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June 12, 2019

The Honorable David Chiu, Chair
Assembly Housing and Community Development Committee
1020 N Street, Room 162
Sacramento, CA 95814

RE: Senate Bill 326 (Hill) – HOUSING KILLER OPPOSE

Dear Chairman Chiu:

The California Building Industry Association (CBIA), represents approximately 3,000 homebuilders and land developers who collectively produce approximately 80% of the new homes built in California. According to many experts, California needs approximately 3.5 million more homes in order to meet its existing population needs. The lack of affordability and availability have truly reached crisis proportions.

We have identified SB 326 as a Housing-Killer because of the obstacles it imposes on the types of projects the state wants us to build – high density multi-family housing. These projects cannot be built without the creation of homeowners' associations (HOAs) which own and maintain the common walls. SB 326 will have a chilling effect on the production of these types of projects.

The most problematic portion of the bill is Section 2. In it, the Board is given the unilateral authority to decide – without any input from the homeowners – whether or not (and when) they will comply with existing law that allows homebuilders the prelitigation right to inspect and repair a defect or to pursue any form of alternative dispute resolution.

The prelitigation right to repair was enacted in 2002 with the passage of SB 800 (Burton) and is mandatory for all defect claims. It was created in response to the overwhelming desire of homeowners to have their homes repaired rather than engage in protracted litigation. SB 800 also addressed the inability for homebuilders to obtain general liability insurance. At the time, there was only 1 admitted insurer in the state that wrote this insurance and it was extremely expensive: a policy with a limit of $1 million cost $900,000 and included a $100,000 self-insured retention. This problem was particularly acute with regard to attached homes. No one should expect homebuilders to build without insurance – a situation that will return if HOA Boards can ignore the prelitigation process.

Alternative dispute resolution procedures such as arbitration and judicial reference operate independently of SB 800 and can only be implemented by being included in the HOA governing documents. SB 326 operates to block these also because they will be construed as a "precondition or limitation" on the filing of a civil action. This also is a key component to obtaining more affordable insurance for homebuilders.

We have attached a copy of RN 1917128 05 (See Attachment 1) which the author has agreed to amend into the SB 326. In addition, the author's office has previously agreed to include the following amendment on page 7, at the end of new subdivision (e) after "Division 2" insert:

> , nor shall it affect the enforceability of any provisions requiring arbitration, judicial reference or other alternative dispute resolution procedures

Alternatively, after "Division 2" insert:

> This section shall not affect the obligations of an association contained in any provisions requiring arbitration, judicial reference or other alternative dispute resolution procedures provided that voting or veto preconditions or limitations are not included in the arbitration, judicial reference or other alternative dispute resolution procedures.

With these amendments, CBIA would remove its opposition and take a Support If Amended position on the bill.

<u>Support If Amended</u>

It is important for the Legislature to understand the problems that will be created by SB 326's retroactive removal of homeowners' right to vote on whether the HOA should proceed with litigation. See subdivision (c) of Section 2 of SB 326. This has been tried in other states with some horrifying results (see below).

We believe that this result in an imbalance between the Board's power and the homeowners. The advocates for SB 326 claim that members of the HOA will be protected because the Board has a fiduciary duty to the association. We believe that characterizing HOA Boards are as pure as the wind driven snow is naïve and contrary to the facts.

This committee will be hearing SB 323 (Wieckowski) on the same day as SB 326. SB 323 is designed to address this problem:

> …Far too many HOA Boards have used arbitrary & unjust rules to maintain their power and control over the association, excluding and disenfranchising other residents who seek to challenge them. Boards manipulate elections by failing to notice an election, failing to deliver ballots to all residents, throwing out valid

ballots, and denying access to ballot counting. Sometimes they don't even hold elections at all.

See, Senate Floor Analysis, Arguments in Support: According to the Author.

In addition, the FBI Investigation known as Operation GrandMaster in Nevada should serve as a warning to legislators of the problems created when HOA Boards can unilaterally initiate construction defect litigation without the consent of homeowners. Operation GrandMaster has been reported in several media outlets and we have included the testimony of FBI Special Agent Michael B. Elliott who oversaw the 10-year investigation (See Attachment 2).

Special Agent Elliott concludes that **the lynchpin of the scheme was the ability to easily corrupt HOA Boards and then use the authority of the Board to unilaterally file construction defect lawsuits without individual homeowner's consent.** If Boards can act unilaterally, there is no question that this will happen again, the only honest question is *when* it will happen. It is simply too easy to manipulate and control HOA Boards and there is too much money at stake in unilateral construction defect litigation.

