MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
February 24, 2005

The Committee on Judiciary was called to order at 8:12 a.m., on Thursday, February 24, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Ms. Barbara Buckley (excused)
Mr. William Horne (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Chad Christensen, Assembly District No. 13, Clark County

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
René Yeckley, Committee Counsel
Jane Oliver, Committee Attaché

OTHERS PRESENT:

Donald L. Cavallo, Public Administrator, Washoe County, Nevada
Andrew List, Executive Director, Nevada Association of Counties
Bill Uffelman, President and CEO, Nevada Bankers Association
Jim Nadeau, Government Affairs Director, Nevada Association of Realtors
Lee Barrett, Past President, Greater Las Vegas Association of Realtors
Rocky Finseth, Legislative Advocate, representing Nevada Association of Realtors
David Smith, Private Citizen, Las Vegas, Nevada
Michael Trudell, Legislative Advocate, representing Caughlin Ranch Homeowners' Association

Chairman Anderson:
[Meeting called to order. Roll called.]

It is the intent of the Chair today to move the bills out of order. I am going to take A. B. 78 first.

Assembly Bill 78: Makes various changes concerning administration of estates. (BDR 12-592)

I have several people who have indicated a desire to speak to this issue. I'd like to get the public administrators who are involved in this back to work so that they are doing what the public paid them to do. Mr. Cavallo.

Donald L. Cavallo, Public Administrator, Washoe County, Nevada:
[Introduced himself.] If you're not familiar with the Public Administrator's Office, I'll give you a brief synopsis. We are the county-elected department that handles estate proceedings. When people die in our county, we are first charged with preserving and protecting the assets of the decedent until the proper person or party can step forward. Hopefully, everyone has an estate plan in place and our work will slowly diminish over the years, but we see because of procrastination, our caseloads continue to grow as our community does.

Chairman Anderson:
These are people, who for a wide variety of reasons, you have to take control of their estates, because they have no other family members or no one else to look out for them.

Don Cavallo:
That would be correct. This bill, Assembly Bill 78, has three parts to it. The first part I'd like to speak about is the sale of personal property. That affects NRS

[*Nevada Revised Statutes*] 148.105. Currently, in the reading of that statute, it talks about capping the sale of personal property at 10 percent. I believe the original basis behind this bill was to cap the sale of personal property in relationship to mobile homes.

[Don Cavallo, continued.] When a person passes away and they have a mobile home in a rental park, we come in after the estate proceeding has begun and we've gone through the process of marshaling their assets, and inventory their assets. Quite frequently, we have to sell not only their personal property but their mobile homes. The mobile home dealers have had in the past a system of a 10 percent commission, or $5,000, whichever was more. We find that very difficult in a lot of the older parks in our community, because the mobile homes date back into the 1960s and 1970s. Those homes are not valued at very much.

I believe this was an attempt to cap those costs and save assets to the estate. It also then flowed over to the sale of personal property such as dishwashers, washers and dryers, furniture, and those things. In Washoe County we sell all of our personal property through auctioneers. An auctioneer does charge a commission. It is a contract that we enter into with the auctioneers at the beginning of the consignment to them. Consistently, the auctioneer charges anywhere between 20 and 25 percent, so this particular reading of the statute has, in a sense, stopped the ability of us to sell personal property.

The second part of the bill deals with *Nevada Revised Statutes* 239A.075. This is the ability for us to get information from financial institutions about the balance at the date of death. What that means is, in the beginning of a case where we're involved, we fax to banking institutions, credit unions, and other financial companies a notification of the death of the individual. We are also requesting information about a bank account they may have held, a safety deposit box, if those accounts are held in joint tenancy, or if they had a beneficiary attached to those, so that we would know in the beginning of an estate process whether that asset existed, whether it flowed to another party, or would be a part of the estate itself.

The banks have worked very well with us over the years. We attach a letter that gives them a check-box system to be able to fax back to us and answer that information for us. Right now, adding to this is the words "proof of death." We fax a certified death certificate along with our request. A lot of times, because of toxicology tests or other information that requires a coroner not to issue the death certificate for a period of time, we then get a statement from the coroner verifying the death. I also get from the Department of Health a verifying death certificate, which is just a photocopy of the death certificate

with "verified" stamped across the front. It's not a certified copy. We would like to be able to utilize that document within the statute.

[Don Cavallo, continued.] We then ask, within the change of the statute, to have the banks not charge us for this. As we know, doing business for banking institutions is getting more and more expensive. We're all being surcharged for a number of things in any of our accounts, whether checking or others. In this instance we do require them to fill a form out and fax it back to us, which takes time on their part, and I can understand a charge. Historically, a public administrator's office is dealing with smaller estates. As I go to the next portion you'll see we'll talk about an affidavit for $5,000 or under.

A lot of our estates are the final Social Security check of the decedent to final retirement. We're not talking about a lot of money. It's very hard to spread that money around when I'm being surcharged by a financial institution up to $10 a response.

A lot of times we're fortunate enough to be able to just pay for these individuals' funerals, so we'd like to conserve that. Within that charge we're saving those funds for the creditors, although a lot of times they are prorated across the board to all of our creditors. It also notifies the bank that this individual has passed away. I think that's a service to the bank that they're benefiting from. Then they can put a block on that account knowing that this individual has died, and that, in an instant, will save the bank and the estate a lot of problems in the long run.

I've had a number of cases in the past I could cite to you about how a person has passed away, and their friend or family member has that ATM card and has wiped that account out before we're even able to get to a court to get letters, to be able to go and do the things we need to do with the financial institutions. It benefits both of us, I believe.

The last portion of the bill affects NRS 253.0405 [253.0403] which is the public administrator's statute. This allows a public administrator to do an affidavit to handle an estate proceeding that currently is $5,000 dollars or less. What that affidavit consists of, as the statute will show, is that at least 40 days have passed since the date of death, we are sending certified mail to all the parties involved in the estate, including the creditors. We then file that affidavit with the district court, and we have a judge countersign that affidavit so that I have a formal document that we can utilize. That document also says and spells out how we are distributing that estate. It is a full picture within this document of what's taken place in the estate. Certainly, $5,000 is a limit that has been

placed in there and has been very beneficial to us over the years to do these smaller estates.

