

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
February 24, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:04 a.m. on Thursday, February 24, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Randolph Watkins, Executive Director and Vice President, Del Webb Community Management Company
Michael E. Buckley
John Leach
Mark Coolman, Western Risk Insurance
Pamela Scott
Garrett Gordon, Southern Highlands Community Association, Olympia Group
Angela Rock, President, Olympia Management Services
Donald Schaefer, Sun City Aliante
Jonathan Friedrich

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Rana Goodman

Chris Ferrari, Concerned Homeowner Association Members Political
Action Committee

Joseph Eaton, Concerned Homeowner Association Members Political
Action Committee

Ellen Spiegel, Ex-Assemblywoman

Kay Dwyer

Jan Porter, Sage Creek Homeowners' Association

Gary Solomon, Professor, College of Southern Nevada

Tim Stebbins

Norman McCullough

Kevin Wallace, Community Association Managers Executive Organization, Inc.

Paul P. Terry, Jr., Community Associations Institute

Bill Uffelman, President and CEO, Nevada Bankers Association

Gail J. Anderson, Administrator, Real Estate Division, Department of Business
and Industry

Rutt Premssirut, Concerned Homeowner Association Members Political
Action Committee

CHAIR WIENER:

I will open the hearing on Senate Bill (S.B.) 174.

[SENATE BILL 174](#): Revises provisions relating to common-interest communities.
(BDR 10-105)

RANDOLPH WATKINS (Executive Director and Vice President, Del Webb Community
Management Company):

I have presented you a handout entitled HOA 101 ([Exhibit C](#)) which explains how homeowners' associations (HOAs) originated. I will highlight benefits to forming an HOA. Municipalities benefit from forming HOAs because they maintain private roads, common areas, and parks and recreation areas that local cities and governments do not maintain.

Another benefit is rules are and should be enforced for all. The HOAs are for amenities such as pools, tennis courts, recreation centers and places where families can have sense of community. They invite clean, efficiently run, architecturally and aesthetically controlled neighborhoods. Resale value for homes in an HOA are higher because property is maintained.

Nevada has 2,956 HOAs, including approximately 477,000 units, and HOA homeowners equate to 17 percent or 18 percent of the state's population. If there are two people in every home, approximately 950,000 live in HOAs. There are three types of HOAs: planned unit development, condominium and hotels, and stock co-ops.

The responsibilities of living in an HOA are to abide by the governing documents; pay assessments on time; attend board meetings; and volunteer to serve as elected board members and committee members.

In order for an HOA to govern itself, it needs governing documents such as articles of incorporation; covenants, conditions and restrictions (CC&Rs); and election procedures. Chapter 116 of the *Nevada Revised Statutes* (NRS) governs HOAs. The CC&Rs, rules and regulations, and design guidelines are tools used by management companies to assist the board of directors.

Professional management companies manage approximately 2,500 of the HOAs in Nevada. The remaining 400 are self-managed or managed by boards of directors or licensed community managers.

There are also supporting professionals, i.e., lawyers, certified public accountants, and landscaping and architectural review companies. It is actually big business.

In December 2009, a Zogby survey showed 71 percent of the residents in HOAs were satisfied with their associations, 12 percent were dissatisfied and the remainder had issues which did not fit into those two categories. In addition, 70 percent are in favor of the rules; 82 percent are positive about the value received from the community association assessments; 87 percent oppose additional government regulation; and 37 percent favor mandatory licensing for community association managers.

ALLISON COPENING (Clark County Senatorial District No. 6):

I am here today to introduce S.B. 174. I will read from my testimony ([Exhibit D](#)).

I have provided a list of the S.B. 174 Working Group members ([Exhibit E](#)) and request it be entered into the record.

MICHAEL E. BUCKLEY:

The Common-Interest Ownership Uniform Act was the first consumer protection law enacted in the State.

I am a member of the State Bar of Nevada, Real Property Law Section. We have looked at S.B. 174 in another context because the Uniform Act has been amended. I am also a member of the Commission for Common-Interest Communities and Condominium Hotels (CICCH). A group of people met before Session to compile solutions. We had input from different groups and people. An explanation of the proposed changes, section by section of the bill, is in ([Exhibit F](#)).

Section 1, page 4, of S.B. 174 would allow an appeal to the CICCH from a ruling of the Real Estate Division (RED). The main issue with HOAs is to have an easy, inexpensive way to resolve disputes. The CICCH is comprised of seven members—three homeowner representatives, an accountant, an attorney, a developer and a manager. All of the meetings are public, and public comment is allowed. A homeowner can go to the CICCH with a complaint. There has been discussion that issues appealed to the CICCH need to be fine-tuned. Sections 2 through 7 are procedural issues. The substance is in section 1.

Section 2, page 4, proposes not permitting cumulative voting. Smaller associations are concerned cumulative voting would permit a small group to take over an association. Cumulative voting may benefit larger associations; you need to draw a line rather than eliminate all cumulative voting.

Section 3, page 6, became law in 2009. *Nevada Revised Statute* 116.310312 addresses the fact homes were abandoned, foreclosed upon and falling into disrepair. This section allows the association to maintain an abandoned or foreclosed property. The costs expended by the association are a superpriority lien against the property. The Uniform Common Interest Ownership Act was adopted wherein, if a first mortgage holder forecloses on a common-interest community (CIC) unit, the association can be paid six months of the dues owed, which is called superpriority. This was expanded to nine months, except for condominiums.

On page 6, section 3 addresses the removal or abatement of a public nuisance on the exterior of the unit which “adversely affects the use and enjoyment of any nearby unit.”