Operation GrandMaster was a scheme wherein HOA Boards were taken over through fraudulent property purchases, rigged elections and in many cases outright bribery of existing Board members, community association managers and association attorneys. Existing Board members were pressured to either collude with the scheme or resign based on threats to reveal embarrassing non-public facts against those Board members. The Board and their co-conspirators would then hire attorneys and a construction company owner, both of whom specialized in construction defect litigation claims. The attorney would then "sue high, settle low, and do as little repair work as possible." The conspiracy not only defrauded the homeowners by illegally taking control of their Boards for personal benefit, they defrauded them again at the end of the scheme by destroying the value of their homes through the filing of construction defect litigation and failing to conduct repairs. The Board members, attorneys, contractors, community association managers and other co-conspirators then pocketed the money.

As in California, many of the construction defect claims were not supported by actual facts. Similar to California, the plaintiff's attorney used fictitious construction "props" to persuade plaintiffs to litigate. In addition, fictitious water damage was derived from running a rigged radar detector (moisture meter/infrared technology – see SB 326, p.4, lines 1-2) over walls in order to steer plaintiffs into litigation.

In the year 2000, insurance for these claims added between $10,000 to $15,000 to the price of a home. This was felt most by those who could least afford it – young individuals and senior citizens. While the scheme was hatched by a Chicago company, they have expanded to Arizona, Texas and Florida. It is worth noting that several plaintiff construction defect firms that operate in Nevada also operate in California.

The investigation resulted in the conviction of multiple attorneys, community association managers and over 2 dozen HOA Board Members. Unfortunately, at least four high-profile suicides and several additional related deaths also occurred.

Section 2 of SB 326 in subdivision (c) attempts to remedy this situation by allowing homeowners the ability to amend the governing documents to reinstate those rights, but that can only happen after the builder has relinquished control of the Board and no longer owns a majority of units in the association. For many large projects, this will take decades. (The previously agreed to amendments would resolve this latter concern). However, it would be unreasonable for the Legislature to expect that homeowners will know about this right so there will be little chance they will ever correct this problem.

While SB 326 does incorporate a meeting between homeowners and the Board is required to take place, that meeting may take place *after* the Board has acted to commence litigation when it is too late to alter the decision. The Davis-Stirling Act is predicated on balancing the Board's powers with homeowners' rights.

In order to put the relationship between HOA Boards and homeowners back into balance and to avoid another Operation GrandMaster a new subdivision (f) should be added as follows:

> (f) Notwithstanding any other subdivision of this section, the Board shall obtain the consent of the majority of the nondeclarant affiliated members before filing a civil action for construction defects.

Existing law requires a prelitigation process during which the Board can resolve their claims without litigation through an inspection and repair process. This process takes 6 months to a year to complete during which time there is plenty of time to obtain the consent of the members. See, Civil Code sections 910-938 and section 6000). If the time limit to file litigation would run out during this process – it is automatically extended 100 days after the repair is complete. See, Civil Code section 927.

Finally, we do not oppose prohibiting the declarant from voting in the determination of the Board to initiate litigation against the declarant.

Because SB 326 will have a chilling effect on much needed high-density, multifamily housing it is a Housing-Killer. Unless the above-referenced amendments are taken, we respectfully request a **NO** vote on SB 326.

Please contact me at (916) 340-3338 if you have any questions about our position.

Sincerely,

Michael A. Gunning
Senior Vice President of Legislative Affairs

cc: Senator Jerry Hill
Members, Assembly Housing and Community Development Committee
Committee Consultants

Enclosures: Attachment 1: SB 326 Amendments
Attachment 2: Prepared Statement of Michael B. Elliott

ATTACHMENT 1

Proposed Amendments to SB 326

RN 19 17128 05

06/11/19 04:08 PM

Substantive

PROPOSED AMENDMENTS TO SENATE BILL NO. 326

AMENDED IN SENATE MAY 1, 2019

AMENDED IN SENATE MARCH 27, 2019

SENATE BILL **No. 326**

Introduced by Senator Hill

February 15, 2019

An act to *amend Section 6150 of, and to* add Sections 5551 and 5986 ~~to~~ *to,* the Civil Code, relating to civil law.

Amendments 1 & 2

LEGISLATIVE COUNSEL'S DIGEST

SB 326, as amended, Hill. Common interest developments.

The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. Existing law also sets forth the duties and responsibilities of the association and the owners of the separate interests with regard to maintenance and repair of common and exclusive use areas, as defined. Unless otherwise provided in the common interest development declaration, the association is generally responsible for maintaining, repairing, and replacing the common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to that interest.

