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CURRENTS

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2011 Nevada Legislative Session

The 76th Session of the Nevada Legislature adjourned in June, 2011. In this session, over 500 bills were passed by both the Senate and Assembly and many of them have been signed by Governor Sandoval. This issue of *Currents* focuses on a few of the most important new laws as they pertain to some of our firm’s primary practice areas. Many of these issues are highly rele-

vant today, such as the new limitations on second lien holders pursuing deficiencies after short sales or foreclosure sales. There are many other important bills which were passed including topics such as animal cruelty, cell phone use, education reform, transgender rights, and smoking bans. As always, if you believe that any of these new laws impact you or your business and you would like

more information on any of the topics contained herein, please do not hesitate to contact us. For a more comprehensive list of the bills which were passed, please visit our website www.inclinelaw.com for links which can direct you to the Legislative Counsel Bureau and the full text of all the laws passed, as well as those which did not make it past the Governor’s pen.

Business and Tax Update

SB 504: Among other things, this bill reduced the interest rate on the overpayment of certain taxes and on certain illegally collected taxes in Incline Village and Crystal Bay. Old rate: 6% per annum. New rate: 3%.

SB 75: Directs the State Treasurer to set up an independent corporation for public benefit intended to allow the state to provide seed capital, or venture

capital, or private equity funding in certain industries.

SB 564: Authorizes the Secretary of State to adopt regulations to allow business entities to use the most recent technology available to carry out their powers and duties, particularly with regard to serving notices and attending ownership or management meetings. It also authorizes the SOS to de-

velop and make available a model limited liability company operating agreement.

SB 405 is a 70 page bill relating to Nevada business entities. Many sections of the bill revise provisions concerning entity records, delivery and receipt of notices, and types and content of notices. Other sections deal with mergers and special

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provisions for corporations with 200 or more stockholders or where stockholders have acquired a certain amount of shares. Sec. 23 of the bill specifically authorizes a stockholder to grant a proxy to consent or dissent in writing to a corporate action. A number of sections deal with winding up and dissolving corporations.

Sec. 15 affects the liability of shareholders of a dissolved corporation. Sec. 53 clarifies and strengthens the

right to indemnification under articles and bylaws.

A number of sections (52, 69, 75 & 82) revise language concerning a “charging order” as the exclusive remedy for collection of a debt against a shareholder, member of an LLC, or partner. These sections attempt to clarify that the charging order is the exclusive remedy and prohibit any other action, including foreclosure of an owner’s interest, which a court might try to impose.

Sec. 96 revises provisions regarding mergers where shareholders of a surviving domestic corporation are not required to give consent. And, Sec. 97 clarifies provisions of existing law dealing with conversion of domestic entities or partnerships into foreign entities or partnerships, or vice versa.

AB 202: Provides for partial tax abatements for new manufacturing businesses in Nevada which renovate existing buildings to meet energy efficient standards.

Estate Planning and Probate

SB 221: Modifies current estate planning, estate administration and probate law. The Act is intended to improve the law relating to estate and trust issues, with these objectives: (a) to simplify the process of transferring assets at death, whether or not probate is required; (b) to clarify the rights of creditors as to non-exempt assets belonging to trusts and to decedents; (c) to clarify exemptions from creditors’ claims that do apply; and (d) to improve and update our laws to make Nevada an ideal jurisdiction for probate and trust matters.

AB 244: Enacts the Uniform Partition of Heirs Property Act to provide procedures and replace cer-

tain provisions of existing law in actions to partition “heirs property.” Heirs property is defined as “real property owned by two or more person as tenants in common where: (1) the property is not subject to an agreement governing its partition; (2) one or more of the cotenants acquired title from a relative; and (3) a certain percentage of the interests in the property are owned by relatives or an individual who acquired title from a relative or a certain percentage of the persons who own interest in the property are relatives of each other.” The bill requires the court hearing an action to partition real property to determine whether the property is

heirs property and, if it is, the bill requires the court to determine the fair market value of the real property, assuming sole ownership of the entire property, by either an appraisal, adopting the value agreed to by the tenants, or by determining the fair market value after an evidentiary hearing before the court. The bill also provides, as a first alternative to a partition of heirs property by sale, a mechanism for the buyout of the interests of persons who requested the sale and a method for determining the purchase price of those interests based on the court’s determination of the fair market value of the property.