On page 8, section 4 changes the mailing of ballots on an election to save the association money. A CIC can consist of three to thousands of units. This language clarifies if the people nominated are equal to or not more than the board spaces which are open, those people are elected. The proposed amendment in section 3, subsection 5, paragraph (a) states if this situation applied, the association could not have an election. We would change the words "must not" to "shall not be required to."

On page 9, section 5, paragraph (b), the change states that the nominees will become duly elected members at the next regular board meeting.

On page 11, section 3, subsection 10 is cumulative voting. That may need to be clarified by limiting it to certain-size associations.

On page 12, section 5 needs to be in conjunction with section 7; although chapter 116 is uniform law, it has been amended many times. Section 7 states how to call a special meeting of the homeowners. Section 5 removes provisions from section 7 and puts them into section 5. This gives the owners the ability to call for a removal election, not the board or the president. Section 5, subsection 1, paragraph (a) clarifies the number of votes. In the statute, if an HOA had 100 members, you only needed a majority of 35 and 18 people could remove a member of the board. The new language restores the provision that at least 35 percent of the membership must vote for removal.

On page 14, section 5, subsection 4 is moved to section 18 on the bottom of page 33 and the top of page 34. Section 6 amends NRS 116.31073. The concern was from municipalities where if a wall or security wall was boarding a street and an association, the city was not responsible. The CICCH had meetings to understand what a security wall is. There can be a wall between a street and the association, referred to as a perimeter wall; a wall between two homes; a wall around a common area inside the project; or a wall along the street inside a project. The person whose property contains the wall assumes responsibility, unless the government has accepted the responsibility, the wall has been damaged by a third party or the CC&Rs provide otherwise. Clark County suggests that where subsection 1 references "governmental entity has accepted responsibility," the agreement be in writing ([Exhibit G](#)).

On page 16, section 7, subsection 3, paragraph (a) is a change which appears throughout S.B. 174. The law states an owner should be provided copies of the

minutes in electronic format at no charge. Some owners want a compact disc (CD) or a copy of the audiotape of a meeting. The intent was if there is a cost to the association, there should be a cost to the owner. But the intent of electronic format was intended as e-mail and PDF attachments.

On page 17, section 7, subsection 6 is the same change, to clarify e-mail rather than a CD or other format.

On page 18, section 8 defines an executive session and also states that an executive session does not require notification to unit owners.

On page 19, section 4, subsection 5 allows the association to make deliveries by e-mail. Paragraph (a) changes electronic format to e-mail. Page 20 is the same change.

On page 21, section 9 describes what can be discussed in executive session and subsection 3, paragraph (b) adds the board be permitted to discuss the professional competence or misconduct of a vendor. The board cannot act on a failure or change the contract in executive session; that needs to be discussed in an open meeting. There is a suggestion to delete the reference to "or physical or mental health" from paragraph (b). Paragraphs (d) and (e) may be repetitive.

On page 23, section 10, subsection 1, paragraph (c) requires the association to provide crime insurance. Section 11, section 1 requires the association maintain its funds with an institution insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation.

On page 24, subsection 2 permits associations to have cash on hand.

On page 25, section 12, subsection 3 states assessments have to bear interest. The change is intended to say they "may" bear interest, not "have" to bear interest.

On page 26, section 12, subsection 6 may need to be rewritten. If a person in the community causes damage to the common elements, the person should be responsible. This would include not only the unit owner but the unit owner's tenants or guests. Subparagraph (b) states the person who created the harm is also responsible for legal fees and costs.

On page 27, section 13, subsection 1, paragraph (b), subparagraph (2), the word "necessary" is deleted. In subparagraph (3), "special" is replaced with "reserve." This clarifies it refers only to those reserves. Some associations refer to special assessments as an assessment for a violation. An association has the ability to fund its reserves or make an assessment against an owner without approval from the owner, but only for reserves.

On page 28, section 13, subsection 4, paragraph (a) clarifies the need to send owners the investment policy as well as the collection policy. Section 14 addresses how an association pays money and requires two signatures, but there are exceptions. If there is more than \$10,000 to be paid to the State, you have to pay by wire transfer. This would permit the transfer. This also permits transfers to the United States Government for taxes and payment to certain vendors.

On page 29, section 14, subsection 3, paragraph (e), subparagraphs (1) through (3) are requirements designed to safeguard the electronic transfers. Section 15, subsection 1 defines anything the association charges a lien on the property. If the first mortgage forecloses, all association's liens are wiped out except the superpriority, which protects the association.

On page 30, section 15 would allow the collection costs to be part of the superpriority lien. In December 2010, the CICCH approved a proposed regulation that clarified what are reasonable collection costs, which is stalled because of the moratorium on new regulations. The CICCH determined what are reasonable fees and costs. In the comment to a change in 2008, the Uniform Law Commissioners stated the 2008 change was approved by the Foreclosure Prevention and Mortgage Assistance (Fannie Mae) program. I have been told that adding collection costs to the superpriority violates Fannie Mae, but when I looked at the Fannie Mae guidelines, that was not the case. Nevada has the concept of reasonable collection costs, which is another safeguard. Subsection 6 clarifies actions "against a unit's owner."

On page 31, section 16, subsection 1 makes the executive board, a member of the board or manager liable for retaliatory action against a unit owner. The intent of subsection 2 was to provide protection for board members against threats and retaliation by a unit's owners.

On page 32, section 17 is a technical correction to clarify reserve assessments, not special assessments.

On page 33, section 18 defines punitive damages.

On page 34, section 18, subsection 4, paragraph (d) should be deleted, as this would apply to the community manager and that was not the intent. It is intended to cover the volunteers who work for the HOA.