This bill would require the association of a condominium project to cause a reasonably competent and diligent visual inspection of exterior elevated elements, defined as the load-bearing components and associated waterproofing systems, as specified, to determine whether the exterior elevated elements are in a generally safe condition and performing in compliance with ~~specified~~ *applicable* standards. The bill would require the inspector to submit a report to the board of the

association providing specified information, including the current physical condition and remaining useful life of the load-bearing components and associated waterproofing systems. The bill would require the inspector to provide a copy of the inspection report to the association immediately upon completion of the report, and to the local code enforcement agency within 15 days of completion of the report, if, after inspection of any exterior elevated element, the inspector advises that the exterior elevated element poses an immediate threat to the safety of the occupants. The bill would require the association to take preventive measures immediately upon receiving the report, including preventing occupant access to the exterior elevated element until repairs have been inspected and approved by the local enforcement agency. The bill would authorize local enforcement agencies to recover enforcement costs associated with these ~~requirements.~~ *requirements from the association.* The bill would authorize the association board to enact rules or bylaws imposing requirements greater than those imposed by these provisions.

The act provides that an association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with its members in specified matters, including enforcement of the governing documents.

The bill would ~~require the board to make the determination of whether and when an association may~~ *provide that, subject to compliance with other specified provisions described below, and notwithstanding any provision to the contrary in the governing documents, a board has the authority to* commence legal proceedings against a declarant, developer, or builder of a common interest development, except as specified. The bill would, with certain exceptions, prohibit an association's governing documents from limiting a board's authority to commence legal proceedings against a declarant, developer, or builder of a common interest development. The bill would make these provisions applicable to governing documents, irrespective of when they were recorded, and claims initiated before the effective date of this bill, except if those claims have been resolved through an executed settlement, a final arbitration decision, or a final judicial decision on the merits.

The act requires the board, prior to the filing of certain civil actions by the association against the declarant or developer, or within 30 days of filing the civil action if the association has reason to believe that the applicable statute of limitations will expire before the association files

the civil action, to provide members of the association a written notice specifying, among other things, that a meeting will take place to discuss problems that may lead to the filing of a civil action.

This bill would require that notice to inform members that the potential impacts of filing a civil action, including financial, to the association and its members will also be discussed.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

Page 3

SECTION 1. Section 5551 is added to the Civil Code, to read:

5551. (a) For purposes of this section, the following definitions apply:

(1) "Associated waterproofing systems" include flashings, membranes, coatings, and sealants that protect the load-bearing components of exterior elevated elements from exposure to water.

(2) "Exterior elevated elements" mean the load-bearing components together with their associated waterproofing system.

(3) "Load-bearing components" means those components that extend beyond the exterior walls of the building to deliver structural loads to the building from decks, balconies, stairways, walkways, and their railings, that have a walking surface elevated more than six feet above ground level, that are designed for human occupancy or use, and that are supported in whole or in substantial part by wood or wood-based products.

(4) "Statistically significant sample" means a sufficient number of units inspected to provide 95 percent confidence that the results from the sample are reflective of the whole, with a margin of error of no greater than plus or minus 5 percent.

(5) "Visual inspection" means inspection through the least intrusive method necessary to inspect load-bearing components, including visual observation only or visual observation in

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conjunction with, for example, the use of moisture meters, borescopes, or infrared technology.

(b) (1) At least once every nine years, the board of an association of a condominium project shall cause a reasonably competent and diligent visual inspection to be conducted by a licensed structural engineer or architect of a random and

statistically significant sample of exterior elevated elements for which the association has maintenance or repair responsibility.

(2) The inspection shall determine whether the exterior elevated elements are in a generally safe condition and performing in accordance with ~~standards set forth in Sections 896 and 897.~~ *applicable standards.*

Amendment 3

(c) Prior to conducting the first visual inspection, the inspector shall generate a random list of the locations of each type of exterior elevated element. The list shall include all exterior elevated elements for which the association has maintenance or repair responsibility. The list shall be provided to the association for future use.

(d) The inspector shall perform the visual inspections in accordance with the random list generated pursuant to subdivision (c). If during the visual inspection the inspector observes building conditions indicating that unintended water or water vapor has passed into the associated waterproofing system, thereby creating the potential for damage to the load-bearing components, then the inspector may conduct a further inspection. The inspector shall exercise their best professional judgment in determining the necessity, scope, and breadth of any further inspection.

(e) Based upon the inspector's visual inspections, further inspection, and construction and materials expertise, the inspector shall issue a written report containing the following information:

(1) The identification of the building components comprising the load-bearing components and associated waterproofing system.

(2) The current physical condition of the load-bearing components and associated waterproofing system, including whether the condition presents an immediate threat to the health and safety of the residents.

(3) The expected future performance and remaining useful life of the load-bearing components and associated waterproofing system.

(4) Recommendations ~~of~~ *for* any necessary repair or replacement of the load-bearing components and associated waterproofing system.

Amendment 4

(f) The report issued pursuant to subdivision (e) shall be stamped or signed by the inspector, presented to the board, and incorporated into the study required by Section 5550.

