well.

Section 5, as Mr. Gordon noted, allows the association to credit bid in the event that there are no purchasers at an association's lien foreclosure sale. That had always been the law up until S.B. 186 of the 81st Session, and the right of a creditor or lienholder to credit bid exists in various different contexts: banks can credit bid when they are foreclosing a mortgage; a mechanic's lienholder can credit bid a storage lien; and an owner of a storage facility can credit bid for storage lien sales. Therefore, this change here in section 5 is simply to place back what had always been the case and what is standard practice, which is for a credit lienholder to be able to credit bid in the event there are no purchasers at that lien foreclosure sale. Furthermore, it is necessary because, in those instances, there needs to be some disposition of the property in some form or fashion, and this provision basically puts that back into law to allow associations to do that when need be.

That was a quick overview with some additional points on the various sections of the bill. Certainly, I am available for any questions or clarifications, and I thank the Committee for its time and consideration of this bill.

Chair Miller:

Thank you so much for your presentation, and we do have a number of questions.

Assemblywoman Marzola:

My question relates to section 5, subsection 8. I would like you to walk me through the process. The HOA is allowed to put a lien on the property, say for \$30,000, and HOAs are also allowed to foreclose on that property because of that lien. Is that correct?

Gregory Kerr:

That is correct. The lien that an association has for unpaid assessments exists by statute. It is set forth in NRS 116.3116. Associations have the ability to foreclose that lien when homeowners are delinquent and do not pay their assessments. Of course, there is an entire nonjudicial foreclosure process that the association has to go through before it actually gets

to the date that the property is sold, and those steps are provided for in the nonjudicial foreclosure statutes, NRS 116.3116 through 116.31168, I believe it is. It is a thorough process; there are a lot of notices that go to the owners and to various interested parties, so it is not something that happens quickly, and there are numerous opportunities for delinquent homeowners to either be placed on a payment plan or otherwise cure those defaults or delinquencies. Association lien foreclosure sales are rare, and it is even more rare that there would be a situation where an association would be in a position where it needs to credit bid in order to have that property sold in one form or fashion.

Assemblywoman Marzola:

I appreciate that answer, which leads me to my second question. Let us say there is a foreclosure, and there is a lien for \$30,000. The HOA is now able to bid on that property; the \$30,000 plus fees and cost; I get that. Therefore, let us say it ends up being \$50,000, and now the HOA owns that property. Furthermore, I understand that there is a 60-day right of redemption for the homeowner, which, let us say expires, and now the HOA owns it. Is the HOA now allowed to essentially flip the property, say, for \$250,000? I do not know where you can buy a property these days for \$250,000, but just for the sake of numbers, is the HOA now allowed to flip it and essentially double-dip?

Gregory Kerr:

The credit bid would be for the amount that is owed under the lien, whatever that dollar figure is with all the collection fees and costs that are allowed by statute. That is what the association would be able to credit bid in the event there are no other purchasers to bid more than that. To answer your question directly, yes. An association, in theory, could credit bid if there are no purchasers, take the property, sell it, and dispose of it in one form or fashion. I understand that there is a concern about that, and I think there is a perception oftentimes that associations race to foreclose properties so they can do just that; become investor purchasers. I can represent to the Committee, that is just not the case. The ideal scenario for an association is a homeowner who lives in the property and timely pays their assessments every month or quarter, whenever they are due. Associations are not in the business of owning properties, nor should they be, and they generally do not. It is a rare circumstance where an association would own a property, especially from a credit bid where there are no other purchasers.

Senator Cannizzaro:

At the crux of this particular issue and the reason why this is in the bill is because this is a situation that will occur only when there are no other bidders for the property. It is not as though the association is coming in, bidding on the property, flipping it to turn a profit, and it gives them some sort of incentive to put a lien on the property. More often than not, based on the data that we know, in situations where an LLC [limited liability company] may own a property or when there is a homeowner, there are typically negotiations and mediations that occur. There is a process that has been put in place, even from when Attorney General Ford was in this building, to ensure that homeowners have different avenues to be able to mediate that. Certainly, there are very rare circumstances where you would have a lien on a property

that would be foreclosed, but this credit bid situation only occurs when that HOA is the only entity that is going to be bidding on that property. If there are other folks in that credit bid process, then they would not be part of it. Therefore, it is just for that very rare circumstance.