On page 35, section 19, subsection 1, paragraph (b), the reference to bond is removed.

On page 36, section 20 clarifies provisions regarding regulations on management contracts.

On page 37, section 20, subsection 1, paragraph (g) requires provisions for indemnity. Paragraph (k), subparagraph (1) defines it is not the manager's funds, but the association's funds. Subparagraphs (1) through (4) define insurance. Paragraph (l) is a technical correction to delete "include provisions for dispute resolution." It also conflicts with the provisions in subsection 2, paragraph (a) defining mandatory arbitration.

On page 38, section 20, subsection 2, paragraph (b) permits management to obtain contracts to provide indemnification for the manager. The reference to Title 7 of the NRS is to the corporate statutes, which say indemnification is not appropriate where the wrongdoer is negligent. Subsection 6 defines managers who only have electronic records. When there is a change in manager, the new manager can obtain and have access to those records without receiving a password from the previous manager.

On page 39, section 21 refers to NRS 116A, community managers (CMs).

On page 40, section 21, subsection 12 clarifies the board invests funds, although the CM can do things on behalf of board members who make those decisions.

On page 41, section 22 amends NRS 76.020 and defines "business." The business law tax was enacted to exempt nonprofits under NRS 82, under which

most associations are incorporated. This would also add NRS 81 because some associations are incorporated under that chapter.

On page 42, section 23 amends NRS 76.100 to further define business.

JOHN LEACH:

I am in favor of S.B. 174. I agree with Mr. Watkins, Senator Copening and Mr. Buckley. The comments Mr. Buckley made regarding [Exhibit F](#) breaks down into two categories, i.e., enhanced due process in section 1 giving the association owner the opportunity to come before the Commission, and the sections that provide cost-savings to HOAs and thereby the homeowners. Clarification in the statutes is also key.

CHAIR WIENER:

Mr. Buckley, when the Commission met with the Real Estate Division, were members going to address the safety issue for the unit owners and management?

MR. BUCKLEY:

We discussed if a crime is committed, it need not be added to NRS 116. But there needs to be protection of retaliation against board members.

MARK COOLMAN (Western Risk Insurance):

I am in favor of S.B. 174. Five major insurance markets provide coverage for HOAs, and all of them provide the endorsements free of charge. The way sections 10 and 20 are rewritten, the cost of insurance would be favorable. Homeowners' associations would have the largest amount of availability, and the cost would be less than both of them maintaining half the insurance coverage. First of all, you would disclose who does what, and second, you would go out to market and obtain the best available price and coverage.

Section 16 defines the need for protection of board members. In the last several years, I had four claims where a board member or president had cars, houses or other personal property destroyed, generally after board meetings or controversial activities within the association.

PAMELA SCOTT:

Section 15 talks about superpriority and reasonable collection costs. Banks are taking from 18 months to 24 months to complete the foreclosure process on

property, causing the superpriority liens and the need for collection costs. Homeowners have stopped paying their assessments prior to the bank's foreclosure action. If the homeowner stops paying the association, the association puts a lien on the property before the bank starts the foreclosure process. If the bank is not moving forward, it forces the association to move forward with the lien, which adds another step and fees. The association does not receive the funds and are writing off years of common assessment to bad debt. It is money which condominium and smaller associations need; they do not have the numbers to spread the debt around. It is important the associations receive their collection costs.

The key is the regulation, which has not been adopted because of the moratorium. Senator Copening has a bill that spells out reasonable collection costs. It is important to include reasonable collection costs for superpriority for HOAs.

GARRETT GORDON (Southern Highlands Community Association, Olympia Group):
Southern Highlands Community Association is a large association with over 7,000 rooftops, approximately 25,000 residents. Many of these issues are unique to large associations.

ANGELA ROCK (President, Olympia Management Services):
I am the president of Olympia Services, which manages Southern Highlands Community Association. We have submitted a list of clarifications ([Exhibit H](#)) on sections 1, 2, 4, 14 and 16. We have additional comments and questions on section 10 as it relates to insurance. Unique situations apply to smaller communities compared to large associations. Both have important issues and needs.

CHAIR WIENER:
Could you give us an idea of the budget and management challenges you have with a large association?

Ms. ROCK:
When you have 25,000 homeowners and they disagree, a great number of groups are involved. This is a complex financial issue, with large amounts of money involved, and there needs to be protection, which S.B. 174 accomplishes. Homeowners volunteer their time to run a multimillion dollar corporation, which I point out in [Exhibit H](#).

Last week, auditing issues were addressed in smaller associations. Cumulative voting can be an issue in a smaller association while in a larger community, it allows smaller subassociations to have a voice. We have some subassociations in our community with approximately 30 to 40 homes, compared to other subassociations that have 720 homes. It is a necessary tool for larger communities to allow smaller masses to have a voice. These are some issues which can be vetted through the process.

DONALD SCHAEFER (Sun City Aliante):

I am a homeowner in Sun City Aliante, an age-qualified community consisting of 2,028 homes. I am here today representing Sun City Aliante exclusively.

Homeowners own the association, which the board manages. Being transparent with disclosures—where money is invested, how it is invested, how collections are made and when someone is turned over to collections—makes board management clear to the homeowners.

On page 9, section 4, subsection 5, paragraphs (b) and (c) have not been addressed. In Sun City Summerlin, the process begins with nominations in January, as its fiscal year runs from July 1 through June 30. The homeowners have 30 days to nominate someone and the nominee to turn in a resume, etc. In another 30 days, the ballots are printed and sent to the homeowners. At the annual meeting in May, a candidate forum and open voting are held. At end of the board meeting, the winners are announced, the meeting is recessed and the board is reorganized. The board then has a meeting to elect the president, secretary, et cetera.