“The Act is intended to... simplify the process of transferring assets at death, whether or not probate is required”



Are Your Hands Free?

Every legislative session we pick one law that is a “blooper” law of the session. Remarkably, our legislature did not appear to waste too much time on laws naming a state bug this year. They did, however, make driving while texting or using a mobile phone illegal. We figured this is probably the single piece of legislation that impacts most if not all of you so we elected to highlight it for you.

Senate Bill 140, which takes effect on October 1, 2011, prohibits a person from using a cell phone or other handheld wire-

less communication device while operating a vehicle without the use of a Bluetooth or similar device to keep hands free for driving. Texting while driving is also included in the bill’s restrictions.

A violation of the law is a misdemeanor with a first offense (within immediately preceding 7 years) punishable by a fine of \$50. A first offense is not treated as a moving traffic violation. A second offense (within immediately preceding 7 years) is punishable by a fine of \$100. A third offense (within immediately preceding 7

years) is punishable by a fine of \$250. If a person is convicted of a third or subsequent offense, the person’s driver’s license will be suspended for 6 months in addition to the imposition of the fine.

While the bill becomes effective on October 1st, section 4 of the bill provides that until January 1, 2012, a law enforcement officer must not issue a citation for a violation but must give the person a verbal or written warning only.

“A violation of the law is a misdemeanor with a first offense punishable by a fine of \$50.”

Real Property and Foreclosure

AB 273: Limits second lien holders to a six month statute of limitations for deficiency actions after foreclosure or short sales and provides limitations on recovery for lenders who bought notes at a discount or received insurance proceeds to cover the loss after a sale.

SB 414: Provides 100% anti-deficiency protections after a short sale in

certain circumstances and prohibits lenders from unreasonably delaying short sale approvals.

AB 373: Makes it a misdemeanor for a homeowner to remove or destroy any portion of their property when a foreclosure is pending.

AB 77: Adds forensic loan auditors and other service providers to the list of “covered services” for which a 645F license is

required (645F licenses are required for non-exempt persons or businesses providing loan modification or foreclosure consulting services). AB 77 also limits the former exemptions for people/businesses arranging or negotiating loans secured by real property the effect of which is drastic limitations on hard money lending

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without a licensed mortgage broker being involved. **AB 308:** Provides additional requirements for 645F licensed loan modification and foreclosure consults including additional restrictions on upfront fees and disclosures. **AB 284:** Places additional requirements on lenders to prove ownership of a loan and authority to foreclose when filing a notice of de-

AB 32: A contractor must submit any request for a temporary or permanent increase in the contractor’s monetary bid limit at least five business days before making a bid over its existing bid limit and the request must be approved by the Nevada State Contractors Board before the contractor makes the bid or signs a contract. **SB 18:** The Nevada State Contractors Board can order a contractor to correct work, among other things. Under new law, the Board can discipline and fine a contractor for failing to

AB 114: Increases certain fees applicable to water rights. **AB 115:** Increases the State Engineer’s time for action on water rights applications and changes the

fault. **AB 398:** Provides for a new Chapter addressing certain issues relating to commercial tenancies including tenant remedies for unlawful lock-outs. **AB 226:** Addresses new residential landlord/tenant regulations including new notice requirements prior to eviction and remedies for a landlords failure to provide essential services.

Contractors

comply with an order made by the Board. **SB 19:** Contractors and contractor license applicants must notify the Nevada State Contractors Board if they have been convicted of certain crimes involving children, violence or sexual offenses, and other crimes involving moral turpitude. Under the new law, the Board can discipline and fine a contractor for failing to make the required disclosures. **SB 110:** Under new law, certain counties and cities must establish procedures to issue business licenses to

Water Rights

procedure regarding pending and “stale” applications. In summary, the law appears to have been changed to address the potential for litigation over stale applications that was at the center of

SB 314: Adds registration/licensing requirements for “asset managers” that handle pre and post-foreclosure management services for lenders. Also removes the ability of a purchaser to waive the seller’s real property disclosures required under Ch. 113. **AB 454:** Extends deadlines for presentations of final subdivision maps.

certain contractors. This appears to only affect Clark County and cities therein – Henderson, Las Vegas and North Las Vegas. **AB 203:** Under new law, the Nevada State Contractors Board is *required* to issue an administrative citation to any unlicensed contractor and contractors without proper specialty subclassifications. Prior law made the citation discretionary with the Board; now issuance of the citation is apparently mandatory.