Assemblywoman Marzola:

Are there any statistics that could show how many times HOAs have bid on properties and how many times they have flipped and sold them?

Garrett Gordon:

We will get you that information and provide it to the Chair and the whole Committee. That is no problem.

Assemblywoman Summers-Armstrong:

Regarding section 1, subsection 3, on page 3, should there be a requirement in that definition about the "payment processor" that the person not be associated with anyone within the HOA's leadership or working with the association so that we do not have a conflict? Also, why is there no stated limit on the fee amount for the processing of these payments?

Garrett Gordon:

To the first point, we can think about whether or not we need to come up with language about a conflict of interest for the payment processor. My initial reaction is we have those conflict of interest provisions for a foreclosure sale. With the hiring of a vendor who would just be processing the payments, if you go up to section 1, subsection 1, paragraph (e), it says, "The executive board of the association has conducted an evaluation of the costs and benefits of providing units' owners the ability to pay." I think the concept would be that if the board wants to utilize a payment processor or electronic payments, it goes to the board, there is a contract in front of them, and they would weigh, is it too expensive and is it in the best interest of the community to do so? At that point, I would say they would have the name of the company and can have a good discussion about who it is and whether it makes sense or not.

If you want to put language in there about disclosure, if the payment processor lives in that community, I think that is probably a good idea and we could come up with some language, but we tried to capture that discussion about the pros and cons in paragraph (e).

Assemblywoman Summers-Armstrong:

Maybe I did not express myself clearly. I think it would be a conflict of interest if there were a person who owns a business doing payment processing and is on the board of directors or somehow associated with the HOA, and that same person is also involved in processing payments for that HOA. What I am trying to say is, I think it could be a conflict. I think it would be prudent to make sure that does not happen so the association's leadership is not influenced to feed a contract either on purpose or inadvertently to someone who is in a position of authority and power in the organization.

Garrett Gordon:

Good point, and we will work on some language to that effect after I consult with Senator Cannizzaro. Anytime we can be transparent and avoid conflicts of interest, my organization, Community Associations Institute (CAI), supports that. I will get back to you, or if I am not thinking of another provision of law that already covers that situation, regardless, I will get back to the Committee with that information.

Gregory Kerr:

There are already prohibitions under NRS 116.31034 that prohibit a director from benefiting from any type of service or contracting the association enters into. Therefore, that protection does already exist in current law to prevent precisely the scenario that was just laid out. I believe those protections are there for the Committee to consider.

Assemblywoman Bilbray Axelrod:

My question is regarding section 3, subsection 3; if a homeowner does not designate an email to receive the notices, should that communication automatically go to regular postal mail? Is that the intent? If they are not designating an email address, would it automatically get mailed to them? That is not clear to me in that section.

Garrett Gordon:

How the process is laid out in this section is that your default is receiving electronic communications for certain documentation. You can opt out and go to postal mail at any time. If you are receiving communications electronically, you either provide a designated email, a new one, or when you sign up with the association and you have to fill out your paperwork, there is an email address given. Therefore, we tried to be helpful; either we will use the email address that you filled out when you submitted your documentation for the association, or you can come in and give us another email if you, say, change from Yahoo to Gmail, we will use your Gmail. It was trying to be helpful to the homeowner in regard to what email address we should use.

Assemblywoman Bilbray-Axelrod:

To clarify, you must put in an email? For example, if my grandmother does not have an email, what would happen?

Garrett Gordon:

If your grandmother does not have an email address, then I presume she would just opt in to postal mail, and it would be mailed out to her with no problem.

