MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Eighty-second Session March 7, 2023

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Tuesday, March 7, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 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 Melanie Scheible, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Rochelle T. Nguyen
Senator Ira Hansen
Senator Lisa Krasner
Senator Jeff Stone

GUEST LEGISLATORS PRESENT:

Senator Scott Hammond, Senatorial District No. 18

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Sally Ramm, Committee Secretary

OTHERS PRESENT:

Rocky Finseth, Complete Association Management Company
Steven Parker, President, FirstService Residential; Complete Association Management Company
Joel Just, CEO, Complete Association Management Company
Mike Randolph, Manager, Manager HOA Collections LLC
Azim Jessa, Nevada Realtors Association

Carmen Cauchi (Interpreted by Shanzeh Aslam)
Tamara Favors, Housing Justice Organizer, Progressive Leadership Alliance of Nevada
Shanzeh Aslam
TaShika Lawson
Jason Hoorn, Owner/CEO, Taylor Association Management
Linda Gallop
Mandy Endelman
Sharath Chandra, Administrator, Real Estate Division, Nevada Department of Business and Industry

CHAIR SCHEIBLE:
We will open the hearing on Senate Bill (S.B.) 174.

SENATE BILL 174: Revises provisions governing common-interest communities. (BDR 10-610)

SENATOR SCOTT HAMMOND (Senatorial District No. 18):
I am pleased to present S.B. 174 for your consideration. Rocky Finseth will assist in the presentation.

ROCKY FINSETH (Complete Association Management Company):
With us in Las Vegas are Steven Parker and Joel Just, who are with Complete Association Management Company. As representatives of realtors, they will be part of the presentation today.

SENATOR HAMMOND:
I will give a brief overview of the bill. Mr. Parker will give some background information on what they see within the industry, why the bill is needed and how we are attempting to solve the issue at hand. The intent is to provide consumer protections for homeowners. A community manager is the person who interacts with the full community, not individual tenants, and is accountable for all property operations. The laws governing collection agencies contain an exemption allowing a community manager, who collects debts or contracts with a collection agency to collect debts, to be included in the association's liens. This bill eliminates the exemption. If community managers want to participate in the foreclosure process, they must become licensed collections companies.

STEVEN PARKER (President, FirstService Residential; Complete Association Management Company):

FirstService Residential performs community management services and collections work in Nevada. We support the proposed changes in S.B. 174 because they are necessary to ensure that consumers are protected throughout the entire collections process. The collections industry is heavily regulated by Nevada, as well as federal laws such as the Fair Debt Collection Practices Act (FDCPA). The regulations governing collection companies are designed to protect consumers. When collection work is done outside the purview of the laws and regulations by those who do not understand those laws and regulations, the consumer suffers. Collection companies that are collecting delinquent homeowner assessments are regulated by Nevada and must comply with all federal laws such as FDCPA. They are required to have a licensed qualified manager supporting their operation. Documentation sent to the homeowners must be approved by the Division of Financial Institutions (DIF) of the Nevada Department of Business and Industry prior to being sent. In addition, every collection company is audited annually to ensure activities being performed are following the regulation. This audit is performed by the DIF.

Any issues with the regulations must be resolved for the collection company to be in good standing. Language in S.B. 174 allows a significant amount of collection work to be done by the community manager outside of that regulation. When a community manager does the work instead of a licensed collection company, there is no qualified manager overseeing the work, documentation is not approved by the DIF and no audit is conducted to ensure regulations are being followed.

Several things happening in the industry are harmful to consumers when this work is done outside of a collection company. First, there is no oversight by the DIF—nothing to ensure work is done correctly and without harm to the consumer. Early in 2022, FDCPA changed some language required in the initial collection letter. Collection companies live by FDCPA, and State regulators made those changes to the initial letter. We are seeing most of those doing collections work outside of a collection company did not make those changes because they were not aware of them. The lack of these required changes will not be caught by any audit because community managers are not required to be audited on an annual basis by the DIF.