(g) (1) If, after inspection of any exterior elevated element, the inspector advises that the exterior elevated element poses an immediate threat to the safety of the occupants, the inspector shall provide a copy of the inspection report to the association immediately upon completion of the report, and to the local code enforcement agency within 15 days of completion of the report. Upon receiving the report, the association shall take preventive measures immediately, including preventing occupant access to the exterior elevated element until repairs have been inspected and approved by the local enforcement agency.

(2) Local enforcement agencies shall have the ability to recover enforcement costs associated with the requirements of this ~~section.~~ *section from the association.*

Amendment 5

(h) Each subsequent visual inspection conducted under this section shall commence with the next exterior elevated element identified on the random list and shall proceed in order through the list.

(i) The first inspection shall be completed by January 1, 2025, and then every nine years thereafter in coordination with the reserve study inspection pursuant to Section 5550. All written reports shall be maintained for two inspection cycles as records of the association.

(j) (1) The association shall be responsible for complying with the requirements of this section.

(2) The continued and ongoing maintenance *and repair* of the load-bearing components and associated waterproofing systems in a safe, functional, and sanitary condition shall be the responsibility of the association as required by the association's governing documents.

Amendment 6

(k) The inspection of buildings for which a building permit application has been submitted on or after January 1, 2020, shall occur no later than six years following the issuance of a certificate of occupancy. The inspection shall otherwise comply with the provisions of this section.

(*l*) This section shall only apply to buildings containing three or more multifamily dwelling units.

(m) The association board may enact rules or bylaws imposing requirements greater than those imposed by this section.

SEC. 2. Section 5986 is added to the Civil Code, immediately following Section 5985, to read:

Amendment 7

Page 6

5986. (a) Subject to compliance with Section ~~6150 and any other applicable procedural requirements~~ *6150, which requires the board to provide notice of a meeting with the members to discuss, among other things, problems that may lead to the filing of a civil action, before the board files a civil action against a declarant or other developer, or within 30 days after it files the action, if the association has reason to believe that the applicable statute of limitations will expire,* and notwithstanding any provision to the contrary in the governing documents, the board shall ~~make the determination of whether and when an association may commence~~ *have the authority to commence and pursue* a claim, civil action, arbitration, prelitigation process pursuant to Section 6000 or Title 7 (commencing with Section 895) of Part 2 of Division 2, or other legal proceeding against a declarant, developer, or builder of a common interest development. If the board includes members appointed by, or affiliated with, the declarant, developer, or builder, the decision and authority to commence and pursue legal proceedings shall be vested solely in the nonaffiliated board members.

Amendment 8

(b) The governing documents shall not impose any preconditions or limitations on the board's authority to commence and pursue any claim, civil action, arbitration, prelitigation process pursuant to Section 6000 or Title 7 (commencing with Section 895) of Part 2 of Division 2, or other legal proceeding against a declarant, developer, or builder of a common interest development. Any limitation or precondition, including, but not limited to, requiring a membership vote as a prerequisite to, or otherwise providing the declarant, developer, or builder with veto authority over, the board's commencement and pursuit of a claim, civil action, arbitration, prelitigation process, or legal proceeding against the declarant, developer, or builder, or any incidental decision of the board, including, but not limited to, retaining legal counsel or incurring costs or expenses, is unenforceable, null, and void. The failure to comply with those limitations or preconditions, if only,

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shall not be asserted as a defense to any claim or action described in this section.

(c) Notwithstanding subdivision *(a) or* (b), any provision in the governing documents imposing limitations or preconditions on the board's authority to commence and pursue claims shall be valid and enforceable if the provision is adopted *solely* by the

Amendment 9

Amendment 10

Amendment 11

Page 7 nondeclarant affiliated members of the association ~~after the declarant has relinquished control of the board and no longer owns a majority of units in the association~~ and the provision is adopted in accordance with the requirements necessary to amend the governing documents of the association.

(d) This section applies to all governing documents, whether recorded before or after the effective date of this section, and applies retroactively to claims initiated before the effective date of this section, except if those claims have been resolved through an executed settlement, a final arbitration decision, or a final judicial decision on the merits.

Amendment 12

+ *(e) Nothing in this section extends any applicable statute of limitation or repose to file or initiate any claim, civil action, arbitration, prelitigation process, or other legal proceeding. This section shall not affect the obligations of an association contained in Title 7 (commencing with Section 895) of Part 2 of Division 2.*

+ *SEC. 3. Section 6150 of the Civil Code is amended to read:*

+ 6150. (a) Not later than 30 days ~~prior to the~~ *before* filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board shall provide a written notice to each member of the association who appears on the records of the association when the notice is provided. This notice shall specify all of the following:

+ (1) That a meeting will take place to discuss problems that may lead to the filing of a civil ~~action.~~ *action, in addition to the potential impacts thereof to the association and its members, including any financial impacts.*

+ (2) The options, including civil actions, that are available to address the problems.