Assemblywoman Gallant:

I want to go back to the bidding and the foreclosure process. If the property does not have a mortgage lien, I can see where they need to have that property occupied or at least taken care of because it makes it hard for the community when they have a dilapidated house; which is why, what, was that in 2010, this body allowed it so the HOAs had a super priority

lien; however, we are not in that situation anymore with it having been heard in the Supreme Court of Nevada and it was decided they do not have the super priority lien anymore. It goes back to the bank. Therefore, it has been interesting watching this whole thing play out.

I am curious how this provision is going to play out in conjunction with the Nevada Supreme Court ruling because frankly, HOAs really should not be foreclosing on these properties anymore if there is a mortgage. Therefore, can you help me understand that big picture?

Garrett Gordon:

The Nevada Supreme Court stated that, based on Nevada law, an association still has a super priority lien for six months, meaning six months' worth of assessments. Therefore, we worked very hard with Attorney General Ford at the time on the bill, once that Supreme Court case came out, in order to protect banks, homeowners, Realtors, and title companies to make sure we had a good framework as a result of that Supreme Court case and how to move forward. The process now is the association still has a six-month priority lien, so if an association does foreclose on that six-month assessment, then it extinguishes the mortgage.

Lenders, obviously, were not happy about that, and we worked with them very closely on a bill, probably four sessions ago, so that now there is a considerable amount of notice that goes to lenders if a homeowner gets behind and lenders are coming in, curing the issue as far as paying off the assessments, then working with their borrower on what is going on. Are you also not paying your mortgage? What is happening? I would assert to you that in the law today, it is a very clean process, and we have not seen any issues. I have been lobbying HOA issues for nine sessions and since we passed that legislation about four sessions ago, that process is now a good one and you are not hearing the banks say we need to change it or tweak it. It is working.

The section you are pointing out was in law, and it was taken out last session. We are asking you to put it back in, and that is for the very narrow circumstance where there is a foreclosure and the lender has not stepped in, which now is happening, and there is no third party showing up to the foreclosure sale to bid on the property. Therefore, the association is just there, and that credit bid allows them to take title to the property and pay off the debts. This way you do not have to raise assessments for the other homeowners and then move the property to a new buyer in order to get assessments coming in and cleaning up the house, which again, oftentimes, is a third-party investor. They have abandoned their house, their property, or their investment, and the association needs some finality at the end of the day. I am sorry for being a little long-winded, but it has been quite the process for the last couple of sessions to get this right.

Gregory Kerr:

Regarding the process that Mr. Gordon described concerning the various legislative changes we made over the past few sessions, what that has done is actually increased participation of third-party bidders at the sales, which means that there is even less likelihood for a foreclosure sale to have no bidders and for the association to be in a position to even have the opportunity to credit bid. With the ability of banks to satisfy that super priority lien, when

they do so, there are various notices that are recorded against the property that disclose to all potential buyers whether or not that property is still going to be subject to the bank's first deed of trust after the association's lien foreclosure sale. That transparency means that there are more purchasers at those foreclosure sales, which means associations are not credit bidding like they did prior to those changes in law. The only reason that we need this provision in the law is in those narrow circumstances where there are no bidders and the property needs to be disposed of in some form or fashion.

I would also ask the Committee to keep in mind that under the NRS Chapter 116 nonjudicial foreclosure statutes, associations are allowed to postpone foreclosure sales up to three times before they have to rerecord and re-serve a new notice of sale. As a matter of practice, in the event there are situations where the day of the foreclosure sale comes and there are no purchasers there, associations will postpone that sale to another date in the hopes that bidders will then show up. Associations can do that three times before they have to start the notice of sale process over. With those postponements, usually there are bidders who show up, but certainly now and in the current environment, with the changes that we have made to the various super priority lien statutes over the years, bidders show up to these sales and the situations where a credit bid is at issue are very limited.