[Don Cavallo, continued.] What we're asking for is to increase that to $20,000. One of the main reasons for doing that is currently under NRS 146.080, that is an affidavit of a small estate. That is the same type of document that can be utilized by family members or the proper party of the decedent to be able to process assets of an estate that are under $20,000. The problem with that particular affidavit is you can walk into the Department of Motor Vehicles and they'll actually supply you the document on their letterhead to do that. You could transfer a $16,000 car at the DMV. You then could go over to a financial institution with a different affidavit that they could supply to you or you could get from the law library. Then you could process that affidavit through that bank and they could have a $16,000 or $20,000 account there also. Essentially, an estate can exceed $20,000 but there is no central clearing house for these documents to be filed. Each institution keeps them themselves. Ours is then filed with the district court, and it can be checked and reviewed by any member of the public.

What I'm asking for here is to be treated the same as a family member but still with the checks and balances that we have under the other affidavit. If that helps summarize the changes to these bills, I think that will slow down my presentation.

Chairman Anderson:
By increasing the estate from a $5,000 limit to a $20,000 limit ... When was the last time the dollar figure was raised, or the amount of these estates that have to fit into your control and go through this process?

Don Cavallo:
I'll ask for some assistance here.

Andrew List, Executive Director, Nevada Association of Counties:
I did some research on the legislative history on this particular statute, and it was last changed in 1999.

Chairman Anderson:
Increasing it four-fold, that's the justification in increasing it from $5,000 to $20,000? As a function of percentage of CPI [Consumer Price Index], it doesn't work out.

Don Cavallo:
Yes, I understand that, Mr. Chairman. In 1999, I believe the figure in our affidavit was $2,500 and that was then moved up to $5,000. I believe, at the time, the small estate affidavit that family members were able to utilize was at $10,000. That also, I believe, moved up in 1999 to the $20,000 figure that was used. My rationale is strictly to be able to be treated as equals to family members that can go out and do this. I don't know that there is a mathematical basis for my jump.

Chairman Anderson:
The net effect is—to make sure that I understand what we're going to do here—10 percent will remain on mobile homes. You're not removing that element from the bill. There will still be a requirement that if I'm selling the property of the mobile home, or manufactured home, then even though they may be older and have once been called a trailer, we're still going to be leaving that 10 percent cap in place.

Don Cavallo:
That is correct.

Chairman Anderson:
Is there an inherent danger that we could lose the largest percentage of the estate by putting in no percentage at all? Just leaving it open?

Don Cavallo:
To answer that, I have to say certainly. But I think if anyone reviews and is counseled correctly as to their responsibilities as a fiduciary, which is to be named as the executor of an estate, the personal representative, or the administrator, their job is to do what's in the best interest of the estate. The administrator, whether it is a corporate administration, such as a bank trust department, whether it is a county administration, such as public administrator, or private party, they still have the obligation to do what's in the best interest of that estate. That is to go out and negotiate with auctioneers to get the best price available or percentage available.

There is one company that comes to Reno twice a year to do auctions, and we will attempt to save items for that company because they charge a lower percentage. Historically, you have your auctioneer companies within your community, and you can certainly get them to do bidding contracts between themselves to try and get your business.

Chairman Anderson:
Are there questions from members of the Committee? Mr. List.

Andrew List:
[Introduced himself.] This matter was brought before our board and is endorsed by all 17 counties in the state, and it has the full support of NACO [Nevada Association of Counties]. I have nothing further to add.

Chairman Anderson:
There won't be any impact; in fact, it would probably cut down on the cost of administrating this office. Fiduciary question for the counties?

Andrew List:
Chairman Anderson, it's our belief that this will certainly speed up the process and make the administrator's job easier.

Chairman Anderson:
How many of the counties have elected court administrators?

Don Cavallo:
I believe in virtually all of our counties they are elected. Only Clark County, myself, and Carson City are paid by the county itself. The other outlying counties, although elected, do this without the benefit of a salary, so their fee is based on the value of the estate. I believe we have approximately three or four—and don't quote me on that, I'd have to look at statute—counties where it's actually assigned to the district attorney's office to be the public administrator for those areas. So it's a little different in every area.

I would like to express that I did speak and I have kept the Clark County public administrator's office, Dan Ahlstrom, up to speed on this throughout the process. I faxed him the original bill changes in June of last year. I did speak with him yesterday, and he is in full support of this bill also.

Assemblyman Conklin:
It was mentioned in testimony that this was last changed in 1999, and even at that time, prior to its change and after its change, it was an amount lower than other estates that could be administered without documents. I think the term used was "other families." My question is a follow up to the Chairman's question. You wanted to create parity. Why was there not parity in the law prior to this? There must have been some rationale. I'm curious if you know what that was, just so we don't overlook it in this Committee.

Don Cavallo:
I believe the original bill was submitted in 1997. Before that there was no affidavit for a public administrator to use at all, and it was a trial basis to see how those function within the office. It started out low to make it more palatable, to see how it handled those small estates. The increase jumped double at that time to bring it up to that speed. Again, there is no rationale other than trying to be consistent throughout the statute with the figures. There is a small affidavit of $20,000 that a family member could utilize. There's our affidavit now at $5,000, requesting to go up. The next level of an estate proceeding is a set-aside proceeding at $75,000. Then there is a summary up to $200,000 and a full administration for over $200,000. It would just bring those numbers consistent with the others that are already on board.

I don't think it answered the question, no.

Chairman Anderson:
I think, in part, what we're talking about is the concern relative to estates and size of those estates, as to what kind of administrative process has to take place, and there is a dollar figure that triggers it based upon the gross amount of the estate at the time of death. Would that be ...?

Don Cavallo:
That would be correct.

Chairman Anderson:
The type of administration that is entered into is governed by statute, depending upon the overall size of those estates and the responsibility of the administrators as to how detailed the accounting is of the expenditures of those things, if a person dies without a will or without having someone to take the management of their assets. That's what Mr. Cavallo and other elected public administrators are supposed to do.

