

**NEVADA LEGISLATURE
MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY
Seventy-fifth Session
April 2, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:41 a.m. on Thursday, April 2, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SENATE BILL 216: Revises provisions regarding the addition of **rolling shutters** to units in common-interest communities. (BDR 10-1078)

SENATOR MICHAEL A. SCHNEIDER (Clark County Senatorial District No. 11): This bill comes from the Energy, Infrastructure and Transportation Committee. Shutters are an outstanding energy tool. You can put the shutters on the outside of your unit. They come down, they are a good insulator and they keep the sun out; they cut your power usage tremendously.

The second benefit we addressed a few sessions ago is they are good for security. In my district, I have many senior citizens who live in condominiums, houses and associations, but especially condominiums. They want shutters; they are concerned about their security. I have talked to many senior ladies in the district who live in condominiums—Heritage Square, Weatherstone and areas like that—and request these. Shutters are not allowed right now. The homeowners' associations (HOAs) decide they do not like them for some reason.

You were provided with a document (Exhibit D) from the Governor of Colorado. The Governor of Colorado has a list of things they are passing for their HOA. They will allow numerous items, including evaporative coolers, outdoor lighting, and retractable clotheslines in HOAs. That is controversial in Nevada. They are doing awnings, shutters, trellises and other energy-reducing shade structures in Colorado.

As we have discussed in our Committee and brought to the Senate Floor, the cheapest watt of energy is the one never used. That is what we are getting at with shutters. You put shutters on; they are going to leak. You drill a hole and penetrate the membrane that seals the house; god made caulk for a reason. You can caulk all of these things.

Last Session when we discussed this, people were saying Senator Schneider's brother sells Rolladen shutters and that is why he brings that forward. You will hear silly things like that going around, and it gets insulting. You have attorneys representing HOAs tell you how horrible shutters are.

In south Florida, they are mandated on homes and condominiums to protect from hurricanes. When you have a hurricane, water comes sideways at your house over 100 miles an hour. A shutter protects; it saves the structures.

This has to do with reducing our energy consumption and letting our people feel more secure, especially seniors.

CHAIR CARE:

These are the roller kind for the most part. I have seen these on television commercials, they come down, they go up; is that what we are talking about?

SENATOR SCHNEIDER:

That is exactly what we are talking about. Let me indicate everybody says Rolladen rolling shutters. That happens to be a brand name like Xerox or Jacuzzi. They advertise in Las Vegas, but there are other brands. You can go to Home Depot and Lowe's, which sell different brands. We are not here pushing one particular brand.

CHAIR CARE:

Senate Bill 216 says an association may not unreasonably restrict. My question is what does that mean, how would the determination be made as to what is a reasonable restriction?

SENATOR SCHNEIDER:

What we are addressing is they come in different colors and they should match the color palette of the building and the association.

CHAIR CARE:

Going to page 2, lines 41 to 42, say: "... which is not part of his unit, which is common element or limited common element ..." If you would explain that to the Committee, please.

SENATOR SCHNEIDER:

On condominiums and town homes, especially condominiums, you only own the inside of the unit. You own the paint on the walls and inside. In a condominium unit, you do not own your walls or exterior walls, which are part of the maintenance of the association. We are saying you can mount these on the exterior of your unit, over your window and doors, and they are common elements of the association.

CHAIR CARE:

You mentioned Heritage Square South, which is where I moved when I first came to Las Vegas. As an example, that complex had 510 units, more or less. Some of them were two-story units, some single-story units. Everybody had the big front window. I can see the shutter coming down and going up on that. Are you saying that is a common element?

SENATOR SCHNEIDER:

I am not sure how Heritage Square does theirs. Does the association restucco and repaint the exterior of the unit?

CHAIR CARE:

They did, but that was in the covenants, conditions and restrictions (CC&Rs). I am using this as an example.

SENATOR SCHNEIDER:

That would be common elements.