Here is an example: When a file is sent to a collection company, the collection company first uses software that finds all known addresses of the debtor. The address is incorrect on many of the accounts that come to a collection company because the homeowner failed to update the address. When a collection company sends to all addresses, the actual address is discovered, and the collection process is shortened. The cost to the consumer is reduced. Unlicensed community managers do not do that process. They simply send it to the same addresses they already have. If the address is incorrect, they do not collect until it gets further into the collection process at more cost to the consumer.

Finally, the reason this bill came to our attention is when an unlicensed community manager does these steps to do collection work and makes an error, the file is then transferred to a collection company to do the subsequent collection work. This means the process must be started over. If the error was in the filing of the lien, the collection company must refile the lien. The homeowner is now billed twice for the lien. If the process is done correctly and then audited, the damage to the homeowner is much less.

For comparison, a general contractor would never consider saying to our community managers, "You can do the first couple steps of general contracting work, and then we will turn that over to a licensed general contractor." There are many reasons this would not happen; it is not efficient, we do not know what to do when it comes to a general contractor's license, it creates liability for the homeowner and for the general contractor which can assume it must start the process over. All of this is damaging to the consumer.

This bill will allow the collections effort to be much more efficient and protect the consumer from some of the things occurring today.

JOEL JUST (CEO, Complete Association Management Company):
I am in favor of S.B. 174. People are licensed for a reason—so the State can ensure people have the competence to do the work. In most of the industry, collection letters are not done by the community association manager. Most of them are done by a back-office accounting person and mailed out without review of the community manager. So not only are they not regulated, they are also neither reviewed for competency by the DIF nor reviewed by the manager who holds the license that allows the letter to be sent.

It is important, especially when the title of the homeowner's property is being clouded, the work is being done by persons who know what they are doing, keep abreast of the law and are reviewed by the State.

SENATOR STONE:
Based on what I am hearing, when the homeowners' associations (HOA) are looking to recover fees and fines, it is like the Wild West of collections where a mistake must go to a licensed collection agency, resulting in duplicate fees to the consumer. Your legislation is common sense, but is there anything in this that would preclude a manager of an HOA from becoming licensed as a collection agency?

MR. FINSETH:
Homeowners' associations could be licensed as collection agencies. This bill does not restrict anyone from applying for a license. If this legislation passes and an HOA wants to have the ability to be a collection agency, it must get licensed.

SENATOR HARRIS:
It is a noble endeavor to try to provide some relief for folks who are already in a sticky situation. They do not want to get charged any further. I suggest we would help them a little bit more if we did not allow an HOA to foreclose on them for lack of fees, period. But since that is not the bill in front of us, I will ask my question. Is there any concern people may not want to become community managers because they potentially have this extra burden?

MR. PARKER:
No, there is not any concern of that. As Mr. Just mentioned, most of that work is being done by someone in the accounting department and the manager is not affected by this, whether doing it or not. We are not concerned that community managers will say that since they cannot do collections, they do not want to become community managers. It will be just the opposite. There is less liability associated for community managers if they are not doing the collections work.

SENATOR HARRIS:
I was thinking about it the opposite way. People will not become community managers if they are required to become collection agencies to collect money owed. Your answer will be the same.

SENATOR NGUYEN:
How will this have a monetary effect?

SENATOR HAMMOND:
This is a cleanup bill that then-Senator Aaron Ford and I worked on in 2015 together. We created a pathway. We did everything we were supposed to except close this loophole, and we created a situation where a community manager could start the collection process. Collection costs a lot of money, and then managers can only go so far before somebody else must start the entire process again, charging the same amount. It is duplicative as mentioned by Senator Stone. We are saving the consumer money with this bill. As a result, the office manager is also going to be saved a headache because the only way to do collections is if the HOA becomes licensed. It is good consumer protection and saves money for the consumer.

