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# The Howard Hughes Corporation <sup>SM</sup>

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April 1, 2003

To: Assembly Committee on Judiciary  
Honorable Bernie Anderson, Chairman  
Honorable John Ocequera, Vice Chairman  
Committee Members: Barbara Buckley, Jerry Claborn, Marcus Conklin, William Horne,  
Harry Mortenson, Genie Ohrenschall, Sharron Angle, David Brown, John Carpetner,  
Jason Geddes, Don Gustavson, Garn Mabey, Rod Sherer

From: Pamela Scott  
Summerlin

RE: AB 376

Following review of AB 376, I feel I must ask that you consider the many negative repercussions this bill would have on the membership of all large scale associations in Nevada, developers of master planned communities and the lending industry that provides not only the funds that build these communities, but that also make it possible for homebuyers to finance the purchase of their homes in these large scale communities.

Please consider the following:

## Section 1:

Reducing the percentage required to amend the Declaration of a large-scale association to 20% from its current majority implies that owners in large associations should have fewer voting rights than owners in smaller associations.

Persons who "sign on" to the restrictive covenants recorded against their property do so with full knowledge and expectation that those restrictive covenants will remain in place. Often the buyer has paid a higher purchase price for a home that has the protections of the master plan. When that purchaser agrees to this contract (the declaration), he does so with comfort, knowing that it would take a minimum of a majority of all of the owners to change that contract. Not a mere 20%.

In 1999, the Legislature added a preamble to NRS.116 which stated in part that "...A unit-owners' association is the form of self-government that is closest to the people and ...all forms of government should follow the basic principles of democracy found in the United States Constitution and the Nevada Constitution...".

The declaration is an association's Constitution. In order to amend the US Constitution, it takes an act of Congress (the board of directors) and the approval of 75% of the State Legislatures. In order to amend the Nevada Constitution, it takes an act of the majority of the state legislators and the approval of a majority of the registered voters (i.e. the members) in the state.

ASSEMBLY JUDICIARY

DATE: 4/3/03 ROOM: 3138 EXHIBIT I

SUBMITTED BY: Pamela Scott

1052

One of the tenets in a democracy (and the language in NRS 116.2117) is that the "majority rules". AB 376 would change that tenet to "minority rules" if you live in a large-scale association.

Examples of covenants in the declaration that could be altered by a "minority" under this bill would include, but are not limited to:

- Property Subject to the Declaration
- Land Classifications
- Use Restrictions
- Assessment Increases Beyond Certain Caps
- Changes in the Use of Association Property
- Ability to Enter into Contracts
- Easement Rights
- Age Restrictions
- Membership and Voting Rights
- Insurance Requirements
- Mortgagees Rights

The 50% to 67% requirement to amend declarations is not put into that document to protect the declarant. It is there to protect the homeowners following the period of declarant control by assuring that the "minority" cannot alter the declaration - his contract with the association.

Language is not clear that existing declarations are not amended by this change.

(i.e. any association that now requires 50% to 67% to amend will still require 50% to 67% if this language was put into law).

Language may be inconsistent with Fannie Mae, Freddie Mac and VA lending requirements on the secondary mortgage market and could effect the ability of prospective purchasers obtaining mortgages, thereby effecting the ability of persons to sell their homes.

## **Section 2**

Again, this is a voting rights issue that would imply that owners in smaller communities have more rights than owners in larger communities.

It is not clear as to whether it applies to existing associations or only to associations that come into existence after adoption of these provisions.

Subsection 5 is inconsistent with subsection 4 in that subsection 4 just requires a majority to vote against the budget, while subsection 5 first requires 60% of the voting power be present and then a majority of those present could reject the budget. This would appear on the face to be more restrictive in the number required to be present to vote on a rejection of the budget, but less restrictive in the final percentage required to reject the budget. This seems contradictory.

## **Section 3**

Subsection 2(b) should only require posting on a bulletin board if the association has facilities that contain bulletin boards. The majority probably do not. In addition, nothing in current law prevents an association from posting notices on a bulletin board so this is really not needed.

*I do*