CHAIR CARE:

Is there a distinction made for cosmetic purposes, such as Heritage Square South where you have homes that do not rise above the second story, and the high-rise condominiums which can be seen a few miles away.

SENATOR SCHNEIDER:

No distinction. What I would suggest is those high-rise buildings being built in Las Vegas which face east or west. All of that glass gets hot. My mother-in-law lives in a high-rise building, and her unit faces west. Her unit gets hot, as you can only imagine, with the glass facing west.

CHAIR CARE:

My last question is, are there HOAs that already permit shutters?

SENATOR SCHNEIDER:

There are HOAs that do permit them. But some do not. In single-family homes, they have been permitted. The lobbyist for the Nevada Association of Realtors has shutters all around his house. I have talked to him and his wife, and they thoroughly enjoy their shutters, especially when he is lobbying. She puts them down at night and feels quite secure. He says their power bills are reduced substantially. He lives in Summerlin South; he got shutters approved there. Summerlin North has had some heartburn with them. Some townhomes in Summerlin have them. It is hit and miss all over.

There was a problem in Summerlin North where I became involved in a particular case. A woman who works for the school district as an administrator in charge of the hearing impaired. She is severely hearing impaired. She was putting shutters on her unit for security in her downstairs bedroom and sliding glass doors so no one could enter in the back while she was sleeping at night. Then she went to put them on her upstairs because she has her equipment upstairs. The upstairs, which faces west, got really hot so she put shutters up there and that is when Summerlin North association said she could not do that, even though the subassociation said it was okay. She had to attend many hearings. When there is a hearing with a person who is severely hearing impaired, the HOA has to pay for an interpreter. Some associations would rather Senate Committee on Judiciary April 2, 2009 spend the money and fight. I attended a few hearings with her and was amazed that the association pays hundreds of dollars to provide a translator.

SENATOR COPENING:

Just a few questions to make sure I understand what Senator Care was just talking about. In section 1, subsection 4, are you saying that an association—if I owned a condominium—is not allowed to restrict me from changing the appearance of another part, something that is not my unit. Take my next-door neighbor's unit and the common element, which in condominiums and town homes, the outside is generally owned by the association or the responsibility of the association. You are saying they cannot restrict me from changing that outside even if it is not my unit? Am I reading this correctly? I am taking out some of the words in between, but an association may not restrict a unit's owner from changing the appearance of a window which is not a part of his unit but a common element or limited common element.

SENATOR SCHNEIDER:

I would defer to your legal counsel on the interpretation. The intent is they can put a rolling shutter over their own windows. Remember, when it attaches to the exterior wall, it is considered a common element because your dues are paid every month and the association paints and maintains the exterior. If the Committee wanted to define it more properly, the owner of the unit would be responsible for the maintenance of those shutters and must take the shutters with them if they leave. But if they take them, they would be responsible to put the wall back to its original condition. They would have to fill the holes and paint the walls.

SENATOR COPENING:

That was my second question. Does it make it the responsibility of the association, which incurs an additional cost?

As far as defining shutters, you gave an example of the Rolladen. You are also talking about shutters viewed as decorative, the wooden shutters, and any kind of design that would go over it. The reason I am asking that question is perhaps we need to have a definition of the need for the shutters. Many shutters are created specifically for decorative elements and have worked for master-planned communities. A lot of thought, time and money goes into the design of that particular community. We call it the integrity of the community. I have a concern with allowing people to come in and possibly changing the look.

SENATOR SCHNEIDER:

If you want specifically to say rolling shutters, that is fine. It is not my intent to have decorative shutters that look like you live in New England with a shutter on each side.

SENATOR COPENING:

Thank you. That answers my question.

CHAIR CARE:

I read it the same way Senator Copening does, so maybe we can play with the drafting of this.

SENATOR PARKS:

Senator Schneider, could you comment on the issue of CC&Rs that may already be in place. This says if you have CC&Rs in place which prohibit shutters, someone could still install these rolling shutters.