+ (3) The time and place of ~~this~~ *the* meeting.

+ (b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the association may

+ give the notice, as described above, within 30 days after the filing
+ of the action.

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ATTACHMENT 2

PREPARED STATEMENT OF MICHAEL B. ELLIOTT

Senate Judiciary Committee

(AB-421)

5/15/2019

Good morning Madame Chair and members of the Committee. My name is Michael Elliott and I am here today on behalf of the Nevada Home Builders Association.

I am currently employed as a licensed private investigator in the state of Nevada. Prior to my retirement in the Spring of 2017, I was employed for over 22 years as an FBI Special Agent. During my career with the FBI I specialized in investigating public corruption and election crimes. From 2005 to 2007 I was a Supervisory Special Agent in the Public Corruption Unit at FBIHQ in Washington, D.C. During that time frame I oversaw all public corruption violations for the entire west coast of the United States, as well as those in the high-profile district encompassing Washington D.C. I was also responsible for the national election crime response and investigative system in the entire United States.

I am appearing before you today as a result of my unique experience as the case agent of Operation GrandMaster, a criminal investigation commonly referred to as the "HOA Investigation." Operation GrandMaster was the largest Federal public corruption investigation in Nevada history. The case lasted for over 10 years, from 2007 to 2017, and involved well over 100 people and dozens of companies and law firms. In the end, it resulted in the Federal indictment and conviction of 44 subjects. Among others, the convicted subjects included multiple Nevada attorneys, private investigators, real estate agents, notary publics, Community Association Managers ("CAM's"), one Captain and four Lieutenants at the Las Vegas Metropolitan Police Department (LVMPD), and over a two dozen HOA Board Members. Several dozen additional subjects, many of whom held high-level positions in the government and private sector, were also targeted by the case but not indicted due to complex legal issues, including statute of limitation restrictions caused by the shear enormity of the criminal scheme. The case also resulted in the execution of 10 Federal search warrants, over 70 consensually recorded telephone conversations with co-conspirators, the largest seizure of physical and computer evidence in the history of the FBI, Las Vegas Division, and unfortunately, at least four high-profile suicides and several additional, related deaths. Further, the search warrants were largely predicated on the outcome of a complex FBI and LVMPD undercover operation in which the primary “bag-man” for the head of the HOA conspiracy paid over $20,000 in cash bribes to FBI Cooperating Witnesses. These cooperators were paid to rig a pending election at the Mission Pointe HOA in Las Vegas, thereby facilitating the essential theft of over $3 million in CD recovery funds from a competitor.

Given the size and notoriety of the case, there has been a great deal of misinformation disseminated publicly. This problem was compounded by the fact that, per Department of Justice policy, government prosecutors and agents assigned to the case were not allowed to discuss the case publicly until the last appeals of all convicted defendants were exhausted. Fortunately, that event occurred

earlier this spring. As a result, I am now allowed to speak about the case publicly, and in a position to tell you today exactly what happened and its relevance to the legislation currently pending before this committee. To that extent I would ask you to consider the fact that I am the agent who actually opened the case, the affiant on all of the Federal search warrants, the one who actually ran the undercover case, and the only investigator to have actually worked the case for the entire 10-year period of its existence. Unfortunately, I was also the agent that had to attend and investigate the results of all of the autopsies of the subjects who tragically, and needlessly, died as a result of the criminal scheme.

As a result, I believe I speak to on this matter today with a level of knowledge and authority that no other individual has. As such, I would ask you to carefully consider the facts I am about to tell you, as opposed to the some of the rumors and misinformation that been disseminated for personal and professional gain by some in the HOA and legal industries. I appear before you today in an effort to prevent Operation GrandMaster from happening again, because, in my professional opinion and experience, there is a provision in the current legislation that was directly responsible for the HOA scandal, and will inevitably lead to another criminal conspiracy if enacted into law. This is the provision that allows HOA Boards to unilaterally initiate construction defect ("CD") litigation on behalf of individuals homeowners without their specific consent (HOA Standing, Section 8). In the limited time that follows, I hope to summarize for you what happened in Operation GrandMaster, how this provision was largely responsible for the scheme, and how it's reenactment will inevitably lead to another wide-scale corruption case in the future.

As many of you have heard by now, the origin of the fraudulent scheme was a mob-inspired, and based on the ease and simplicity with which HOA Boards could be taken over and manipulated. In sum, the investigation revealed that these individuals began looking at Nevada HOA's in the late 1990's and realized their similarities with other legitimate businesses historically targeted by the mob, such as labor unions, waste management, and construction. Specifically, they realized that many HOA's in Nevada controlled multi-million-dollar budgets, yet there was little, if any, true regulation or oversight over their conduct and decisions. In addition, it was clear that many Boards could easily be taken over and manipulated through election rigging and bribery of select Board members and assigned CAMs and association attorneys.