SENATOR NGUYEN:
Do you have any concerns that now only collection agencies do these collections instead of having community managers also being allowed to do it—that people will start to charge more for something they are already doing anyway?

MR. JUST:
The fees are set by the common-interest community and are the same no matter who does the work.

MR. PARKER:
I would add this is going to tighten up the process of who is being charged. For example, if a collection company charged outside of the current regulation, the annual audit would catch that; the company would receive an unsatisfactory rating and must correct its charges. If that would occur multiple times, the company would have a tough time staying in business. If statute stays in place, a community manager charges more than the regulation and there is not anyone to catch that.

SENATOR OHRENSCHALL:
If this bill passes, will any community managers or their employees try to seek this licensure, or will they then go to collection agencies that already do this in terms of trying to get these fees?

MR. JUST:
Only the community manager can become licensed as a collections agent. That means a community manager must become a licensed collections manager, responsible for ensuring all the documents are reviewed, all the monies are put into trust and dispersed from the trust. Full background checks are required. The applicant must be financially stable. The profit and loss statement must be provided every year. There is a great deal more to do in the process of becoming a licensed collections company and having licensed collections managers overseeing every document, every dollar collected and every disbursement sent out.

MR. FINSETH:
You have received a letter of support from Steve Dover of Nevada Land Title Association (Exhibit C). Mr. Dover participated in these conversations but was unable to make the meeting today. The Association wanted to put on record that it supports the bill.

MIKE RANDOLPH (Manager, HOA Collections LLC):
I have been a licensed collection manager in Nevada for 30 years, specializing in common-interest community collections for the last 23 years. We are talking about changing *Nevada Revised Statutes* (NRS) 116. However, if we look at NRS 649, which is collection agency law, NRS 649.020 defines "collection agency" as including a community manager while engaged in the management of a common-interest community. In 2015, NRS 116 was changed to allow community managers to do unlicensed collections. However, NRS 649 still states that community managers should be licensed as a collection agency. The two statutes are in conflict.

AZIM JESSA (Nevada Realtors Association):
We are fully in support of S.B. 174. When a homeowner is faced with foreclosure and the process starts with an unlicensed company, once it does get transferred over to a licensed collections company to continue the process, statute dictates the fees. Unfortunately, those homeowners who are already in a tough situation are charged a second time. We want to make sure that our homeowners are in the best position possible when they come out of foreclosure and can bounce back as quickly as they can. We want to reiterate that we are 100 percent in support of S.B. 174.

CARMEN CAUCHI (Interpreted by Shanzeh Aslam):
I am a resident of North Las Vegas, Senate District No. 4, and I am retired. I am asking you to vote yes on S.B. 174 to ensure that our communities are protected from HOAs. Twenty years ago, I bought the condominium where I live today, which has an HOA. I started paying $20 a month. Today, we pay $270 a month. As a person with a fixed salary, I am concerned that I cannot continue to pay that amount. I have searched for resources and talked to my neighbors with little success. We have been unable to meet with the HOA to present the complaints of my neighbors.

I have heard of the abuses of the HOA. For example, in my neighborhood, failure to pay results in a $50 fine. It is easy for someone to fall behind and lose one's home. I do not have the option to move or sell my unfinished condominium. I ask that you pass S.B. 174 to protect Nevadans from practices that can have a profound impact on their lives. This bill, if it passes, will require community managers to be categorized as collections agencies, and that will lower the risk of people losing their homes due to the current collection agency regulations. Right now, people are likely to lose their homes due to these massive fines from the HOA.

TAMARA FAVORS (Housing Justice Organizer, Progressive Leadership Alliance of Nevada):
I urge the Committee to pass S.B. 174 to ensure HOAs are regulated the same way as collections agencies because their fees have similar impacts on people's lives as the debt collectors. I live in a community with an HOA. My family and I have been directly impacted by fees and fines; having been fined and billed for not having our backyard completed in a timely manner and not submitting pictures each week has resulted in being fined $1,000. It is clear how quickly that adds up, making it impossible to stay up to date on other living expenses. Furthermore, we run the risk of losing our house. Being a homeowner is an accomplishment for my immediate family and losing this home through fees and collections would devastate us.