SENATOR SCHNEIDER:

Correct. This as a State law would supersede the CC&Rs. We have done that a lot through NRS 116. On the floor today, we will vote on a bill to allow solar on the roofs in HOAs. Solar collectors have been outlawed in many HOAs.

CHAIR CARE:

If the homeowner or unit owner wants the shutters and CC&Rs prohibit it, is there the option of attempting to remove the board or to amend the CC&Rs? Apparently, you do not think that would work?

SENATOR SCHNEIDER:

No, that does not work. With most of these CC&Rs, you have to have a supermajority to change your CC&Rs. Some of the old ones go up to a 75- to 90-percent vote, and if you can get 25 percent of the people to show up for a vote on anything, that is big time. I have areas in my district where only 20 percent of the people are registered to vote, and on Election Day, 20 percent of that 20 percent votes. It is virtually impossible to change CC&Rs. It is like changing our Nevada Constitution; it is really hard to change.

CHAIR CARE:

I do have a few letters in support of S.B. 216. We will make them part of the record if you wish. One is from Wanda Jaranowski (Exhibit E), and the other, Barbara Mello (Exhibit F).

SENATOR SCHNEIDER:

I would like to point out to the Committee that Colorado is already geared to do these things.

CHAIR CARE:

We will make that part of the record also, Exhibit D.

SENATOR COPENING:

Because you have referenced Colorado, Exhibit D says under page 2 you do not have the right to install energy-efficient measures on limited or general common elements or on property owned by someone else. If you live in a condominium, it says you cannot do it unless they live in a condominium. Do you agree with Colorado?

SENATOR SCHNEIDER:

No. But Colorado does not have our NRS 116. They are not as progressive as we are yet. We have always led the nation in HOA rules. But you go to south Florida, they are mandated. Ordinance says homes must have them because of the hurricane problem.

I never play golf in mid-summer, but you go to a golf course community then and see shutters down on the houses. Those belong to snowbirds. They lock their places and leave. Nothing inside fades from the sun, and they are secure. That is what we are talking about. People have the option with these. Let people have the options to reduce their power bills and feel more secure.

CHAIR CARE:

I do not have anybody in Carson City to testify in favor of the bill. Kyle Davis, Nevada Conservation League did sign in favor of the bill but did not sign in to testify. In Las Vegas, Mike Henle signed in for the bill but not to testify. Mr. Henle, was it your intent to testify?

MIKE HENLE (Rolladen Rolling Shutters):

The shutters have become so important in many ways. The Rolladen Company was started here in 1984 before other companies joined, primarily because of the crime.

Then we got into the energy issues, and now with the deteriorating economy, crime is rearing its ugly head. As we know, shutters do save a lot of money on power. But right now, crime is running rampant down here. When people case a neighborhood, they go into them, be it a single family or a town house. They do not take your stuff, they go in and trash the

place. The bottom line is they do not mess with a home that has shutters, no matter what the brand.

There are so many elements to shutters. They have been in Europe for over 100 years, and they are part of construction. They started going big time in southern Nevada and other places. There are many reasons to have them.

As Senator Schneider alluded, if somebody wants to put pink shutters on the side of a condominium or town house, that is not a good idea. But if it meshes with the color and compliments the design, there is a good reason to have them.

We go back to when the original bill was passed. An elderly single lady named May Roy lived in Sunrise Village. Suspects came into her home and took everything. She had just left the house; thankfully, she was gone. She has shutters on her home now, and feels better because of it. An attorney had fits about them and raised all kinds of Cain. Mary Roy still got her shutters, and she is happy.

I see no reason not to pass S.B. 216 as long as the colors match.

JOHN LEACH:

This bill is more of a conflict between real estate rights and the right to have shutters. Senator Schneider was successful a few years back in getting a provision that already provides the relief you are talking about. The statute says an association may not unreasonably restrict, prohibit or withhold approval for a unit's owner to add shutters to improve the security of the unit or to reduce the cost of energy. That has been the law in Nevada for many years. Associations are already restricted from doing that.