If S.B. 174 passes with no changes, the above section states: “the nominated candidates shall be deemed to be duly elected to the executive board.” If this was the case, at the end of January if there were three people running for three positions, they would be elected to the board on the second Wednesday of February. You have shortened the term of the existing board and lengthened the term of the incoming board. It is not a major issue for those associations that have a two-year term, but for those associations that have a three-year term, the board would be in violation of the three-year maximum limit. That term would be exceeded by two to three months.

The Sun City Summerlin board suggests the language in paragraph (b) be changed to say elected board members would take their seats at the conclusion

of the current board term. This is consistent with how State officials are elected. They are elected in November and seated in January.

JONATHAN FRIEDRICH:

I will read from my testimony ([Exhibit I](#)).

When you buy a home in an HOA, you sign a contract. When the State changes the terms or supersedes the contract, there is no approval by one party—the homeowner. It is a contract.

Mr. Watkins stated 71 percent of the homeowners are satisfied; what about the other 29 percent? Based upon Mr. Watkins' numbers, he stated 950,000 people live in HOAs. If you multiply that times the 29 percent who are not happy, that makes 275,000 people in this State who are not happy with their HOA.

Mr. Buckley referenced the item on electronic format. I received a complaint from a homeowner whose CM wanted \$25 for a CD. We need regulations.

On page 4, section 1, subsections 1 through 7 can be used as a tool by the HOA attorneys to charge high attorney fees, which the association will pay. Then, the association attempts to recoup those fees using NRS 116.3115, subsection 6, which forces the homeowner to pay the attorney fees. It can also be used by the homeowner who wants to appeal a RED decision to the CICCH. Either way, the Commission will become inundated with appeals. If these appeals are considered civil actions, NRS 116.31088 requires notice to all homeowners. This will prove costly to everybody.

The new law extends the removal of board members to 120 days, four months. If you have bad board members, you want them off the board as soon as possible.

I am in favor of criminal insurance, but the HOA should pick up the cost. That is a cost of doing business by the CM.

RANA GOODMAN:

I have previously submitted my comments ([Exhibit J](#)); I will not read them. However, I have additional comments regarding Mr. Watkins' statements about HOAs and how they are established. He is describing a utopia. When most of us buy a home in an HOA community, we buy it with the same idea; we want to

live in a nice community. In that respect, I agree with him. The problem is the people who govern the HOA. You are at the mercy of your board of directors. If you have a resident-friendly board, you have what you want. The problem is many HOAs are run by bully boards; it is a fact of life, and the complaints prove that.

In Southern Highlands Community Association and Sun City Anthem, there are 7,144 homes with 11,000-plus residents who are retired with no children. The biggest majority of those residents suffer from a bad case of apathy. They do not care—they want to play golf, live a fabulous retired life, and more power to them. I would argue that 71 percent are happy; a big portion are not happy, not with the association. The look of the association is beautiful, but the residents are not happy with those who govern the HOA.

I ask you to choose how you coin your words in S.B. 174. For example, on page 18, section 8, subsection 2, paragraph (b), you use the term, “if the association offers.” It is too soft; I would suggest it be changed to “the board shall offer.” When you say, “if the association offers to send notice by electronic mail” and you have a bad board, it can say, no, we are not going to do that. There is nothing a resident can do because the law gives the board an out.

On page 21, section 9, subsection 3, in paragraph (b), you use the term “misconduct.” How do you define misconduct? Several years ago, a resident in my community physically assaulted someone by knocking that person down; that is misconduct. There are other cases where someone asks for documents and the board did not want to give them. Because the attorney deemed it misconduct, he fined the person, used the paragraph which deals with community expenses and charged the homeowner \$8,000 in legal fees. That word needs to be changed and further defined; it is too loose. Misconduct is when my child mouths off to me. What we need from you, our Legislators, is a way the homeowners can hold their boards accountable. It is not the HOA per se, it is people governing the HOA. Our first line of governance is our board, but our line of reason is you. If we have ambiguous terms in the law, where do we go?

If residents are retaliated against by the board, they go to the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels and wait for at least three months. Then they take it to RED, and it goes

into mandatory arbitration. If this law passes as is, a resident is deemed to retaliate against board members by having an argument with them or whatever the board deems is retaliation against them. The board can do anything it wants. I quote my board president in testimony last week to you: "This board can do whatever we want."

CHRIS FERRARI (Concerned Homeowner Association Members Political Action Committee):

Concerned Homeowner Association Members Political Action Committee (CHAMP) is a broad-based coalition of homeowners, consumer credit counselors, labor union members, minority chambers of commerce, National Association for the Advancement of Colored People, legal aid organizations, real estate agents, builders and numerous others. For clarification, we are not anti-HOA. Our primary concern is to ensure when fees are assessed based on nonpayment of assessments, the money goes to fix the communities and keep them maintained for their residents.

I am not in opposition to S.B. 174 but have concerns in opposition to sections 12 and 15. Based on Mr. Buckley's comments in section 12, subsection 6 alleviates our concerns in section 12, so I will focus on section 15.

After a home is foreclosed upon, the Fannie Mae program will pay up to six months of back due HOA assessments for common expenses. That amount may include collection fees, but no more than that. This is a discrepancy that we have with the comments made by Mr. Buckley and is evidenced on page 1 of our handout ([Exhibit K](#)), in the bottom two right-hand boxes. We have also had conversations with Fannie Mae and Federal Home Loan Mortgage Corporation's (Freddie Mac) counsel to confirm this.