Given this situation, a scheme was initiated wherein HOA Boards were taken over through fraudulent property purchases, rigged elections, and in many cases outright bribery of existing Board members, CAM's and association attorneys. The goal was to take over the Boards, which would in turn enter into seemingly legitimate contracts with various service providers, such as those involving landscaping, pool maintenance, and security services. Through this illegal control of the HOA principals, contracts would then be awarded to companies secretly owned and controlled by the conspirators. This was facilitated by bid-rigging and related illegal acts, all designed to redirect millions of dollars in HOA's funds back to the conspirators.

During the process of developing this scheme, the lead conspirators realized that, while they could make millions of dollars through the scheme, the greatest pot of money to be stolen was in fact through construction defect litigation claims. This was not surprising, given that the two principal

conspirators included a highly experienced attorney and construction company owner, both of whom specialized in construction defect litigation claims. In addition, both of these individuals were absolutely convinced that the current system was rigged, and that the other successful construction defect attorneys and remediation companies were already doing the same thing.

Thus, the scheme was put into full effect in the early 2000's. At this time the head of the conspiracy hired a team of individuals, including a licensed private investigator, to research literally every HOA in the state of Nevada. They had a grid rating system, and the specific goal was to rate every HOA for potential takeover. Issues targeted by the team included, among others, when the unit was built, the size of the HOA as the CD recovery amount was typically based on the "number of doors" in the association, the ease with which the Board could be corrupted through bribery or replaced through rigged elections, and the potential for influencing and controlling the assigned Community Association Manager.

I know this process occurred, not just because multiple key defendants admitted it as a result of their cooperation agreements. Rather, during the process of reviewing the evidence seized in the case, a process that took well over two years to complete, we discovered "targeting packages" containing detailed information collected on over 2400 separate HOA's throughout Nevada. These initial efforts narrowed the list of potential targets, and were then followed by and an actual intelligence gathering phase to identify final targets. This second phase included members of the team performing on-line database searches of county court and property records, secretly contacting paralegals and other support personnel at competing CD law firms, and conducting actual, on-site research at the HOAs in an attempt to determine suitability for the take-over scheme. The on-site research included a wide variety of techniques, including posing undercover at common areas, such as swimming pools, clubhouses and gyms, to covertly interview actual residents regarding potential defects. It also included illegal database searches and research of current Board members to identify potential negative or embarrassing information that might be used to encourage Board members to resign or otherwise coerce them into compliance with the scheme.

Once a final decision was made to attempt full take-over, units would be purchased in the targeted HOAs. The initial funds utilized to make these purchases are believed to have been provided by Chicago linked mob associates and were literally delivered to the main subject's office in pillow cases. Later, units were purchased through funds provided by the main attorney, who was able to obtain millions of dollars in loans through simple signatory agreements with no collateral. In a seemingly unprecedented action, several banks loaned this individual millions of dollars for the alleged purpose of funding construction defect litigation. The banks did this because, at the time, multi-million-dollar CD recoveries were common and considered by the banks to be a "sure thing." However, this was an expensive scheme given the number of HOAs and resulting units involved (over 40 were actually purchased as part of the scheme). Thus, towards the end of the conspiracy the units were refinanced and the equity obtained was used as a down-payment on additional units. These purchases were all Federal felonies in that the banks were defrauded on multiple counts of misrepresentation as the true intent of the loans was to facilitate a criminal conspiracy.

Once the units were purchased, a percentage of the unit was often deeded to a prospective straw Board member. These individuals would then run for positions on HOA Boards. Victories were assured through election rigging and often bribery of the association's community manager or attorney. Once the straw Board members obtained seats on the association's Boards, "plants" at meetings would read scripted statements prepared by the conspirators raising alleged issues of construction defect and requesting immediate action. This tactic was intentional and specifically designed to remove suspicion from the newly elected straw Board members. The Board members would then request the association's manager or attorney to contact attorney's specializing in CD matters to investigate the claims raised by the planted audience members. Not surprisingly, the conspirator attorney was always brought in and eventually hired to pursue CD litigation against the builder and associated subcontractors. This individual always won the contract through bid rigging as the conspiracy controlled the CAM and the CAM controlled which bids were accepted and brought before the Boards.