Assemblywoman Newby:

My question is on section 4, subsection 1, paragraph (b), where it says, "The most recent copy of the declaration of covenants, conditions and restrictions." That language is struck in terms of what documents would be available to the homeowners on the online portal. That seems like an important document that homeowners would want to refer to, and I am wondering why it was being struck from that list.

Gregory Kerr:

The reason that was struck is because the language is somewhat duplicative. If you look at paragraph (a) in that same subsection, it says, "The governing documents." The term "governing documents" is actually defined in NRS 116.049, and the definition of governing documents expressly includes the declaration of covenants, conditions, and restrictions. Therefore, it is included, thereby the use of that term "governing documents."

Assemblywoman La Rue Hatch:

My question is on the paragraphs related to cybersecurity under section 1, subsection 1. I really appreciate the attention to cybersecurity because I think that is a critical and growing need. I noticed there are provisions for the insurance but there are not minimum standards for the type of cybersecurity that the association would need. Are you just assuming if they are getting insurance, then they are going to have a website that is up to certain standards? Is that why there are not specific minimum cybersecurity standards in the bill?

Gregory Kerr:

The term "cybersecurity insurance" is defined in section 1, subsection 3, paragraph (a), which discusses the types of claims, if you will, that would be required to be covered under that cybersecurity insurance when it is obtained. Furthermore, the breakdown of the different

amounts of insurance needed regarding the size of the community are found in section 1, subsection 1, paragraph (b); for example, when you have associations with 150 units or less there must be \$250,000 minimum coverage, and then so on as the bill states. That is just based on a reflection of the potential exposure to liability based on the size of the community. I believe our CAI Legislative Action Committee came up with those numbers based on input from some of our insurance-related professionals who informed some of the content of this bill.

Assemblywoman La Rue Hatch:

I did see that definition for what must be covered, but I do not see anything discussing the minimum level of security you need or types of actions you should take to protect this information. Therefore, my question is, are you just assuming they will do that because they have to get insurance now; is that why that is not in the bill?

Gregory Kerr:

There are some protections provided for; if we look at section 1, subsection 1, paragraph (d), where it talks about the protection of what is called "personal information," it refers to the statutes NRS 603A.010 through 603A.290. Those are all provisions in that chapter that apply to what are referred to as "data collectors," and those particular statutes require data collectors to provide various security and protection measures for that information. Therefore, those protection measures are basically incorporated into this section of the bill that payment processors would have to follow. Hopefully, that answers your question. Those are the protections we would have to have in place aside from the insurance requirements, but those protections would also be required to be complied with by a payment processor or the association if they offer this particular service.

Assemblywoman Summers-Armstrong:

I think I tried to ask this before regarding the paying of the fees through the portal; are you trying to exclusively have people pay through this electronic portal? Will they have another option? Can they mail or drop off their fee payments? Finally, have you considered keeping a limit on the amount of fees that a processing company can charge?

Garrett Gordon:

As I mentioned before, in section 1, subsection 1, paragraph (e), there will be a discussion about what the costs are and to bring that to the HOA board. However, we could certainly talk about if there is some sort of cap, and it will probably be market driven; you are going to have these payment processors doing this all over and, hopefully, they will be competitive enough to provide a good rate to HOAs. To your point, a very good one, you will never be mandated to use the electronic portal or to pay the associated fee. You would always have the option to drop off a check at the management office or drop it in the mail if you did not want to participate in the electronic payments. It is more of an additional option for folks, but not a mandate.

Gregory Kerr:

Yes, that is correct. It is entirely permissive. It is permissive for the association to even provide the option to make online payments through an online portal for the owners. There is nothing in this bill that compels an owner to pay through an online portal even if it is established by the association.

Chair Miller:

Not seeing any additional questions, I will open it up for testimony. Is there anyone who would like to testify in support of Senate Bill 378?