The HOAs have the ability to foreclose for past due assessments through Nevada's nonjudicial foreclosure process. Prior to foreclosure, an HOA resident who missed payments is turned over to an HOA's collection or management company in less than two months. This is referred to as "imaginary fees." We all know someone who has been impacted by these egregious fees.

Page 2 of [Exhibit K](#) shows a sample payoff demand from an HOA collector, who supports S.B. 174, for services purportedly rendered to collect past due assessments. While it contains many of the imaginary fees—it is not unique—it is the norm. In this particular example, page 3 shows the two past due

assessments are each in the amount of \$39.12 for a total amount owed of \$78.24. How much would the demand letter be based upon? \$3,322.24. To be fair, in this example we will deduct the demand and transfer fees from the total, as these are relevant charges. The new total is just under \$3,000. The past due amount is \$78, and we are talking about almost \$3,000; that is the core of our argument. That means 2.7 percent of the money demanded will find its way to the HOA, and 97.3 percent will go to the collector. Who is winning in this situation? The money is not going back to the HOA to fix the issues.

Page 4 of [Exhibit K](#) shows a demand issued via e-mail at 9:08 a.m. for payment by 1 p.m. that same day. I doubt whether any one of us who received such a demand this morning would be able to pay it by 1 p.m. Because the four-hour demand was not met, the fee went up \$2,000, a \$2,000 fee increase in four hours. The money is not going back to the HOA to fix the problem.

In [Exhibit K](#), page 10, in contrast—Fannie Mae and Freddie Mac's nonjudicial foreclosure pays \$600 for the same process and completes the foreclosure, unlike the previous examples.

One of the members of Senator Copening's Working Group testified in previous Legislative Sessions that from the thousands of files opened by an HOA collection company, only two homes were foreclosed upon. This seems fairly consistent in the process, but the question is: why are those notices sent?

In closing, [S.B. 174](#), sections 12 and 15 make it harder for families in Nevada to buy or sell a home and easier for their HOA collection companies to do business as usual.

SENATOR BREEDEN:

Mr. Friedrich, you mentioned homeowners contact you. Are you an advocate, but not with an organization?

MR. FRIEDRICH:

Through personal disputes with my HOA and having been run through the mill, I have become an advocate for unhappy homeowners. I will be glad to share my binder with anyone who would like to see it. These are complaints e-mailed to me by unhappy homeowners that range from, "I have a jungle gym in my backyard, and they want me to take it down" to "the color of my driveway paint does not match the exact shade I submitted." There is no organization,

just a group of people trying to fight for homeowners' rights and level the playing field.

SENATOR GUSTAVSON:

Mr. Ferrari, on the exorbitant fees people are being charged; if Fannie Mae or Freddie Mac will not pay these fees, who will?

MR. FERRARI:

That is a great question, one of which all of you are concerned. What typically happens is a superpriority lien, which is in section 15, incorporating more fees under superpriority. As many real estate agents or others can tell you, that lien is stuck on the house regardless of who owns it. When the next buyers purchase the home, they will not find out how much the fees are until the end of the process through a demand letter to the collection agency. We found in numerous examples, including the consumer credit counselors, when people buy homes, their federal loans are approved, but they cannot finance the lien amount. That is stopping real estate transactions throughout the State, making it a larger issue. Until we rid the excess inventory in the market, people cannot start building again and those homes will not transact.

SENATOR BREEDEN:

If this is a bank-owned home, why are buyers not responsible for paying those fees?

MR. FERRARI:

I will defer that question to Mr. Buckley, a real estate agent or attorney from CHAMP to answer the question.

SENATOR COPENING:

There is a collections bill which will mirror the CICCH's regulations not on hold. We wanted to codify it into law to ensure these egregious fees to a homeowner do not happen again. The fees would be capped at under \$2,000 and only one letter will be sent. There would be limits on how much could be charged to write a letter, maybe \$50 for the time it took to generate it.

Someone has to pay those collection costs when there is a foreclosure. Right now, in my bill and in the collections bill, superpriority will be given to collection costs because it is a cost of the association. In many cases, HOAs have paid those costs when contracted with a collections agency. In some situations, they

paid every month, and two years down the road, the home forecloses. There may be the maximum \$2,000 collection fee. If the assessments were \$100 for nine months, the association receives \$900 and could also be owed those fees. It is my understanding CHAMP believes those costs should pass on to all homeowners of the association. In that case, one person's bad debt, or several in an association, would be passed on to all homeowners. If it is not passed on and the bank owns the unit, it would pay—or the investors would pay. Investors could recoup when they flip the home, or the debt would be paid by the new homeowner. If we remove superpriority, who should pay those collection costs?

MR. FERRARI:

This is an issue impacting folks; it is a unique issue because we agree with the cap. We will work with you and try to pass a bill we believe is reasonable and benefits all parties. When working with folks, i.e., legal aid centers all the way to bankers, there is a middle ground. It is not in the best interests of HOA residents to pay exorbitant fees without getting additional money. We look forward to working with you on the collections bill.

JOSEPH EATON (Concerned Homeowner Association Members Political Action Committee):

Superpriority fees are not paid by the purchaser who acquires the property from the bank if the bank is the successful bidder at a nonjudicial foreclosure sale. Those fees are paid by investors. Given the amendments proposed, those fees would be included in superpriority. The payment would be shifted from the community members to the general public as a whole. That is who will pick up those costs in the context of a foreclosure. Those fees have to be paid by the bank when the bank takes title to the property—or an investor when the investor takes title. This is not a case where a delinquent homeowner steps up and pays the fees. This is not a question of shifting the cost to someone who should have borne the cost. It is whether the people who could exercise restraint over the collectors and who enter into those contracts are going to be forced to bear the costs. When they do not, the costs shift to the public as a whole. Members of the community are in a much better position to exercise restraint over the collectors they retain.