Great Basin Water Network v. State Engineer (126 Nev. Adv. Op. No. 20, 6/17/2010), discussed in *Currents*, at Volume 3, Issue 3, Summer, 2010.



Collection of Judgments

SB 348: Eliminates certain limitations on the amount of life insurance and annuity payments exempt from execution by a judgment creditor. Under existing law, the amount of life insurance benefits exempt from execution by a judgment creditor is limited to policy proceeds attributable to no more than \$15,000 in annual policy premium. Under the new law, an unlimited amount of life insurance benefits is exempt from execution by creditors. Under existing

law, the amount of monthly annuity payments exempt from execution is limited to \$350/month. Under the new law, annuity payments are completely exempt from execution by creditors, subject to certain limitations for transactions made to defraud creditors.

AB 223: Adds new exemptions from execution by a judgment creditor and substantially changes procedure for executions, attachments, and garnishments and claiming ex-

emptions. Some highlights: Up to \$2,000 in a personal bank account received from certain sources within the preceding 45 days (e.g., Social Security, veterans and disability payments), is exempt *and must remain accessible to the debtor*. The new law added and adjusted some exemptions for private disability insurance proceeds, unemployment compensation, vocational rehab benefits, and certain other sources.

“Under the new law, an unlimited amount of life insurance benefits is exempt from execution by creditors.”

Common Interest Communities/ Homeowner’s Associations

SB 204: Makes many changes prompted by amendments to the uniform CIC act. A few of the more important changes are described below. Many of the new CIC provisions allow HOAs to authorize alternate provisions within their governing documents. Sec. 2, 40-41 specify the types of notice to be given for member or board meetings (authorizes electronic notice if owner has given electronic address). Sec. 5 reaffirms the HOA must indemnify board member (including defense costs) unless member acted with willful or wanton malfea-

sance or with gross negligence. Sec. 6 discusses when equal time is required to present opposing views of issues discussed in an HOA official publication. Sec. 30 restores controversial language that a change in “use” must be approved unanimously by all units “affected” by the change, and by a majority of other units. Sec. 33 clarifies powers of HOA, and authorizes board to consider many factors in deciding whether or not to enforce the governing documents. This provides that there is no duty to enforce the governing documents if certain

findings are made. Also, it emphasizes that enforcement needs to be uniform. Sec. 34 makes clear that conflict of interest rules for non-profit corporations (NRS 81 & 82) apply as well as the more specific rules in NRS 116. Sec. 37 deals with elections to remove board members. The voting reverts back to the old statute requiring votes in favor of removal must be at least 35% of the total voting members and at least a majority of votes cast in the removal election. This makes a vote to

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“Members of a board are not personally liable to victims of crimes committed on the property.”

remove more difficult. Sec. 42 impacts quorums at meetings. For board meetings a quorum is established at the time an action is taken, not just at the beginning of the meeting. Critics suggest this will allow for selective attendance for particular votes. This Sec. also mandates use of Robert’s Rules of Order in all HOA meetings unless the bylaws or a board resolution provide otherwise. Sec. 44 confirms that unit owners are not liable simply because they own a unit for injury or damage arising out of the condition or use of the common elements. Actions for such claims must name only the HOA, not individual unit owners. But note, judgment liens may affect all units in an HOA (NRS 116.3117). Sec. 45: There is now an obligation for an HOA to acquire “crime insurance” – subject to “reasonable availability and deductibles” – that includes coverage for dishonest acts of members of the board, officers, employees, etc, and which includes the community manager and its employees. Sec. 48: In certain circumstances, the HOA can assess a unit’s owner for damages caused to a unit or other part of a