The only purpose of S.B. 216 is to expand that to property you do not own. Senator Schneider pointed out that in a condominium, you own the airspace. You own inside, you do not own the exterior. You do not maintain it, and you do not individually pay for it. The association takes care of the paint, stucco, roofs, etc., based upon assessments paid by everybody. It is a common element, it is not owned by the individual.

I question, from a constitutional standpoint, whether you can legislate that I can put something on property I do not own, even if you say I am responsible for maintenance of the shutter. With all due respect, you have to drive around Las Vegas for a while and see how many units have been abandoned and the condition they are left in. To suggest we have a provision that says the homeowner who installs this shutter is responsible to maintain it does not mean it is going to be maintained. In condominiums, the roofs and exterior walls may be maintained by the association, but they are owned in common by all unit owners.

Traditionally, condominium CC&Rs do not give title to the association. It says the association must maintain those components, even though they are owned as undivided interests by all unit owners.

Take a hypothetical. John Leach decides to purchase a shutter and place it in the common area. He decided not to pay for it, he is unhappy for some reason. Now the person arguably has a mechanic's lien because of an improvement to a building. Guess who gets sued when John Leach does not pay for it? They would have to name all 100 units because those

people have fractural interests. This is a concern if someone is trying to sell a unit because there could be a lawsuit involving the buildings impeded.

There are liability issues. Senator Schneider alludes to the maintenance issues and suggests this could be only a few nails, a few things. If you are in a home that has had water intrusion and there is mold inside, the people suggest that is more significant.

Lastly, in 1996, they passed a federal Telecommunications Act which granted people the ability to install satellite dishes and circumvented HOAs, which were restricting this and now approve satellite dishes. However, even with the FCC, 13 years down the road, different rules apply if you own the unit versus if you do not own the unit. If you do not own the condominium, you cannot put a satellite dish on the roof of that building. You do not own it; you cannot install it. If you have a limited common element or an exclusive use area where you could install the satellite dish and it does not intrude into the common area, that is fine. Otherwise, you cannot because you do not own that unit.

As Senator Copening pointed out in the Colorado explanation, it is a different type of housing product. When you buy that type of housing product, you have to understand what the differences mean.

Since we already have a statute that grants the right of an individual to install shutters for security and to reduce energy costs, and if they are not allowed to put them on the exterior, they could be on the interior. If you are trying to protect yourself, if the paramount issue is security, there are other ways to do that than by putting a shutter on the exterior property you do not own.

This bill would be fraught with many issues. I am not confident this bill even passes constitutional muster because you are allowing someone to do something to someone else's property without their consent. When it comes to CC&Rs, people say they bought their unit believing that was the game plan.

CHAIR CARE:

I am looking at the proposed NRS 116.2111, subsection 2, paragraph (b), subparagraph (3) in S.B. 216, page 2, lines 23 and 24.

MR. LEACH:

Correct.

CHAIR CARE:

It says "An association may not unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit shutters to improve the security of the unit or to reduce the costs of energy for the unit." What if we were to add to subsection 3 something like "shutters, including but not limited to exterior rolling shutters, to improve the security of the unit or to reduce the costs of energy for the unit."

MR. LEACH:

That would still pose a problem with subsection 2, paragraph (b) because the introductory language says "to a unit." If you added rolling shutters—I am not a proponent or opponent to rolling shutters—it is where it is placed. It appears that subsection 2, paragraph (b) is the preface to those sections including the shutters. Since the condominium owner does not own the exterior, even if we added rolling shutters to subsection 3, I am not opposing that, it

would not change which owners would be able to do it. Senate Bill 216 is aimed to allow the condominium owner to put them outside units on property they do not own.

CHAIR CARE:

I have listened to Senator Schneider and understood his intent. My concerns are the same as Senator Copening's—if only there were a way to craft language so it is clear we are only talking about rolling shutters. I am thinking of where I used to live, Heritage Square South and that big front window. My unit faced west, and I can tell you in July at approximately 5 p.m., I could have scrambled eggs in the living room. But if I ever put a rolling shutter in back then, I am thinking exterior or interior? There may be a way to craft the language so it cannot be construed to mean common areas.