SENATOR COPENING:

Collection costs are a part of the superpriority; you want that removed. We know it is happening because when investors or homeowners buy homes, they

are responsible for the superpriority. Those collection costs are paid to the collection companies.

MR. EATON:

There is litigation pending. This is not a settled question at this point.

SENATOR KIHUEN:

Mr. Friedrich, how long did it take you to accumulate the complaints in your binder? Are these from this January or the past few years?

MR. FRIEDRICH:

These have been forwarded to me by different people in less than a year. I will get the binder to each of you. It is broken down into three sections: the arbitration trap mandated under NRS 38 and 116, fines levied by associations against homeowners, and collection fees. In one case, a 78-year-old lady almost lost her home on two issues: Over \$6,000 in fines for dead grass on her front lawn and delinquent association fees where she thought she was current and was not. I attribute this to her age and not being on top of the situation.

ELLEN SPIEGEL (Ex-Assemblywoman):

I will read from my written testimony ([Exhibit L](#)).

KAY DWYER:

I am a homeowner, resident and former board member of a large CIC. I am in support of S.B. 174.

There are many issues in sections of this bill, but I will limit my comments to section 16, subsection 3. This section addresses the issue of harassment and interference with the performance of duties of board members, managers and staff. You have received testimony where multiple complaints, 60 to 80, were filed in a large association at a cost of more than \$38,000 to the association. None of these complaints resulted in fines or serious charges of wrongdoing. Most of the complaints resulted in either no action or were deemed unwarranted. Some complaints are still open and unresolved. These multiple and numerous complaints were filed by the same people over and over again. These complaints were made by fewer than a dozen people out of a population of 14,000 in a community of over 7,000 homes. There are probably 13,900 people who are happy with their association. Board members, managers, staff

and professional associates have been targeted by this very small, vocal group. This is not a unique situation as the recent negative publicity has shown.

Please support S.B. 174 and retain the authority of boards, managers and staff to perform their duties without harassment. This association is responsible for administering the business of the corporation, representing thousands of residents, and is accountable for millions of dollars in budget decisions, reserve issues, and maintenance and upkeep of many millions of resident dollars in assets. The association is responsible for over 250,000 square feet of recreational facilities that accommodate the lifestyle of the 14,000 residents. The HOA and other responsible, diligent volunteers, board members, managers and staff must be allowed to conduct the business of their communities. There are remedies in place for those associations and managers who violate their positions and duties.

JAN PORTER (Sage Creek Homeowners' Association):

I support S.B. 174. I am a homeowner and member of the board of the 230 homes in Sage Creek Homeowners' Association. I served as the homeowner representative on the Commission for Common-Interest Communities and Condominium Hotels. I serve as general manager for Peccole Ranch Association.

Our small association met last night and discussed a number of the different items in this bill. We need to ask how many of these complaints have gone before the CICCH. How many complaints has the Office of the Ombudsman received? What kind of validity do the complaints have, and have they followed the process? One of the most important things is education. Education helps the homeowners as well as the board members serve their communities better.

GARY SOLOMON (Professor, College of Southern Nevada):

I am a psychology professor at the College of Southern Nevada, am tenured, an expert witness, a published author and psychotherapist.

My concern is that HOAs are doing damage to their residents, a syndrome which I have identified as HOA Syndrome, somewhat similar to post-traumatic stress disorder. People living in HOAs are experiencing a wide range of psychiatric conditions. There are people who are becoming ill; people who are dying. I personally, at my own expense, placed a billboard on Boulder Highway warning people not to move into HOAs. It is so far out of hand that an HOA is

now mimicking a concentration camp, an actual neighborhood ghetto. People on the HOA boards have taken the roles as Capos, defined as individuals who hurt other individuals at no charge.

The master community is an absolute abomination. To refer to one as a "master" is an archaic term which was used against women and blacks. Now we are using it against homeowners.

At the top of the food chain come the collection companies. I refer to them collectively as a cartel. The HOA boards, the management companies and the collection companies operate as cartel consortiums. Unlike drug cartels, the HOAs supply nothing, no drugs, nothing, except harm and pain. As a health care professional, I am now putting the entire State on notice, you need to stop this now. Not only should this bill not be passed for health reasons, but what has been passed needs to be undone.

I have put individual board members and management companies on notice. I will continue to do so at my own expense until this stops. If we do not stop this now, you are going to see people killed and houses burned down because the owners feel powerless over their own situations.

TIM STEBBINS:

I will read from my written testimony ([Exhibit M](#)).

I urge the wording in section 8, subsection 5 be changed so it is not mandatory that the only way one can receive information about agendas, etc., is by e-mail. It should be optional. Maybe in another generation everybody will be up to speed on computers, but we are not there yet.

I support the comments made by Ms. Goodman earlier.

NORMAN McCULLOUGH:

I agree with Mr. Stebbins' testimony. There are parts of S.B. 174 I am for, but there are parts I dislike, and dislike is a kind word. You need a third option such as, "disagree with parts." I have submitted a three-page statement with four exhibits ([Exhibit N](#)).

I will read from my written testimony ([Exhibit O](#)).

