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Assembly Committee on Judiciary - Comments and Amendments for SB 254, 1st Reprint May 6, 2011

My name is Tim Stebbins T-i-m S-t-e-b-b-i-n-s from Henderson.

I have serious concerns about some of the current wording of SB 254.

1. There seems to be major emphasis on punishments for a party filing a bad faith, false, fraudulent or frivolous claim. Fair enough. But there are almost no penalties for any party filing bad faith, false, fraudulent or frivolous response to the claim.

This seems to indicate an extreme bias on the part of who ever authored those sections of the bill.

It has been my experience the response to a claim is more likely to contain bad faith, false, fraudulent or frivolous statements than the claim itself.

If my observations are valid, the authors of such language should be ashamed of themselves.

The XIV Amendment to the US Constitution guarantees equal treatment for all parties involved. All parties are guaranteed equal protection under the law. The current wording in several sections of SB 254 does not provide that protection.

I have previously submitted some suggested wording changes aimed at providing equal treatment for all parties of a claim to Senator Copening but it appears my attempt was too inept to be taken seriously. I apologize for my shortcomings.

Now this bill is before you members of our legislature. You all took an oath to support, protect and defend the US Constitution. To honor your oath it is your responsibility to work with the LCB to adjust the language of SB 254 and insure all parties to any claim are provided equal protection.

2. I also believe there should be consequences for any party that refuses to provide a written response to a claim as called for in the bill and consequences for any party that refuses to participate in the mediation called for in the bill.

It has been my experience the party named in the claim more often than not refuses to participate in any attempts to resolve the concerns or complaints of the party filing the claim.

There seems to be little in the bill that addresses this very common issue.

a. I believe if a party refuses to provide a written response to a claim as called for in the bill the allegations in the claim should be considered substantiated. This consequence is consistent with existing language in NRS116.770.

b. I believe if a party refuses to participate in the mediation they should bear all costs of the mediation.

I have provided some suggestions for additions to SB 254 aimed at achieving these goals. They are included with these remarks and have been sent to the Committee by e-mail on May 4, 2011.

1. There should be consequences for refusing to participate in the mediation.

SB 254, Section 1, part 7, page 3, lines 34-44, page 4, lines 1- 10, add (3) as shown in all CAPITALS below.

7. If either party fails to participate in the mediation or if, within 60 days after the selection or appointment of the mediator or any longer period agreed to by the parties, the parties are unable with the assistance of the mediator to resolve any of the disputes included in the written claim, the mediator shall, not later than 5 days after the conclusion of the mediation:

(a) Certify to the Ombudsman that the mediation was unsuccessful; and

(b) Recommend that the claim be referred:

(1) To arbitration pursuant to NRS 38.330, if the claim relates to any governing documents or covenants, conditions or restrictions applicable to the real estate which is the subject of the claim; or

(2) To the Division for proceedings pursuant to this section and NRS 116.745 to 116.795, inclusive, if the claim relates to an alleged violation of a provision of this chapter or any regulation adopted pursuant thereto.

(3) IF EITHER PARTY FAILS TO PARTICIPATE IN THE MEDIATION THE PARTY THAT FAILS TO PARTICIPATE SHALL PAY ANY AND ALL COSTS OF THE MEDIATION.

_ The mediator may not provide any other information relating to the mediation to the Division, and the Division, the Commission and a hearing panel may not request from the mediator any other information relating to the mediation.

If either party fails to participate in the mediation the party that fails to participate shall pay any and all costs of the mediation.

2. There should be consequences for refusing to file a written response to the Division.

SB 254, Section 10, part 5, page 11, lines 1-4 add (c) as shown in all CAPITALS below.

5. Upon being served pursuant to subsection 4, the person upon whom a copy of the claim was served shall, not later than 30 days after the date of service, file a written response with the Division. The response must:

(a) Contain an admission or a denial of the allegations contained in the claim and any defenses upon which the respondent will rely; and

(b) Be delivered personally to the Division or mailed to the Division by certified mail, return receipt requested.

(C) IF THE PERSON UPON WHOM A COPY OF THE CLAIM WAS SERVED REFUSES TO OR FAILS TO FILE A WRITTEN RESPONSE WITH THE DIVISION NOT LATER THAN 30 DAYS AFTER THE DATE OF SERVICE THE ALLEGATIONS OF THE CLAIM SHALL BE DEEMED SUBSTANTIATED.

Request for amendments by:

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