Mark Leon, Private Citizen, Las Vegas, Nevada:

[Read from written testimony, [Exhibit E](#)] I am a homeowner/board member of Mountain's Edge Master Association, a community of 12,000 single-family homes in southwest Las Vegas. Saving our homeowners money by reducing the cost to the association has been a long-standing goal in Mountain's Edge. A campaign to convince our homeowners to receive documents electronically furthered that goal. But when S.B. 186 of the 81st Session passed in 2021, it reversed the effort we made by forcing us to print and mail communications for all homeowners, even those receiving the same information electronically. Thus, we are in support of this bill, which restores the previous ability and allows us to continue our effort to reduce costs.

Chair Miller:

I will now open it up for opposition testimony. Is there anyone who would like to testify in opposition to Senate Bill 378? [There was no one.] I will open it up to neutral testimony. Is there anyone who would like to testify in neutral?

Sharath Chandra, Administrator, Real Estate Division, Department of Business and Industry:

I am just here to testify in neutral and answer any questions that the Committee may have.

Michael Kosor, Private Citizen, Las Vegas, Nevada:

I am all in favor of reducing costs and improving transparency, and that is why I like this bill; however, my neutral position comes as a result of what is not in the bill that I believe should be considered, which creates some ambiguities. There are three points that I will make quickly. First, the definition of a "meeting," which is required to be posted on the website, is not defined in NRS Chapter 116, and I believe it should be in order to provide clarification. Secondly, what is a "proposed budget"? This also creates ambiguity and should also be defined. In both cases, there are abilities of the association to work around this. I have served eight years and currently serve on a large association in southwest Las Vegas, and that sometimes can be an issue.

Lastly, this goes to disclosure, which has to do with section 5 and what is or is not on the prohibited list. I believe one of the items that should be prohibited or one of the parties that should be prohibited from bidding on homes is a declarant, particularly a declarant that has control of the association. A declarant currently is not on the list and could exercise some

influence on the boards and others that are prohibited or associate with others, and I believe that party should be prohibited from voting on or being able to bid on houses in the foreclosure.

Chair Miller:

Is there anyone else wishing to testify in neutral? [There was no one.] I welcome Senator Cannizzaro back up for any closing remarks.

Senator Cannizzaro:

I just want to thank you again for hearing this bill. In Senate District 6 we have many HOAs, and after some of the issues occurred with some confusion over language that was passed last session that was intending to ensure that people are getting more notice, not less, we received a lot of feedback from members who live in Senate District 6 about the confusion and about the issues that had arisen as a result. They are concerned they would not be receiving proper notification even of things like community events happening in community centers, let alone some of the more necessary pieces of information that you may need living in an HOA or common-interest community. Therefore, this bill is very important for those folks who may have a number of common-interest communities or HOAs in their districts. For me, I know that it was important to many of my constituents.

I just wanted to thank you for allowing me to be here to present this because I do think this is something that will be very beneficial and provide a lot of clarity where there was some lacking after some of the legislation last session. Thank you for the time.

Chair Miller:

With that, I will close the hearing on Senate Bill 378. Our last order of business today on the agenda is public comment. [There was no public comment.] I will close public comment.

Just a few announcements before we adjourn today's meeting. The agendas will be posted soon. We do not have Committee tomorrow morning. We do have Committee starting at 8 a.m. on Wednesday, but we will be up in Room 4100 on Wednesday, so if you come here and no one is here, you will remember we are up in Room 4100. With that, this meeting is adjourned [at 10:08 a.m.].

RESPECTFULLY SUBMITTED:

Connor Schmitz
Recording Secretary

Aaron Klatt
Transcribing Secretary

APPROVED BY:

Assemblywoman Brittney Miller, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment to Senate Bill 211 (2nd Reprint), submitted and presented by Senator Dallas Harris, Senate District No. 11.

[Exhibit D](#) is written testimony submitted by Brian Mills, Private Citizen, Las Vegas, Nevada, in support of Senate Bill 211 (2nd Reprint).

[Exhibit E](#) is written testimony submitted by Mark Leon, Private Citizen, Las Vegas, Nevada, in support of Senate Bill 378.