Don Cavallo:
I could help Mr. Conklin's question a little more, now that I thought about it. Currently, the administration of an estate for $75,000 or under is, again, called a set-aside proceeding. For that I certainly hire an attorney to file those pleadings within the court. That certainly has a cost that bears against the estate. Right now with an affidavit of $5,000 we do that on our own; there are no attorney's fees charged to the estate for that. Up to $20,000, again, if we're successful to do this, no attorney's fees are charged against that estate. This will hopefully help pay for the creditors of the estate and the funeral of the estate, or possibly even distribute something down to the beneficiaries.

[Don Cavallo, continued.] Right now if I have an estate that is $11,000, I have to hire an attorney, and I'm basically charged the same cost that it does to do a $75,000 estate. That's in the range, in our district, of approximately $2,800. So if I've got a $7,000 estate or an $11,000 estate, I'm spending almost one-third of that to pay for the attorney's fees just to get it through the court process. Bringing it up to the $20,000 level, I think, would be consistent with the other small estate affidavits and yet then save assets to the estate.

Assemblyman Conklin:
That helped tremendously, that last statement.

Assemblyman Carpenter:
I guess I have a little problem of taking the limit off of the commission for all personal property. I can understand what you're saying about the auction companies and that, but it seems to me that there should be some kind of a limit just for your protection and to make sure that at least there was some kind of a figure put in there, so you just couldn't give 90 percent of the value of the personal property to someone else. Maybe I could come in and say, "Well, I'm going to give you $100 for the horse, but I want 90 percent to sell it." That kind of worries me to take the limits completely off.

Don Cavallo:
I certainly understand your concern and share that concern. In some of the outlying counties, it may not be as easy or competitive to have an auctioneer as it is in Washoe and Clark County. But again, I think it's the obligation and the job of the administrator to conserve that estate. As we go through the estate process, we have to have those sales confirmed by the court eventually. Historically, if we're selling certain assets up front that have large monetary value, such as some collector vehicles and those things, we get the court confirmation and approval in advance to do that. So, there is some check and balance systems, but that's only when the administrator wants to utilize those. Again, I do share your concern on that.

Chairman Anderson:
Mr. Cavallo, under NRS 146.080, "estates not exceeding $20,000 transfer of assets without issuing a letter of administration, public administrator on behalf of estate or other entities of property may within 40 days after the death move with that currently ..." Does that not aid you in accomplishing what you're looking at here, or are you only focusing on the auction question of property with this amendment?

Don Cavallo:
I'm sorry Mr. Chairman, I'm not clear on ...

Chairman Anderson:
The distribution of small estates, those estates not exceeding $75,000 which is covered under [NRS] 146.070, and then estates not exceeding $20,000 transfer of assets, you're able to utilize that one to accomplish some of the bills? What you're really looking at here by moving the dollar figure—I don't think we're as concerned about that, if it's going to cut down on having to retain an attorney and do those other kinds of questions.

I think that our concern rests with—if I'm understanding what Mr. Carpenter is saying—not having a fee, the 10 percent question. It could become 90 percent of your personal property or 50 percent of the personal property that they sell, and although I heard you say, of course, that as a good fiduciary, you would be looking for the auction company that has the least impact upon that estate. I guess if we're changing black letter law here, we want to make sure that there is a dollar figure percentage that we would feel comfortable with, and are probably looking for a realistic percentage like 25 percent. What number would we be looking at as a percentage, would you suggest, accommodating what the reality of the marketplace is currently?

Don Cavallo:
Historically, I've seen the auctioneers charge 25 percent. It actually was at a higher rate a couple of years ago; it went as high as 32 percent. But because of what we're able to do, we negotiated with these auctioneer companies to get it down to a lower figure. Twenty-five percent of the sale of personal property can sound, and does sound, like a substantial chunk out of that personal property when it comes to the bottom line. That takes into account not only the transportation of that property from its location to the auction house, the organization and cleaning of that property, the advertising of the sale of that property, and then, of course, the time to go through that.

Mr. Chairman, I'd certainly have no problem if a percentage number was placed on to that. Without the auction industry here today, I don't know that I'm qualified to speak on their behalf on what that number would be.

Chairman Anderson:
I'm kind of surprised they're not, as a matter of fact.

Assemblyman Mortenson:
I share the same concern, and I spoke to these gentlemen yesterday about that. Even 25 percent seems high, but now that you've explained that it includes transportation, advertising and so on. I sincerely believe there should be a cap and I would hate to see it go any higher than 25.

Chairman Anderson:
I apologize to Mr. Carpenter. I should have come back to you for your follow-up.

Assemblyman Carpenter:
I was just going to make the statement that if all public administrators had done their job and were honest, like the one appearing before us, we wouldn't even have this law, but you know there's been a lot of "hanky-panky" out there, and so I think that it's up to us. I think 25 percent is a reasonable figure.

Chairman Anderson:
I agree that the gentleman appearing has had a long history of public service to the people in Washoe County and we've been fortunate in that regard. However, there have been other individuals, even within our county, who, after being elected to this position, had a different view of how their position was supposed to function and who were supposed to be doing it. The voters clearly remedied that situation when they next had that opportunity.

Don Cavallo:
Thank you for those comments.

Chairman Anderson:
Are there any other questions? Ms. Yeckley, do you want to help me out here and clarify the law for me? This is the drafter from our Legal drafting department to make sure that we do the right thing here.

René Yeckley, Committee Counsel, Legislative Counsel Bureau:
[Introduced herself.] I think the point that Mr. Anderson was making earlier is it looks like under NRS 146.080, public administrators currently can make use of those affidavits for estates up to $20,000, and it looks like the change that you're making to Chapter 253 would just make those statutes consistent so that it would operate in the same way for estates that are up to $20,000. Is that right?

Don Cavallo:
That would be correct.

Andrew List:
You had asked earlier whether the public administrators were elected or appointed, and I'd like to point you out to NRS 253.010. It states in subsection 4 of that section that the district attorneys of Lander, Lincoln and White Pine are the ex-officio public administrators of their respective counties, and the clerk of Carson City is the public administrator for Carson City.