Having this bill would require community managers at HOAs to be categorized as collections agents. This would lessen the risk of people losing their homes due to regulations on collections agencies. As it is now, people are likely to lose their homes from massive HOA fines. Some of these homeowners are the first in their family to buy their homes. Keeping people in their homes is part of our

slogan, Home Means Nevada. I urge you to protect Nevadans from practices that would deeply impact our livelihoods and vote yes on S.B. 174.

SHANZEH ASLAM:
I am here on behalf of my mother, Sasha Aslam. My mother spent most of her adult life living and working in Las Vegas. She worked for 12 years as a threader, shaping people's eyebrows and removing facial hair, which is a manual, tedious job. She is a single parent putting myself and my two brothers through college. She was finally able to secure a mortgage for her home in 2017. Unfortunately, her joy was quickly followed by deep frustrations with the HOA governing our neighborhood. Despite a hefty $85 fee per month, the HOA provides no landscaping, a constantly closed clubhouse, a dirty pool and streets frequently littered with trash and broken vehicles.

The HOA has little to nothing to show for what it does with our monthly dues to fix the lack of overall upkeep. You can imagine the deep frustration that she faced the numerous times we received threatening letters from the HOA regarding fines upwards of $100 for small things like pebbles in our driveway. During quarantine months when my mother lost her business, had absolutely no income and could not reach the unemployment office, the HOA was relentless in coming after us. We are told that the HOA fine can lead to a lien on our home, leaving us on the street which is terrifying. Homeowners' associations act relentlessly as collections agencies, and the consequences of their fines can negatively impact a person's life and livelihood. I ask you to please regulate HOA as collection agencies and pass S.B. 174.

TASHIKA LAWSON:
I am representing TaChelle Lawson, my older sister. She is a small business owner. We live and work in Las Vegas. I want to talk about the problem we are having with the HOA. My sister is part of Peccole Ranch, which is a master-planned community in Las Vegas. She pays two HOA fees. One is for the master-planned community, and one is for her community within the planned community. We encountered problems, especially when we were going through the pandemic. There is no way for us to deal with an HOA run by people who are from a different generation. I check my mail about once a month as does my sister. She received multiple notifications sent in plain envelopes. As a result, my sister accumulated homeowner's fees that compounded on top of one another. By the time she realized what was happening, she owed thousands of dollars. This was during the pandemic when both of our businesses

experienced severe hardships. There was no real communication, even though she had provided her email address to be kept up to date on what was happening.

This is a problem, especially now when we are starting to see a lot of people who are coming out of the pandemic and starting to recover. Concerns about the fact that HOAs can file liens against your house has additional consequences, such as being unable to refinance or get the equity out of your house, that are important to small business owners who may need that extra support.

We support S.B. 174 mostly because my sister did not buy this house thinking that the HOA could use small fees that can accumulate over time to take the home she worked so hard to keep.

JASON HOORN (Owner/CEO, Taylor Association Management):
We represent or take care of around 40,000 units in Las Vegas. I have a been in contact with four other community association management company owners, collectively representing 200,000 homes. My opposition to this bill is the language in the statute is not broken, and it does not need to be reworded. In fact, the way that it is being proposed to be changed does not address any of the concerns we have heard from some of the folks in this room today. They are worried about HOA abusing power. But the only part that is stricken from the statute is the community managers' ability to do collections.

The statute still allows for board members who are often completely uneducated, unqualified volunteers to perform the steps that a management company or a collection agency would also perform at the same time. While the concerns about us or management companies getting it wrong may have merit, the bill as proposed does not come close to protecting the consumer.