CIC. This applies to willful misconduct or gross negligence (but apparently not simple negligence or damage by vehicles delivering goods and services). And, Sec. 59: members of a board are not personally liable to victims of crimes committed on the property. [There are many other Sections not mentioned here.] AB 246: Restricts disclosure of owners names without their approval. Candidates for HOA boards may request the HOA to send campaign materials to the owners, or provide a list of “addresses” so candidate can mail own materials. That list may not contain names of unit owners. AB 271: Collection of “private transfer fees” is restricted. This area is likely to be subject to litigation and further amendment. Certain “private transfer fees” are restricted or prohibited if not recorded. The problem: the restricted “private transfer fees” are defined so as *not to include transfer fees paid to an HOA*. (See, AB 271, Sec. 5 (1) and (2; g).) This is an attempt to restrict or prohibit developers from requiring annuity type payments on future sales of the same property, not to prevent usual and necessary

fees to process new owners in an HOA. To be extra cautious, an HOA may want to record a document claiming its usual “transfer fee” is exempt, but recording it per the statute to prevent it from being held invalid. SB 403: Amends NRS 116.4109 and describes new information that must be provided by a unit’s owner on sale. The HOA must provide a statement of “*any unpaid obligation of any kind, including... management fees, transfer fees, fines, penalties, ... collection costs, ... and attorneys fees*” currently due (emphasis added). If the statement contains errors, it must be amended immediately. Failure to completely disclose obligations, or correct errors immediately, results in freeing **the purchaser** from any such obligations. Time for production is limited. AB 564: Authorizes the Secretary of State to adopt regulations that will facilitate the conducting of meetings by boards and members by use of the most recent technology available, including using electronic communications and videoconferencing that allows for the simultaneous presence and participation among multiple parties.

Courts

AB 261: Nevada's small claims court monetary limit has been increased from \$5,000 to \$7,500. This is an important development as the small claims court can be the most efficient and inexpensive way for

people to resolve their own disputes. Small claims court jurisdiction applies only to a defendant who is a resident of, does business in, or is employed in the township where the small claims court is located.

AB 156: A default judgment based on papers served by an unlicensed person is invalid, unless certain exceptions apply. The required contents of service affidavits has been changed.

"Nevada's small claims court monetary limit has been increased from \$5,000 to \$7,500."

Miscellaneous Legislation

AB 174: Requires the Governor to annually proclaim June 19th to be "Juneteenth Day" in the State of Nevada to commemorate the abolition of slavery in the United States.

AB 211: Prohibits discriminatory employment practices based upon the "gender identity or expression" (defined as the gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth) of an individual. The bill also authorizes the Nevada Equal Rights Commission to investigate certain acts of prejudice with regards to employment based on "general identity or expression" and sexual orientation.

SB 277: Prohibits, under certain circumstances, a minor from using an electronic communication device, such as a cell phone, to possess, transmit or dis-

tribute a sexual image of him or herself or of another minor. The bill also revises the definition of "cyber-bullying" to include the use of electronic communication to transmit or distribute a sexual image of a minor.

AB 143: Allows a qualified applicant for a concealed firearm permit to obtain one permit for all semiautomatic firearms that the applicant seeks to carry instead of being required to obtain a permit for each specific semiautomatic firearm. The bill further provides that an applicant may demonstrate competence with semiautomatic firearms in general rather than competence with each specific semiautomatic firearm. Finally, the bill provides that the identity and any information acquired during the investigation of a concealed firearm permit holder are confidential.

AB 192: Provides authorization for a county recorder to collect a fee of not more than \$3, in addition to the \$1 fee permissible under existing law, for the recording of documents, instruments, notices, deeds and other writings and provides that the fees must be used to provide legal services for abused and neglected children.

AB 432: Establishes licensing requirements for "energy auditors" by the Nevada Real Estate Division. This is intended to reduce the number of owners that are scammed by untrained "auditors" purporting to provide "energy audits" required by law on the sale of property (NRS 113.115).

"The bill also revises the definition of 'cyber-bullying' to include the use of electronic communication to transmit or distribute a sexual image of a minor."

A Law Firm Committed to Excellence & Committed to You.

Incline law Group, LLP is a boutique law firm located on the North Shore of Lake Tahoe. The firm, founded in 1973 by John C. Rogers, has earned a reputation for professionalism, discretion, diligence and positive results.

In short, we are personally committed to excellence and to our clients' success.

Our areas of practice include change of residency, creation and management of entities, contracts, real estate, asset protection, family law, commercial transactions, civil litigation and estate planning.

All of our attorneys are licensed in Nevada and California.



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