MR. LEACH:

The biggest objection of the parties to whom I have spoken is it is not their unit. Senator Schneider was accurate when he said in the single-family residential units, this already applies. Since homeowners own their single-family residential unit, they can go ahead and install shutters—although the association does have the ability to reasonably restrict. But as Senator Schneider pointed out, that is happening for those two legitimate purposes, security and reducing energy. These are significant purposes. We are asking the Committee to consider the fact you can only do it on property you own, and you still have to recognize the differences in the types of housing product.

SENATOR SCHNEIDER:

If I may respond. In Mr. Leach's amendment, you are discriminating against people who happen to live in condominiums right now. For the good of society, we are making huge changes in the way we deal with energy. The Committee could look at putting shutters on windows and doors that lead directly to a person's unit—perhaps you could craft language like that. We are talking about the exterior, which is a common element, but it is possible you could attach it to the common element that leads directly to your unit. This is a higher good than just a particular HOA. Mr. Chair, even Heritage Square, where you used to live, was not wired for cable. The unit you owned probably has cable today; they drilled through the wall and brought it in. Those things have been going on for years. People demanded cable, so cable was installed, coming through the wall into the units.

To respond to Mr. Leach on the matter of putting the shutters on the inside: you are attaching them to a common element. They have to be anchored to a common element, and the shutters do not work inside because they heat up inside. Outside, they are insulated, and there is airspace. They work outside but not inside. The sun will come through the window and heat them up inside. They do not work inside at all.

MR. LEACH:

Discrimination is a strong word. People buy different housing products with different benefits and detriments. We cannot change the real estate law by saying because it is better efficiency or security. You can take someone else's interest in real estate.

I cannot testify to the success of placing a shutter inside a unit. I do not know how efficient they would be. I still have a problem with the notion of placing shutters on components you do not own. Whether it is liability, maintenance or constitutional issues, S. B. 216 is fraught with issues if modified as you suggested, Mr. Chair. Adding the reference to rolling is not

the issue. If homeowners want to add rolling shutters, no problem; recognize the distinction that "on a unit" is the problem.

JONATHAN FRIEDRICH:

I have submitted written testimony (Exhibit G). I came here with the thought I was partially against S. B. 216 in that it would create an esthetic patchwork quilt on multifamily condominium-type units. I have no problem with S. B. 216 when it deals strictly with residential, individual, standalone homes.

I have heard testimony but have not seen any facts. I am somewhat neutral now as far as the energy savings. I would love to see some independent testing laboratory reports on what R value these shutters provide and how much power consumption they save.

As far as putting these shutters on the outside, it is a question of esthetics on a multifamily complex. Film could be installed on the inside of the glass, which would cut down on heat transmission. Shades can also be used.

As far as security is concerned, the homes built here in the last ten years or so are constructed of approximately 1-inch foam with approximately three-sixteenths of an inch of synthetic stucco on them. Somebody can easily kick right through the walls. If they could not get through the windows because of the shutters, they would still have easy access into the premises through the walls. At this point, I am somewhat neutral on the bill.

ROBERT ROBEY:

I moved from opposed to neutral.

MR. HENLE:

I have some figures for you. The slats have 46 millimeters on the five-sixteenths and 55 millimeters on the three-eighths. To reiterate one more thing from Senator Schneider, some attorneys are saying you can put these inside. Senator Care, you remember how hot the inside of your unit was in July at 5 p.m? Shutters are made to block the heat. If you put them inside and the heat has gotten through the window and radiated on the shutter, trust me, you can cook the egg real quick.

CHAIR CARE:

I received an e-mail correspondence from Michael Shulman with letters attached in opposition. Meanwhile, Mr. Wilkinson, if you can play with the language to see whether we can make it clear we are talking about the person's property, not the common elements. We can talk about it at the next work session.

We will close the hearing on S.B. 216.