Chairman Anderson:
I was under the impression that it was a difficult position to keep filled with people. There was a little thing that you mentioned there—in part to Mr. Mortenson—or alluded to in your response to the cost associated with the auctioneer. I thought that you warehoused the estate once it had been collected, as it was being prepared or held, to provide its security until it was brought to auction. Then the auctioneer takes the cost of removing it from your warehouse, or sometimes maybe even the estate. It's kind of a mixed bag?

Don Cavallo:
It's a mixed bag, Mr. Chairman. Depending on the circumstances of the estate and beginning process, my office will inventory the personal property within the residence. At that stage, if we do have beneficiaries of the estate, we will send that inventory list to them, so they have the ability to choose personal property of their family members that they may want to retain. Those are primarily what we'll bring into our storage facilities.

Some estates seem to take much longer than others, because of litigation or other issues within those estates. With those we will then essentially close the house down and move all that property into our storage, or if there's a contested issue over the personal property. The auctioneer may come after we've removed those things to that home to remove those items, or eventually come to our storage facility. They are making at least one trip.

Chairman Anderson:
The great concern is those people who die intestate, without a will, or you end up having to take control of that in the name of the county and the state.

Don Cavallo:
Absolutely, and certainly find, that happens more frequently than anyone would realize.

Chairman Anderson:
I see no other questions from members of the Committee. Any concluding remark you feel you need to get into the record?

I have nobody else who is signed in that has a desire to speak on Assembly Bill 78. I do see somebody here from the Banking Association, and I don't know whether you arrived late and didn't have an opportunity to sign in. Did you wish to speak, sir? Have you signed in?

Bill Uffelman, President and CEO, Nevada Bankers Association:
[Introduced himself.] The only question I had on A. B. 78 was that line 26 of the printed copy of the bill, "financial institutions shall provide without a charge a public administrator with a statement setting forth account information about the deceased." The issue there is, "without charge."

I do not know what level of charges have been imposed in the past that perhaps have upset them, that the bank charges are so depleting the estates. I am aware that on many accounts, for example, if you ask for a complete run you're looking at a $2.00 charge. I'm not sure that is so onerous that not allowing any kind of charge from the financial institution is in the interest of fairness, is necessary.

It was a question that I had not been able to discuss with the other gentlemen prior to their testimony.

Chairman Anderson:
Are there questions from members of the Committee?

I'll ask Mr. Cavallo to come back up to make sure we have clarity here. I don't want to misrepresent what I believe I heard without having the opportunity to go back and look specifically at the record.

Mr. Cavallo, did you not tell me the current practice of the banks are not to charge you, and this would merely codify what is current practice in this particular kind of estate, if you provide the proper documentation as the public administrator recognizing the smallness of the estate and the magnanimity of the bank?

Don Cavallo:
Currently, that's correct. We have not been charged at all for these requests from the banking institutions. We've been doing this approximately 12 years now.

Chairman Anderson:
Have you had an opportunity to talk to Mr. Uffelman and the other bankers about the potential impact of this bill?

Don Cavallo:
No, I have not.

Chairman Anderson:
Are there any other questions for Mr. Uffelman? I just want to reclarify to make sure that I heard what he said correctly.

I want to make sure that we have that clarified in the record. There remain some concerns from the bankers relative to what that long-term impact would be—"without charge" in the language.

Is there anybody else wishing to testify on A. B. 78? Is there anybody in the south who wishes to testify?

Let me close the hearing on Assembly Bill 78.

We'll bring it back to Committee. I would suggest to the members of the Committee that we would be looking at a potential amendment to the bill in Section 1, and possibly to the bill drafter, creating a bit of a problem. I don't want to create a dramatic problem here because I don't want it for this next work session but I do want it so that we would put a cap on personal—I'd like us to see not bill drafting to do it, but that we develop a potential amendment for our work session that might put a cap on personal property, as suggested by Mr. Carpenter.

Having heard the concerns of the Banking Association and following what I hope happens with the discussions between Mr. Cavallo and those discussions, if you could get back to us as to whether the line 26 of Section 2, page 2 "without charge" language needs to be there.

Moving from $5,000 to $20,000, which is a dramatic leap forward, does bring a certain level of consistency to the laws, we've heard from our representative in Legal. It looks like everything else looks pretty clear, unless anybody else on the Committee has anything else to be taken into consideration.

We'll turn our attention to Assembly Bill 71.

Assembly Bill 71: Requires association of common-interest community to provide copy of declaration of covenants, conditions and restrictions to unit's owner upon request. (BDR 10-441)

Assemblyman Chad Christensen, Assembly District No. 13, Clark County:
[Introduced himself.] Assembly Bill 71 is what I'd like to introduce and share a brief story, or, basically, how this bill came to my attention and why it's before you right now, just from my personal experience, and then I'll hand it off to my colleagues.

[Assemblyman Christensen, continued.] During the summer I sold my house. I used to live in a homeowners' association. As part of the sale the realtor told me that I needed to go down and pick up a copy of the CC&Rs [conditions, covenants & restrictions] from the homeowners' association or from the management company to give to the buyer. I figured, all right, so I'll go down and pick that up. My next question was, would I just go pick it up, or is there anybody specific that I need to get it from? They said, "Well, you need to pay for it." I said, "$20 or $25 just for these papers." He laughed and he said, "No way. It's more like it could be anywhere from $100, and I've seen as much as $275." I said, "All right, what if I just don't want to give them to them?" I was trying to figure out: isn't there some other way without paying that fee? I said, "What, does it have a gold stamp from the ambassador from some other county that they have to get? Why does it cost that much?" The response again was that it is required, under NRS 116.4109 [*Nevada Revised Statutes*], for the seller of a property to provide these documents to the buyer, so I had no choice.

So I didn't get it directly from my homeowners' association, but I got it from the management company of the HOA [homeowners' association]. Essentially, they could set whatever price they wanted. In the end, mine was $150. As I went down to pay, I tried to ask as many questions as I could. I asked to meet with the owner of the management company. I just wanted to find out because the thought that was going through my mind is, if they could set whatever price, why don't they charge $1,000 to give me these documents.