The letters going out are all form-driven, directed content letters that have been reviewed by legal counsel. They have been vetted. It is not something we just conjured up and sent. I am very much opposed to this bill.

LINDA GALLOP:
I am the controller for a community management company. My department consists of the people who send out the letters. I am opposed to S.B. 174. It is my understanding that part of the collection process starts with a 60-day notice

that we send out on behalf of the association. Yes, we charge a fee, but the collection agency, if they started at that point in the process, would charge a fee to the homeowner. There would be no savings to the homeowners because it is a collection process.

I am opposed to the wording because it does not clarify the point at which the collection process starts. If the community manager sends it out, we can communicate with the homeowner. Often, the board will waive fees we can collect. We can catch and eliminate the process from going further, which at 90 days would be an intent to lien. Our company sends out the 60-day notice and the intent to lien notice. When it goes to lien, we send it to a collection agency. I want to go on record of saying that at every stage there is a fee, whether the community manager, on behalf of the association, charges a fee for the letter or the collection agency sends out an intent to lien notice and charges a fee as well. There would be no savings to the homeowner. The question of where the collection process begins needs to be answered. The fees will be there regardless of who does it.

MANDY ENDELMAN:
My concern is if you are a homeowner and you pay $40 a month, is the management company not allowed to send a notice to an owner asking if you missed your first-month payment of $40? Should it be sent directly to a collection agency at the point to collect a $40 fee? If this escalates to the homeowner owing $120, should this be sent directly to a collection company? The notice is sent when the homeowners owe $80. If they owe $120, the community manager would normally send a letter asking homeowners if they were in trouble. Do they need a payment plan that would incur a fee? If a payment plan is offered again, can that offer be sent to the homeowners, or does it necessitate a collection company to send homeowners a letter, which will incur a $120 fee? Someone must notify homeowners.

Community managers work with homeowners and board members and offer to work with the homeowner to reverse fees or be sent to collections. There is an advantage to staying with the community manager to do some of these preliminary steps before it gets to a lien. Clarification is needed on where that foreclosure process starts while giving the homeowners some protections to clear it up before they get a nasty letter from a collection company.

SHARATH CHANDRA (Administrator, Real Estate Division, Nevada Department of Business and Industry):
We are neutral.

SENATOR KRASNER:
The woman who just testified on the record in opposition said that she had a concern that a management company would no longer be able to send the notice of being $50 late because the homeowner missed a payment. Would this force the management company to send it to an agency, which would be worse for homeowners and might negatively affect their credit?

CHAIR SCHEIBLE:
I am not sure if Mr. Chandra can answer that question. If that is a question for the sponsors of the bill, I will give Senator Hammond the opportunity to respond.

MR. CHANDRA:
I will let the sponsor answer it, and then I can add some clarification if there are any further questions.

SENATOR HAMMOND:
Three or four questions were brought that Mr. Parker would like to address, if possible.

MR. PARKER:
One of the questions related to the collections process and what had to go to a collection company. Just to clarify, a collections process occurs prior to being sent to a collection company where that process is then regulated by the State. A letter is sent, which is regulated, a lien placed that is also regulated and so forth. The collection efforts prior to that vary depending on the association. Some send two notices, some send one. We have many associations that make a phone call telling homeowners they are a little late and asking if there something the association can do to help. Those efforts are taking place in what we call "prior to the official collection process."

Another question was when does the process begin and what must be turned over to a collection company? The answer is whatever is an official collection process. For example, the first process is an intent to lien letter. A preliminary collection letter is just that. It is not required to be done by a collection

company but was part of some legislation a number of years ago, allowing notice to go to homeowners that they were behind and including associated documents to prevent them from going to collections. For example, the documents included information about fees if they were to go to collections so homeowners could work something out. Additionally, homeowners would be given an opportunity to get on a payment plan if they wanted. Several documents associated with this pre-collection process were designed to prevent the account from going to collections. That is not part of the legal collection process as it relates to a foreclosure. That part would stay with the management company and be done by the management company.