KEVIN WALLACE (Community Association Managers Executive Organization, Inc.): I represent the Community Association Managers Executive Officers (CAMEO), which collectively manages 250,000 doors in the State. I was also the president of RMI Management and received hundreds of e-mails regarding the issues we are talking about today; most of them are in favor of S.B. 174. CAMEO supports this bill with the changes noted by the sponsors.

We want to clarify a few issues. Section 15 is a policy issue. There will be collection costs accrued to collect a homeowner's debt, but the issue is who should pay the costs. Is it going to be the homeowner who pays the costs, or under CHAMP's suggestion, the guilty party or delinquent party? We support the bill regarding collections and reasonable fees.

We are a Fannie Mae representative in this State. Fannie Mae and banks pay liens. Fannie Mae has offered to pay more than legally required. The agency's concerns are that associations in this State are financially strapped. If the troubled associations need help, it has offered to lend a hand.

PAUL P. TERRY, JR. (Community Associations Institute):

I am a member of the board of the Community Associations Institute (CAI) and a member of the CAI Legislative Action Committee. In the interest of full disclosure, I am also a practicing attorney in the HOA area and my law firm, Angius & Terry, operates a licensed collection agency.

I am here on behalf of CAI, which is in full support of S.B. 174. Unlike the bills in past years based largely on anecdotal information, this is the first bill where all stakeholders have been brought together in a thoughtful and collaborative approach. We understand there needs to be language change, but overall, the bill is the way the legislative process should work.

BILL UFFELMAN (President and CEO, Nevada Bankers Association):

The Association supports S.B. 174. The concerns we have are sections 12 and 15, the collection cost issues. There is a companion bill coming forward, and the more closely we can link the bills together, the better. Perhaps we need to ensure the collections bill reflects the discussions we had over the interim. Everything is tied together, so everyone knows the rules, the rights of the HOAs and the obligations of the purchaser at foreclosure sales. Be it known, I am also the neighborhood representative for Chardonnay Hills in Summerlin.

SENATOR MCGINNESS:

Are these collection fees unique to Nevada, or are they across the United States?

MR. UFFELMAN:

Collection fees are common. I was president of my HOA when I lived in Virginia. We had a little ...

SENATOR MCGINNESS:

I am referring to the collection fees in the case of the unpaid assessments for \$39.12 for two months, but the total came to \$3,000.

MR. UFFELMAN:

I cannot speak to the amounts, but the concept, yes.

MR. TERRY:

I operate a collection agency in both Nevada and California. The amounts are consistent between the two states. The issue is not the amount of collection costs because whatever the costs are, they are fixed. They are fixed regardless of whether the assessment owed is \$10 or \$1,000. The steps you go through to comply with the statutory process are always the same.

SENATOR MCGINNESS:

There was an exhibit presented today where the notice was sent out at 9 a.m. to be paid by 1 p.m.

MR. TERRY:

That situation is not common. Circumstances arise where homeowners ignore the collection process until the foreclosure sale is scheduled to take place. They call our office at 9 a.m. and say we do not want the foreclosure sale to go forward. We may send them a communication which says you have a very short period of time to produce the money. It is not because they received the notice for the first time at 9 a.m. before the foreclosure sale; it is because they ignored the entire collection process until 9 a.m. before the foreclosure sale.

CHAIR WIENER:

We have a stand-alone bill on collections where we go into more depth on this issue.

SENATOR MCGINNESS:

I hope we do not lose this because it is in a separate bill.

CHAIR WIENER:

We will make sure everything is covered. That is why we are waiting on this bill until the end.

SENATOR MCGINNESS:

I hope we do not leave it to "reasonable" because it does not seem "reasonable" is getting it accomplished.

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):

I will address section 1, where it states "any person who is aggrieved," then it lists a number of items, i.e., letter of instruction, advisory opinion, declaratory order or any other written decision which the person has received. The Real Estate Division issues many written documents, closing letters, responses to constituents and attorneys, and delinquency notices regarding delinquent registrations. If this section means to propose any written document issued by the Division under this program is subject to appeal by a recipient or possibly someone affected by it, it is going to create an arduous process for anything to be done and finalized. That letter could be presented as an appeal to the Commission, and then it comes to what?

Under the law, an investigative file is confidential. This poses some legal and procedural issues to be considered for a closing of an unsubstantiated case of complaint for nonjurisdiction. A complainant receives a closing letter on a complaint filed and investigated by the Division and then presents this closing letter in appeal to the Commission. The party who comes before the Commission says, here is my letter and I am aggrieved by it, but there is not much the Division can do. We have conducted an investigation under NRS 233B, which is notification of an opening letter, an opportunity to respond, and a request to provide us with an answer that might take care of the issue. The contents of that investigation are confidential. Outside the process of NRS 233B, I do not see how the Division could defend an appeal made to the Commission on the basis of our investigation.

Under NRS 233B, a notice of complaint and hearing has to be offered. The production of documents used in the State's prosecution and presentation of

evidence to support an alleged violation of law are all part of that process. I strongly oppose this procedure being offered to a licensee under the jurisdiction of RED. This provision is in NRS 116, not NRS 116A.

It is a conflict for the Commission to act as an investigative body and a judicial body on the same matter. I do not see how it would work in an appeal process.

Since a complaint and notice of hearing is a document issued by RED and the Office of the Attorney General, does the formal notice become an appealable written document someone could bring to the Commission and say, I do not like this notice of hearing and I would like to tell you why?

One suggestion is to address the needs for mediation or resolution and issues to be considered. If there are questions of substantive law a party wants considered by the Commission before a complaint has been filed, it would be argued before the Commission for determination of facts specific to an association's issues. Those are many of the complaints filed. Homeowners say this is going on and we do not think it is right, or they are doing it this way—they being the board.