I left my business card. I didn't get a response. I had to go back for something else and I left my Assembly card, hoping that somebody would call me back. They weren't interested in talking to me and so I just thought this seems like a pretty significant inequity, where the state law requires this. I didn't have a choice, and somebody could set any arbitrary price. The intent of this bill, my intent being here with the gentlemen sitting next to me, is to hopefully bring equity to what the state law requires. With that, I'll turn it over to one of them.

Chairman Anderson:
I recognize that this is not an area in which you spend a great deal of your life. The big question to me would be: didn't you get a copy when you first purchased your home as part of the agreement when you went into the common-interest community? You didn't have at least one copy as part of that?

Assemblyman Christensen:
Mr. Chairman, are you asking me if I received one when I purchased the home?

Chairman Anderson:
Right.

Assemblyman Christensen:
Yes, I did.

Chairman Anderson:
And that would not suffice to be in the transfer?

Assemblyman Christensen:
No, because financials have changed and regulations have changed over time, and so it's a changing document as time goes on.

Chairman Anderson:
Mr. Nadeau.

Jim Nadeau, Government Affairs Director, Nevada Association of Realtors:
[Introduced himself.] With me is Rocky Finseth, who is also with Carrara Nevada. In Las Vegas we have Mr. Lee Barrett, who is a real estate broker in Las Vegas.

We support A. B. 71. I would ask, if it's the pleasure of the Chair, that Mr. Barrett be allowed to provide his testimony, followed by Mr. Finseth, who will outline an amendment that we have to the bill. We have discussed the amendment with Assemblyman Christensen and he gave us his okay. If it pleases you Mr. Chairman, we defer to Mr. Barrett in Las Vegas.

Lee Barrett, Past President, Greater Las Vegas Association of Realtors:
[Introduced himself.] As a real estate broker in Clark County, where there are over five to six hundred of these communities where we have common-interest communities, we run into some scenarios as Mr. Christensen ran into.

Assemblyman Christensen noticed that when he went down he was able to get his forms right away. Based on the statute, the homeowners' association's management company has up to 10 days to provide that documentation. What we're noticing is that they want to use that whole 10-day time period to get that information over to the property owners. That's why I support this bill, because those documents should be available at any time for any owner coming in front of that homeowners' association's management company.

To give you an example of the standard contract that we use down here in Clark County, our paragraph 8 of that contract talks about "common-ownership-interest properties." If you'd indulge me to just be able to read to you a short paragraph here. It says:

> [Lee Barrett, continued.] If the property is subject to a common-interest community (CIC), the seller shall request CIC documents defined in NRS 116.4109 within two business days. The seller's acceptance to provide the same to the buyers within one business day of the sellers receipt thereof. The buyer shall, within seven days after the receipt of said certificate of resale and CIC documents, provide written acceptance or disapproval. If disapproval is not received within specified time period the CIC documents will be deemed approved.

The issue is that on some short escrows, the owners made the request anywhere between 10 and 12 to 15 days to get the documentation from the homeowners' association. Recently, we asked for a homeowners' association to provide us information. As a perfect example of this, they went ahead and told us to contact a company called CondoCerts.com.

It was my understanding that in the last Legislature in 2003, companies that were not in Nevada could not service homeowners' associations, and it's my understanding that this company is on Sunset Avenue in Suisun City, California. It has a 707 number that you have to call to get the information. This particular neighborhood is French Oaks Homeowners' Association and to give you an example …

Chairman Anderson:
Mr. Barrett, sir, what you're talking about is somebody out of state?

Lee Barrett:
Yes.

Chairman Anderson:
But that's not what the issue is here in front of us, I believe.

Lee Barrett:
Let me get to the issue then; I apologize. The issue is getting the information as rapidly as possible. These companies that provide this information online are charging in excess of what would be considered 25 cents per copy. To give you an example, they give a breakdown of a 56k speed for a download and that would cost you $15 for that download, or broadband download which would happen in 35 seconds would cost you an amount of $15 for the Rules and Regulations, and it goes on and on with the different cost breakdown.

A. B. 71 does talk about getting the information as rapidly as possible, but it also does want to put a limit on the cost, if my understanding is correct, of

25 cents per copy. So that just becomes my concern, as a broker representing the public, that a lot of time the cost exceeds what the consumers' expectation is, and also what is reasonable fee for the amount of service that's needed to provide this necessary documentation.

Chairman Anderson:
The intent of the bill is to make sure that the CC&Rs are available at the site, number one; make sure that they are there in reality. Secondly, that copies which are requested are available, not in the timelines that we've laid out or the discussion which was compromised in the initial, but instantaneously, and that the cost would be set at 25 cents. That's what you think we're going to do here?

Lee Barrett:
That's my understanding of S. B. 71, yes.

Chairman Anderson:
This would be Assembly Bill, A. B. I want to make sure our record is correct.

Lee Barrett:
I'm not used to testifying in front of such an honored group as you, so I apologize.

Chairman Anderson:
We're just like you. We're all citizens just like you. We appreciate the fact that what you're trying to do is clarify what's happening here and trying to take care of not just your industry, but also other people who are caught up in this particular discussion who may not be as familiar with it as you are, and they want to walk down and pick up the documents. They need to know what's going on in their homeowners' association and the CC&Rs that are there, so then you have a common reference to it. And they would like to get it at 25 cents a page.

Lee Barrett:
That's correct, sir.

Chairman Anderson:
Why 25 cents? I have an Internet system at home and I even use it sometimes. I'm not a great computer guy as people will tell you. My other family members seem to do a better job at it than I do, but is 25 cents a reasonable or unreasonable kind of fee, and how did you pick 25 cents?

Lee Barrett:
The cost of going to a copy shop, Kinko's or something like that, would maybe be 10 cents. Buying your own machine, the cost of having equipment—I don't know where the 25 cents came from. I think there has to be a limit similar to the previous bill that we see that you just had discussion on. There has to be some kind of limit, even if it's 10 cents or 15 cents. It's unreasonable, some of the costs that we see.