Once the process to begin origination of a foreclosure of that loan begins, that would need to be done by a licensed collection company, according to the proposed bill language.

SENATOR HAMMOND:
The last question that I heard was about who can send out a letter. If it is not the property manager, would it be somebody else on the board? We address that in section 1, subsection 6 of the bill. Mr. Parker may have an answer to that, because when we talk about who is an officer, we include board members in that definition.

MR. PARKER:
There are several descriptions about what can be done in an HOA. A board member is usually allowed to perform those activities, but in practice, none of them ever do. I am unaware of any board member performing a collection activity, and we manage almost 1,500 different board members. As a practice, a board member is not going to take that responsibility. To address the cost, it is going to cost more. A collection company is more efficient at collections. The fact that they send mail to all known addresses is a cost savings to the homeowner because we catch those homeowners with incorrect addresses. I disagree with some comment that it would cost more. It is going to cost less if a collection company does the legal collection process. What happens prior to that is done by a management company.

SENATOR OHRENSCHALL:
The concern expressed in opposition testimony was that if this passes into law, there might still be board members acting like a collection agency. Does this

plug up the holes where there might be someone acting as a collection agency who is not subject to the laws?

MR. JUST:
The Fair Debt Collection Practices Act, which is federal, allows a creditor to collect one's own debt. That is why a board member can knock on the neighbor's door and say, "Bob, you owe me some money. Is there something we can do to help you out?" Any person who owns the debt can collect that debt. The problem is when a third party is hired to collect a debt. Third parties collecting a debt are governed by the FDCPA. When a call is made to a collection agency, the first thing said is, "This is a collection agency. All information will be used to collect a debt." Certain phrases and specific language are also required in the documents to ensure compliance with FDCPA. A third-party management company collecting a debt is not held accountable for telling homeowners this information. The company is not going to give that warning to the homeowner. It will tell the homeowners they have the right of dispute. The problem is third parties collecting a debt who are not authorized or knowledgeable about collections.

SENATOR HANSEN:
If you are going to get rid of the community manager, why are you allowing a member of the executive board or an officer, employee, unit owners or owner of the association to do collections? Why would they be exempt from the new law?

MR. JUST:
Because federal law allows the creditors, to whom the money is owed to collect their own debt. When a third party is hired, federal law does not apply. If somebody owes me $100, I can go to his office and say, "Bob, you owe me $100." A collection company cannot do that. It cannot reach the debtor at that person's office, leave a message, walk on the debtor's property and bang on the door or bother the debtor at certain times of the night.

SENATOR HANSEN:
So, the community manager would fall outside the scope of the federal law.

MR. JUST:
I have had some discussion with the attorneys, and a community manager hired directly as an employee of the HOA who is doing collections makes the HOA a third-party collections agent, and the federal law applies.

SENATOR HANSEN:
Okay. That clarifies it, but I might have to talk to the bill sponsor later.

CHAIR SCHEIBLE:
The hearing on S.B. 174 is closed. We now introduce one bill draft request (BDR).

BILL DRAFT REQUEST 14-310: Revises provisions relating to pretrial release. (Later introduced as Senate Bill 235.)

SENATOR NGUYEN MOVED TO INTRODUCE BDR 14-310.

SENATOR STONE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR SCHEIBLE:
This meeting is adjourned at 1:57 p.m.

RESPECTFULLY SUBMITTED:

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Sally Ramm,
Committee Secretary

APPROVED BY:

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Senator Melanie Scheible, Chair

DATE:______________________________

EXHIBIT SUMMARY				
Bill	**Exhibit Letter**	**Introduced on Minute Report Page No.**	**Witness / Entity**	**Description**
	A	1		Agenda
	B	1		Attendance Roster
S.B. 174	C	7	Steve Dover / Nevada Land Title Association	Support Testimony