Thereafter, Chapter 40 notices were immediately filed, and inevitably litigation followed. The conspirators had a rule of thumb in this regard. Specifically, their moto was "sue high, settle low, and do as little repair work as possible." Thus, in the end, the conspiracy not only defrauded the homeowners by illegally taking control of their Boards for personal benefit, they defrauded them again at the end of the scheme by destroying the value of their homes through the filing of CD litigation and failure to actually conduct repairs. Additional damage was done to the associations through the eventual default of mortgage payments on the units used to qualify plants for their positions on the HOA Boards. Almost every one of these units eventually went into default, thus significantly damaging surrounding property values for years.

Given the constraints of today's hearing, there is not enough time to detail even a fraction of the illegal, intrusive, and damaging actions taken by the conspirators in this matter. However, it is my hope that a summary of the following key issues will assist and guide you in your decision making process with respect to Section 8 of AB-421 (HOA Standing):

- Affordable Housing: At the inception of the case I and other investigators met with a wide variety of government and private officials involved in the CD industry. Based on the information obtained in these meetings, it became patently clear that a by-product of the criminal scheme was a direct increase in the value of condominium housing in Las Vegas. Specifically, it was learned that the price of a condominium in Las Vegas at the turn of the century was approximately $10,000 to $15,000 more than it would have otherwise been due to increased insurance premiums caused by the perceived inevitability of CD litigation. These increases were directly passed on to homebuyers. This was viewed as a major issue as the impact was felt most by those who could least afford it—young individuals just starting their careers and senior citizens. Similarly, due to the extensive loss in value and negative publicity caused by the investigation, one complex (Chateau Versailles) lost its HUD Certification, thereby making it virtually impossible to obtain a bank-secured loan on properties. At the apex of the investigation in 2010-12, this resulted in units that previously sold at over $200,000 being sold at approximately $50,000 to cash only purchasers.

- Limited Scope of Scheme: It has been argued by those supporting AB-421 that Operation GrandMaster was a "limited" problem involving only a small group of criminals in Las Vegas. This

statement is patently false. Operation GrandMaster was in fact a mob inspired scheme conceptualized by Chicago LCN associates and brought initially to Las Vegas. Not only did the group target over 2400 HOA's throughout the entire state of Nevada, by 2008 the scheme had expanded to include efforts in Arizona, Texas and Florida. In one of the most flagrant acts of the entire scheme, the lead Las Vegas attorney associated with a Florida law firm and actually flew several associated Florida attorneys to Las Vegas to teach them how to conduct the scheme. These attorneys later filed CD law suits in Florida and were subject to a spin-off criminal investigation in that state.

- Many of the CD cases that were filed were not supported by actual defects: It has also been argued that Operation GrandMaster should be viewed in a limited manner as all of the defects supporting the CD law suits were in fact real. This is also incorrect. Rather, there were multiple instances in which the conspirators could not prove actual defects, or deceived the homeowners about the likelihood of potential defects, in order to file a CD law suit. In many instances this was accomplished through deceptive presentations to home owners during the pre-Chapter 40 filing process. The following two examples are illustrative of the type of deceptive techniques used to deceive and manipulate homeowners:

    - Fictitious Constructions "props": The lead attorney had a demonstrative "prop" created and used it to incite homeowners and gain support for filing CD litigation. The prop consisted of an alleged section of wall that contained a "half-empty" can of Mexican beer allegedly discovered left in a wall during construction and found during destructive testing. The implication was that the construction companies commonly used non-union, illegal aliens to build the units and they were often so drunk while working that they actually left half-empty beer cans inside the walls during the process. This was a clear phycological ploy designed to enrage home owners by praying in biases against illegal aliens and non-union workers. This prop was found and seized by the FBI during the execution of search warrants on the primary attorney's office.

    - Fictitious Water Damage & Stripers: The conspirators knew that the greatest fear of homeowners was defective construction related to health and safety issues. As a result, they often utilized the fear of water leaks resulting in dangerous mold growth to motivate homeowners to support destructive testing, a required precursor to CD litigation. This was a dual-purpose deceptive technique as it is commonly difficult to obtain homeowner's permission to conduct destructive testing because it often results in the homeowner being displaced from their unit for extended periods of time. This was the case at Pebble Creek Village HOA. As a result, the conspirators concocted a scheme involving strippers who would knock on the doors of units owned by single men on Sunday mornings, background information provided illegally by the CAM who was receiving kickback payments in return for cooperating in the scheme. The strippers were essentially dressed in bathing suits or G-Strings and a jacket from an alleged water intrusion detection company. The strippers would inform the owners that they believed there might be water damage in the unit and asked permission to enter the unit and inspect the walls. They would then run a rigged radar detector over several walls, claiming the device was a water intrusion detector. During the alleged inspection they would cause the device to alert with a loud beep in front of the homeowner and claim that this was proof of defective pipes, water intrusion, and likely mold growing in the walls. Finally, they would flirt with the homeowner, offer him their telephone number, and then ask them to sign a consent form authorizing destructive testing.