The concern I have about everything being on the Internet is a lot of consumers that we deal with, and as an example, this one that I just shared with you on French Oaks. The people that we represented were seniors and were not able to get online, were not able to go ahead and get this information, so we went ahead and did this for them, and so I think sometimes it's not necessarily a savvy consumer that's put into this position to have to get this information.

Chairman Anderson:
If the homeowners' association has to keep somebody at the site to do these kind of things, they have to have the machine, they have to have the personnel, they have to have the cartridge in the machine, they have to have the paper all in stock, and all these other questions that are additional costs to the homeowners' association, and to provide the service and so …

Lee Barrett:
Historically, sir, they have these anyway.

Chairman Anderson:
I'm trying to figure out the 25 cents, so let me move to Mr. Christensen, and maybe he'll be able to answer that question for me.

Assemblyman Christensen:
I'll give you the short answer and hand it off to Mr. Finseth. When I spoke to the LCB [Legislative Counsel Bureau] Legal Counsel they recommended 25 cents because that follows a state guideline, that the State, in other scenarios, uses 25 cents.

Chairman Anderson:
Mr. Barrett is there any other point that you need to make for the record? I presume that the document that you read from, you intend to have submitted for the record?

Lee Barrett:
Yes, sir.

Chairman Anderson:
Is there any other information that you think that is important for us to have?

Lee Barrett:
I think Assemblyman Christensen's—I think it's a great thing to bring up. I think there are other documents that could also be added to this that I think you're going to have another speaker speak about. But I think there are other documents that could be brought up, besides the CC&Rs, that are required as part of the statute, but I appreciate this beginning.

Chairman Anderson:
Okay, Rocky.

Rocky Finseth, Legislative Advocate, representing Nevada Association of Realtors:
Before we get into the amendment, I want to clarify some questions that came up in Mr. Barrett's testimony. The nexus of the 25 cents goes back to NRS 116.3117 [116.31177], dealing with the maintenance and availability of certain financial records, which, as Mr. Barrett said, was either amended in 2001 or 2003. That's where the 25 cent precedent comes from, and I believe LCB [Legislative Counsel Bureau] simply followed that portion of statute in applying it to A. B. 71.

The proposed amendment that I believe you all have before you today (Exhibit B) is from the Nevada Association of Realtors. It goes to address those documents that pertain to the resale that are required under NRS, pertaining to the resale of any unit contained in a common-interest community. It would simply take lines 17 through 19 in A. B. 71, that are contained on page 2, that Mr. Christensen is proposing in NRS 116.3118, and apply that to NRS 116.4109, again pertaining to the resale of units. But all those documents that are required to be provided in the sale of a unit would also be subject to the 25 cents per page charge.

Chairman Anderson:
Ms. Yeckley, will we be able to do that with this? Will this amendment fit within the scheme? It would appear that it does, but I'm not positive.

René Yeckley:
Yes, I do believe that it would work within this.

Chairman Anderson:
The "not to exceed 25 cents" mirrors those parts of the NRS, and that's where the not-to-exceed language comes from, the 25 cents?

If we were to move with this bill, Mr. Christensen, you've had an opportunity to review the amendments and find them not to be in conflict with what your original intent and concerns were?

Assemblyman Christensen:
That is affirmative.

Assemblyman Mabey:
I have a couple of questions and then a concern.

Chairman Anderson:
On the document, Dr. Mabey, or on the amendment?

Assemblyman Mabey:
Either. How many pages are we talking about, typically, for this whole process?

Rocky Finseth:
I would actually probably defer to Mr. Barrett, since he typically deals with this on a day-to-day basis for the average consumer, in terms of the volume of documents that an individual receives.

Assemblyman Mabey:
My other is as a businessman. I don't know that I can run my machine for 25 cents a page. I know for medical records we can charge up to 75 cents a page. I'd have to call my wife to get the details, but I just sense 25 cents a page is not a number that would pay for the machine, the toner, the paper, et cetera, and so I just wonder if this number isn't too low.

Rocky Finseth:
Again, the nexus of the 25 cents goes back several sessions to a bill that amended another section of this statute, but it addressed, if I'm correct in my thinking, a similar situation with respect to the availability of financial records and the difficulty by the consumer in being charged adequately for those documents.

Chairman Anderson:
The 25 cent document fee is what we've taken to be a worked-out compromise minimum cost that could be figured. And, of course, when I asked my question earlier, my concerns were those of small impact. Of course, I'm a little bit concerned about the time factor which we tried to build into the original thing, recognizing that some homeowners' associations may not be able to do that and have to go down to Kinko's to do it. Dr. Mabey had a question, Mr. Barrett, which we felt you might be in a better position to answer, relative to the

number of documents that would be typically in one of these. It is a number factor that we're looking for. Usually give us an average thing.

Lee Barrett:
25 to 100 pages.

Assemblyman Mabey:
That's fine.

Assemblyman Conklin:
Just to clarify—Mr. Mabey's point, I guess, sparked some other questions for the folks here. I don't live in a common-interest community. Would it be my understanding, would this be correct, that either a common-interest community is not a "for profit" entity in the first place, or those that are having membership fees associated with it? People have already paid dues to the members of those common-interest communities. Is that correct?

Rocky Finseth:
That is correct.

Assemblyman Conklin:
From my point of view, there shouldn't be a profit margin in getting CC&Rs that are rightfully yours in the first place, for which you've either already paid money to be a member of that community or that non-profit organization in the first place. Correct?

Rocky Finseth:
You are correct. And again, it is statutorily defined what the fee is.

Assemblyman Conklin:
Thank you.

Chairman Anderson:
In point of clarification, we've dealt with CC&Rs for some time here, and it's always a tricky kind of question. The homeowners' associations are supposed to keep their members up-to-date on the information. I presume that when they send out any changes on a regular basis that a good dutiful homeowner puts them carefully into a facility where he can make ready reference to them. He would never lose a piece of paper or discard any important notices, like all of us never lose any pieces of paper that come to all of us.

Therefore, at time of sale or when he needs to have a ready reference, he needs to have some instrument to remind him what was sent to him before. This

would be his second copy, in reality. The fee question becomes 25 cents. Would that be correct, Rocky?

Rocky Finseth:
You are correct.