The Division, and therefore the Commission, does not have jurisdiction over governing document disputes. I look forward to working on section 16, but I have jurisdictional concerns.

RUTT PREMSRIRUT (Concerned Homeowner Association Members Political Action Committee):

I am a director of CHAMPS. I would like to answer Senator Copening's question of who is paying the majority of these liens. It is the U.S. taxpayers. You may see Bank of America on the title, but the bank is the servicer. The bills are being paid by Freddie Mac, Fannie Mae and the U.S. Department of Housing and Urban Development (HUD). I have liens provided by Freddie Mac's in-house counsel of \$3,000 ([Exhibit P](#)), \$4,000 ([Exhibit Q](#)) and \$7,000 ([Exhibit R](#)).

In section 15, amending the superpriority lien is nothing but a scheme to raid the U.S. Treasury. This is a 20-year-old statute being amended that takes advantage of the foreclosure situation. This amendment distorts the original intent of six or nine months. When you add collection fees on top, it becomes \$5,000 or \$10,000, which is five to ten years of assessments. If you are a lender, i.e., Fannie Mae or Freddie Mac, and you want to continue lending in

Nevada, you have to mitigate these risks, which means pass the costs off to the consumer. That means higher down payments, higher mortgage insurance premiums and higher interest rates.

I would like to ask the Senators, homeowners and HOA boards—when the Inspector Generals of HUD, Fannie Mae and Freddie Mac come to recover their millions of dollars in damages, similar to what Bank of America is doing now in federal court, who is going to be liable and holding the bag? I have confirmed this legal position with Regina Shaw, in-house counsel to Freddie Mac; Lisa O’Donald, Associate General Counsel of Fannie Mae; and Donna Ely, legal in-house counsel to the Federal Housing Finance Agency.

Clark County Republic Services, Clark County Water Reclamation District and special improvement districts all have superpriority liens. You do not see any of these entities hiring a third-party collector charging \$3,000, \$4,000 or \$5,000 in collection fees, often four to ten times the original principal of the debt to collect their back due assessments. This amendment’s intent is to unjustly enrich a small handful of collectors.

MR. EATON:

I will clarify what happens in the context of a nonjudicial foreclosure. Previous comments indicated that through this process, the superpriority lien is putting the burden of these delinquent assessments on the homeowners who failed to pay those assessments. That is not the case. When we speak about the superpriority statute, the portion at issue is what happens after there is a foreclosure under a first deed of trust. Under those circumstances, a delinquent homeowner does not show up and offer to pay the past due assessment and thus avoid the bank; U.S. taxpayers or an investor does not have to pay those expenses.

When the bank owns the property and has to clear those liens, it passes along those costs. We, the taxpayers, have to bail the banks out and pick up those costs. It is not the people in the community who did not pay those costs, it is the taxpayers who do not live in the community and who have no ability to exercise any oversight other than through their elected representatives such as yourselves. The collectors have contracts with associations to provide these services. When the members of the association can rest assured the taxpayers are going to pick up those burdens and the association will not have to bear

them, the board members have little incentive to exercise oversight over the collectors.

The vast majority of lien amounts I have seen as an investor are due to collection costs. A small amount of those monies the collectors seek are passed on to the association to help them out. Those monies line their own pockets.

A prior comment was made regarding the collection process that takes place on behalf of the HOA. One comment is because the banks are taking so long to foreclose, the HOAs have to go forward with their foreclosure process. In fact, they do not go forward with the process; they threaten to go forward but do not complete the process. There is a good reason why. If the HOAs were to go forward with that process, they would own the property. When they own the property, they would not have the lien against it and their lien would be lost. If their lien is lost, they are subject to the bank's foreclosure and they are not going to get paid at all. Lacking a present intention to go forward violates federal law—the Fair Debt Collection Practices Act, which is intended to protect consumers and shield them from threats. To say these people are going to get their legal fees and collection costs and be included in the superpriority is to stretch this to include improper costs the collectors seek to impose for their own benefit, not that of the community. This is an ill-advised policy.

With respect to common assessments, we are not confused to the extent the common assessments are composed of expenditures by the association. Our objection is the inclusion of collection fees and costs within common assessments that can be imposed exclusively against a particular unit and made

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to survive the nonjudicial foreclosure under a bank.

CHAIR WIENER:
The meeting is adjourned at 10:54 a.m.

RESPECTFULLY SUBMITTED:

Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 174	C	Randolph Watkins	Welcome to HOA 101
S.B. 174	D	Senator Allison Copening	Written Testimony
S.B. 174	E	Senator Allison Copening	S.B. 174 Working Group
S.B. 174	F	Michael E. Buckley	SB 174 -Explanation /Section Summary
S.B. 174	G	Senator Allison Copening	Clark County Proposed Amendment
S.B. 174	H	Angela Rock	Written Testimony
S.B. 174	I	Jonathan Friedrich	Written Testimony
S.B. 174	J	Rana Goodman	Written Testimony
S.B. 174	K	Chris Ferrari	Priority of Common Expense Assessments
S.B. 174	L	Ellen Spiegel	Written Testimony
S.B. 174	M	Tim Stebbins	Written Testimony
S.B. 174	N	Norman McCullough	Written Testimony
S.B. 174	O	Norman McCullough	Statement regarding S.B. 174
S.B. 174	P	Rutt Premsrirut	Lien by Freddie Mac \$3,140
S.B. 174	Q	Rutt Premsrirut	Lien by Freddie Mac \$3,962

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S.B. 174	R	Rutt Premsrirut	Lien by Freddie Mac \$6,788
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