- Character Assassinations of Legitimate Opposition: As with any criminal scheme of this size, there were many moving parts and often times the conspirators made mistakes which, at least in part, exposed what they were doing. This was especially true at Vistana, the epicenter of the scheme in 2005, when several legitimate homeowners identified planted Board members and exposed a rigged election. In response, the conspirators utilized the services of a well-known lobbyist and political consultant to create negative advertising and character assassination efforts designed to discredit those individuals who opposed the scheme. This included, but was not limited to, circulating anonymous fliers and confronting homeowners with allegations of racism and criminal records. In at least one instance the conspirators had an opposition member arrested by the involved LVMPD command staff on bogus charges as a means of intimidation.

- Non Completion of Repairs—"Value Added Engineering": As noted above, the purpose of the scheme was to obtain as much money from the HOA, through any means available, not to correct defective construction. As a result, in almost every instance the repair work done subsequent to settlement of the CD litigation was either not completed at all, or done at sub-standard or deceptive levels. To conceal this practice, the conspirators would refer to the work completed as "value added engineering." One of the best examples of this was the roof repair at Vistana. This work was alleged to have cost, and billed to Vistana, at several million dollars and supposedly included a complete replacement of all identified building roofs. However, in reality, the conspirators arranged for an unwitting subcontractor to conduct a simple repair of several problem areas. The repair job cost several hundred thousand dollars and the conspirators simply pocketed the difference. In a similar situation at Vistana, the conspirators failed to correct an alleged issue with the firewalls between garage areas and living spaces that were not sufficient to meet fire-code standards (a serious health-safety violation). Rather, they simply used a special type of fire-proof paint (Elastomeric) to cover the existing firewall and claimed the problem had been corrected. Again, the money saved through this "value added engineering" was not passed on to the homeowners, but rather pocketed by the lead conspirator.

In 2012, at the height of the investigation, several meetings were held with the investigators and prosecutors assigned to Operation GrandMaster. This was a result of the fact that members of this body, the Nevada State Senate, had reached out to the Justice Department in an attempt to obtain assistance in crafting legislation that might prevent the criminal scheme from happening again. During this meeting several issues were identified as the key legal issues that facilitated and encouraged the conspirators to initiate the HOA take-over/CD litigation scheme. While there were multiple issues identified, the two most critical were the following:

1. Lack of Legal Penalties for Bribing CAMs, HOA Board Members, and Rigging HOA Elections: The most pressing issue was the fact that, under Nevada law at the time, there were no statutes criminalizing the bribing of licensed CAMs and HOA Board Members. Similarly, there were no criminal prohibitions on rigging HOA elections. In response, a meeting was held with a leading member of this body and a criminal statute was drafted correcting this glaring omission. Later that year the legislation was enacted into law.

2. Authority of HOA Boards to Unilaterally Initiate CD Litigation on behalf of Homeowners Without their Specific & Individual Consent: The second most important issue, which lead directly to the success of the criminal scheme, was the fact that the HOA Boards were allowed to unilaterally initiate CD litigation on behalf of entire associations, without

the specific consent of individual homeowners. Because of this, the conspirators only needed to control a majority of any given HOA Board in order to initiate the scheme.

In 2012 and 2015, legislation was passed by this body, and later enacted into law, correcting both of these issues. While AB-421 does not seek to revoke the criminal prohibitions on bribing Board members and CAMs, it does take a dangerous step back, in my opinion, by allowing Board members to once again unilaterally initiate CD litigation on homeowner's individual property without their specific consent.

As I have detailed, the HOA/CD litigation scheme was a sophisticated, far-reaching, mob inspired criminal scheme motivated by millions of dollars in potential illicit gain at the expense of hard-working Nevada homeowners. The lynch-pin of the scheme was the ability to easily corrupt HOA Boards and then use the authority of the Board to unilaterally file CD law suits without individual homeowner's specific consent. If this body decides to pass AB-421 in its current form, it will reinstate the ability of Board members to file such lawsuits. Based on my extensive experience investigating HOA Boards, CAMs, industry lawyers, and sophisticated public corruption and organized crime schemes, I can tell you with virtual certainty that, if this body approves the HOA standing provision of Section 8 of AB-421, there is no question as to whether this scheme will happen again in Nevada. Rather, the only honest question is *when* it will happen. The evidence and outcome of Operation GrandMaster clearly demonstrates this fact. It is simply too easy to manipulate and control HOA Boards and there is too much money at stake in unilateral CD litigation to believe otherwise (estimated to be approximately $1.5 billion in recoveries in Nevada to date).

I respectfully submit this statement on the record and welcome any questions the committee members might have regarding my experiences as the case agent of Operation GrandMaster and how it guided my opinions with respect to the HOA standing issue of AB-421 contained in Section 8 of the proposed bill.