Chairman Anderson:
Your amendment applies to everything in this long list of copies, of declarations. Everything under NRS 116.4109 would have to then fit into this: "May charge unit owners a fee to cover the actual cost of preparing the certificate containing the document, but not to exceed 25 cents per page." This is the maximum amount. They could charge a lesser fee depending upon their feelings within that particular community, right?

Rocky Finseth:
Yes.

Chairman Anderson:
Do we need to put anything else into the record here? Let me move back down south to Mr. [David] Smith, who had indicated a desire to speak on this issue.

David Smith, Private Citizen, Las Vegas, Nevada:
[Introduced himself.] I'm a senior, owned four homeowners' association properties, and have been on board of directors in Northern Nevada. I now live in southern Nevada, and I've owned two association properties down here. They're a great program if they're not abused.

Some history. Senator [Mike] Schneider, four or six years ago, put the 25 cent limit in. I don't have a particular problem with that. This is a great consumer bill. I recently sold a unit in Las Vegas and they charged me $85 for the documents, and the documents should have cost me $25 or $30. The boards generally do not control the management companies on documents. Some homeowners' associations and managers put the documents up on the Web, and you can get them for free. Others consider it a profit margin, and there's some gouging.

Recently, the situation I came upon was that I needed my documents. Generally, I let the title company get them. One of the problems when the title company gets the documents is they pay whatever the fee is, and they don't question the fee if it's an overcharge. You don't find out about it until you do your settlement and you see it on your expense report. It was $85 and I knew the law fairly well and I went down to the management company and I said, "You're not going to get away with it." And they said, "Well, we're not charging it. The organization called getdocs.com in Nevada, here in Las Vegas,

is charging"—they didn't say, "the exorbitant," but what I consider—my words—"exorbitant fees." "And you're paying to them so, therefore, they can charge anything they want." I said, "No they aren't." And I said, "You're responsible for paying, for providing these documents, and this is what it is."

[David Smith, continued.] I had to close. I had to overpay it. I'm trying to get my money back, but it's going to cost me more money to get my money back, my overcharges, than not.

What I would like to see in this bill—and I talked to Assemblyman Christensen, and he's a very nice gentleman—do not put specific items in. It's "any documents." Because if you put specific items in and the Legislature, in their wisdom, comes back next year, or comes back this year, and adds another mandatory document, it won't be covered in this bill and it leaves it open. I would also like to see that the homeowners' association cannot charge more than 25 cents and cannot charge more than they are paying for documents from the management company. There's a lot of gamesmanship played in there. By the way, I've been able to verify getdocs.com gives a percentage of the revenue they get back to the management company, which runs it up.

I see this as a consumers' issue. You don't find out about it until you close escrow. You have a lot of seniors like me that live in these homeowners' associations, and they don't want to follow the law, they don't have the interest in the law, and they don't know what to do. Most of them don't know they've been overcharged, and most of them don't know what to do if they do get overcharged. When you're down to close of escrow and you don't make your date, you can lose your deposit and it can unravel on you. The management companies understand that, and they really hold a gun to your head.

Chairman Anderson:
Questions for Mr. Smith? Have you ever served on a board of directors of one of these homeowners' associations?

David Smith:
Yes, two different ones in Washoe County.

Chairman Anderson:
By removing the timeline requirement, the timeframe requirement which this bill will do, are we creating an undue burden for some of these?

David Smith:
No. There are two things here, and I apologize for not covering that in my testimony. The only custom documentation that's required is the current financials. Everybody uses the computer; you go over and you print it out. Your CC&Rs, your rules and regulations, and all of the other documents are all standard documents. CC&Rs are very hard to change, so those don't change very often. The rules and regulations they may change from time-to-time but the management company keeps those in stock, and not to promote Kinko's, which is now part of Federal Express, but they will pick it up and deliver it back for the cost of 10 cents.

What's interesting is, please remember these documents are standard documents and are generally bound. It's not a custom situation where you have to find a folder or you have to read the whole file for the folder and pull out specific documents. These are all standard documents so they're ready to go at any time. If I were running a management company I would have most of these—a stock copy of them—available at any time. I don't have a problem with saying …

Chairman Anderson:
Okay, Mr. Smith, thank you. I just wanted your opinion whether removing the timeframe …

David Smith:
I'm saying three or five days is fine, because if you do a quick-close escrow you can still get them in. Ten days gets real long, and if they start jerking you around, then they don't start the clock.

Chairman Anderson:
The reason I point this out, Mr. Smith, is because the proposed amendment to A. B. 71 puts a 10-day window of time in place so that the association within 10 days after requesting by a unit owner, shall furnish a certified [copy] that contains the information necessary, which is the existing law under NRS116.4109. Where the original bill had some other kinds of questions, I wanted to make sure that you recognize that we're still giving some timeframe suggestion, that there be a timeframe element as part of this, because of the different natures of different homeowners' associations.

Since you have served on the board of directors of associations, you have practical anecdotal information that other people sitting here may not have. I, for one, have never sat on a homeowners' association, although I occasionally hear from my mother-in-law who lives in such an association, and she often

speaks to me about the problems she faces. Mr. Smith, is there anything else you feel you need to get into the record, relative to the bill?

David Smith:
Yes. The other thing that I would say is the only problem with the 10 days is if you have a quick close.

Chairman Anderson:
I guess you have to make sure it's within the 10 days, right?

David Smith:
I'm just trying to give you the fair, honest reality of what it's like in an HOA [homeowners' association].

Chairman Anderson:
How many times have you put a property up with a realtor and been able to open, set the whole thing up and close, from start to finish—the concept that you were going to put up one of your properties in a close, and done it—within 10 days?

David Smith:
I bought one in less than 10 days. The last one, the one we had the problem with.

Chairman Anderson:
The guy putting it up. I'm not talking about buying it; I'm talking about the person who puts it up for sale.

David Smith:
Well, I haven't. It's interesting, but I had a 30-day close on the unit I sold in Las Vegas, and I had a tough time getting the documents to the buyer because the management company kept jerking me around. They said I had to go buy them off the Internet. I said, "No, they had to give them to me."

Chairman Anderson:
Are there any other questions for Mr. Smith? Seeing none, thank you very much, sir.

David Smith:
Thank you very much and, thank you for being consumer-oriented.

Chairman Anderson:
Anybody else wishing to speak on Assembly Bill 71? Is there any piece of information that needs to come in front of the Committee? Anyone wish to speak in opposition? Ms. Ohrenschall.

Assemblywoman Ohrenschall:
I don't know to whom this should be addressed. I was just wondering what impact, if any, this bill might have on the whole process of getting the appropriate title insurance, and so forth, for a change of property ownership. Would it have any effect at all? Does anyone know?

Rocky Finseth:
I've brought our legal counsel with us, Ms. Buffy Dreiling. It's my understanding that, no; this would not impact that in any way.

Assemblywoman Ohrenschall:
Has this been checked at all with any of the title companies, and so on, to see how they might feel? I understand you're talking about a piece of legislation and just a flat legal issue, but you know sometimes in the world of commerce, companies like title companies might feel more comfortable in having a bigger or fatter package of something going back, that's all. I was just wondering if anyone had checked it.

Rocky Finseth:
By chance, we also represent the title industry.

Assemblywoman Ohrenschall:
Enough said.

Chairman Anderson:
It is my understanding—and clearly, you have your legal counsel there on your right—do you need to get information into the record?

Let me make sure that I understand Ms. Ohrenschall's concerns correctly and have interpreted them correctly. What we're dealing with here is the bringing together of the package of information that is going to be presented to the title company. We're not changing the methodology in which the title company carries out its business, but rather the seller of real property in these kinds of condominium associations, so that they're not impacted as the seller, and it's bringing the associations to recognition of what is in place.

Rocky Finseth:
Let me just clarify, we represent the Nevada Land Title Association, Carrara Nevada does. We have dealt with this issue with them going back one or two sessions ago, pertaining to a bill that I mentioned earlier, pertaining to the 25 cents, and they did not have an issue then.

Chairman Anderson:
Mr. Trudell, I presume that you're here because it's been amended?

Michael Trudell, Legislative Advocate representing Caughlin Ranch Homeowners' Association:
[Introduced himself.] I just wanted to state that this bill would amend two sections of the current law. I don't think anyone is opposed to it, but the change would require that the documents be at the management company and not necessarily only available through some other method. That might be a problem for the homeowner to obtain. Caughlin Ranch Homeowners' Association doesn't have a problem with that. I would assume that some management companies that have gone with some of these other companies, like getdocs.com and some of these other companies, may have a problem because they've kind of given up that obligation to another entity.

The standard documents—the CC&Rs, the bylaws, the articles of incorporation—are the bulk of the documentation that is provided to every buyer upon the close of escrow. They don't change. If you change any of those documents, you're required by law to provide changes to the homeowner. Rules and regulations, financial statements, and minutes are documents that are also required, and they can change from time to time.

I don't have a problem with having those documents currently available at my office. We have tried to get online to provide minutes and some of these other documents, so that people who do have Internet access can download these documents in a PDF [portable document format] file, so that they can provide this stuff to the prospective buyer. I'm just here to hopefully say that if a homeowner keeps their documents and maintains the documents that are provided, and are required to be provided by the homeowner's association, they should have the bulk of the information to give to a prospective buyer. If not, the homeowners' association should have that information available. Thank you, Mr. Chairman.

Chairman Anderson:
Ms. Ohrenschall.

Assemblywoman Ohrenschall:
I just wanted to make sure, and we've gotten on record, that there wouldn't be any business problems, and I'm satisfied.

Chairman Anderson:
Thank you, Mr. Trudell, for being here and for clarifying that. Is there anything else that you need to get onto the record?

Michael Trudell:
No, sir.

Chairman Anderson:
Anybody else feeling a need to speak to Assembly Bill 71? Let me indicate to the Committee: it is hoped that we will be able to put this onto the work session document, which is a week from today. We have an amendment that is in front of us. I'll ask Research to make sure that if any of you have any other kind of concerns about this particular piece of legislation, they would be addressed by Tuesday of next week, so that we would have the document ready to be processed.

Mr. Smith, I see you still sitting there, and that concerns me because I want to make sure that—you know, we have this teleconferencing system and we put in this spacious auditorium this morning, not so you'd feel by yourself, but that you were rather part of this discussion—before I close this entirely down, I want to make sure if there's anything else that you need to put on the record, that we have it for the record.

David Smith:
Thank you for your courtesy, Mr. Chairman. The point that I'd like to make to the Committee is that it's important to put the responsibility back on the homeowner's association. In my case, and also with Lee's [Lee Barrett], who testified with me here in Las Vegas, the homeowners' association gives it to the management company. Then, the management company, to make another profit, gives it to an outside firm. In my case, I said to the homeowners' association's management company, "I don't care what you do or where you give the documents. You're responsible for giving documents to me, and I know what the price is; it's 25 cents a copy." What's important is that it's the homeowners' association that is ultimately responsible for providing the documents, and if they want to give it to somebody else, they can't give it to somebody else to do and the person can charge more than the 25 cents. Thank you very much.

Chairman Anderson:
Thank you. We're closed on Assembly Bill 71. I don't believe that we're going to be quite doing what Mr. Smith may think, in terms of the management companies in this particular piece of legislation. I know that that's where his concerns are. I think what we're dealing with are the condominium groups themselves, but I'll make sure, seeing what the reach of this truly is, and ask the Research folks to make sure that we take a look at what the fallout would be for those other dot-com events that may be out of state, that are being utilized by condominium associations, and whether we can reach them, or if it's a question of interstate commerce and all those other kinds of dot-com world that we all live in now, which is different than the one where it used to be.

Anything else to come before the Committee? With that we are adjourned [at 9:46 a.m.].

RESPECTFULLY SUBMITTED:

_____
Jane Oliver
Committee Attaché

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Judiciary

Date: 02-24-05 **Time of Meeting:** 8:12 a.m.

Bill #	Exhibit ID	Witness	Dept.	Description
	A			Agenda
71	B	Rocky Finseth, Nevada Association of Realtors		Proposed Amendment to A. B. 71