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TESTIMONY OF NEVADA FAIR HOUSING CENTER, INC

BEFORE THE ASSBEMPLY

COMMERCE AND LABOR COMMITTEE

ON AB 284

April 2, 2003

Nevada Fair Housing Center Inc (hereinafter, "NFHC") is a private non-profit Qualified Fair Housing Organization. Our mission is to provide, to the communities we serve, educational, legal, financial, technical assistance and policy research. NFHC has provided programs and services in Nevada since 1993. We were incorporated in 1995. Today, programs are offered both in Nevada and across the country.

NFHC, in the area of predatory lending, has actively represented consumers and advocated for public policy change over the last four years. This advocacy is based both on the actual representation of clients with predatory lending issues, along with research in the field itself.

There exists, a dual lending market, both in Nevada and around the country. This market, up until 1999 consisted mostly of prime and sub prime lending. That all changed in late 1999 when, due to several factors[1] the market fragmented into three separate and distinct categories, namely, prime, legitimate sub prime lending and predatory lending.

Predatory Lending has been defined as many things. Most notably, it is the absence of loan terms that result in a net benefit to the borrower. Think of it as a continuum of possible factors, when, taken as a whole result in one of five characteristics:

- Loans involving fraud or deceptive practices
- Terms that result in the waiver of legitimate legal rights
- Loans to borrowers with insufficient means to repay, structured to result in foreclosure
- Predatory servicing

Predatory practices normally occur in marketing, sales, loan terms or servicing. Lack of disclosure to borrowers represents only one paradigm in a series of targeted attacks that result in devastation to the consumer and economy as a whole, when allowed to go unchecked.

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[1] Factors include lack of available access to credit and capital in some communities, passage of AMPTA rules and passage of Gramm Leach-Biley

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ASSEMBLY COMMERCE & LABOR
DATE: 4/2/03 ROOM: 4100 EXHIBIT H
SUBMITTED BY: GAIL BURKS

AB 284 offers a legislative solution in Nevada and should be passed. The need for the bill falls in five basic categories:

A. Lack Of Existing Laws To Address The Issue

Current existing laws, while helpful, are non-specific in terms of a reasonableness standard for addressing predatory lending. In a free market economy, the idea is that consumers should be free to make financial choices absent regulation. This approach, most of the time works where there is equal bargaining power and a lack of deliberate efforts to deceive. Both are lacking in the area of predatory lending. Existing federal consumer protections rest in statutes such as Truth In Lending[2], Home Ownership and Equity Protection Act[3], Real Estate Settlement Procedures Act (RESPA)[4]. Nevada remedies, with the exception of cases that meet the standard of Unfair and Deceptive Acts and Practices (UDAP)[5] are non-existent. None of the statutes listed address the specific practices that are most prevalent in predatory lending. Each addresses a symptom of the problem but not the core of the problem. Contributing to the void of legislative and regulatory regulation are market forces and changes in the lending market. No laws have kept pace with this change.

B. Number of Cases In Nevada

During the agency's fiscal year in 2001, over 417 clients were provided services specifically related to a predatory lending problems. In 2002, 585 clients with predatory lending problems received services. Of those, approximately 47% involved predatory issues during the "sales and marketing" phase of the loan. The other 42% involved servicing.

AB 284 would protect consumers during those phases where they are most vulnerable. For example, Section 6, defines as a lender a mortgage beneficiary of a deed of trust or other creditor who "holds a mortgage". This language is needed in order to protect consumers during the assignee phase of a loan. To limit the definition to an originator only would effectively eliminate approximately 42% of those consumers that have mortgage problems.

If the industry objects to the language, a compromise position could be reach, similar to proposed language in New Jersey. Language could be added that eliminates liability for a holder, if, using a "preponderance of the evidence" standard, due diligence was exercised prior to purchase of a predatory loan. This would effectively provide a safe harbor to a mainstream lender that, exercises due diligence prior to a portfolio purchase.

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[2] 15 U.S.C. 1601-1693
[3] HOEPA is a subsection of TILA. 15 U.S.C. 1601. It requires an additional three day disclosure before closing, but only for non-purchase money high rate loans.
[4] 12 U.S.C. 2601-2617.
[5] N.R.S. 598

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Section 10 addresses what is perhaps the most difficult phase of predatory lending activity – loan terms and servicing. It **limits** judicial foreclosures in situations where a loan is made to a consumer who has no ability to pay the loan.

Currently, in Nevada our non-judicial foreclosure process is so quick, it's impossible to raise legitimate defenses even under existing federal statutes. For example, under RESPA, 12 U.S.C. 2605, a servicer, upon receiving a qualified written request for verification of mortgage payments (i.e. explanation of how payments have been applied), has twenty days to acknowledge receipt of the letter and sixty (60) days to respond. Some lenders simply let the clock run. This makes these types of cases more difficult to defend, if the foreclosure actually takes place. Again, we think some compromises can be made in this section as well, namely, providing additional disclosures or listing specific factors, other than income, that would limit judicial foreclosures.

C. Disclosure/Credit Counseling Alone Is Inadequate

Disclosure alone in any proposed remedy is insufficient for three reasons. First, there is an inherent disconnect and differences in the availability of information between buyer and seller. Second, in the initial mortgage stages, some borrowers lack the sophistication to grasp the maze of details inherent in a mortgage. Further, the economic reality is that a few hours of disclosure and/or credit counseling cannot educate someone about the impact of economics, financial markets and their role in the overall global economy.

Credit counseling conducted by our agency is specific and includes document review, along with an analysis of the final HUD-1. Most agencies are not trained in loan analysis and predatory practices to provide adequate advice. The more inherent problem in a reliance on the idea of "just educate them" assumes that predatory lending is just a result of poor choice verses predator activity.

Our agency spends an average of 42.3 hours per client providing services to first time homebuyers. This includes class time, individual consumer assistance and contacting providers of services on their behalf. This assumes, of course that the client comes in before there is a problem. On the back end, contesting a foreclosure due to predatory practices requires, from intake to resolution without litigation approximately, 320 hours or eight working weeks. This assumes the servicer or lender cooperates.

Education post mortem that is after a problem has occurred is also not a cure all for predatory lending for two reasons. Reaching victims is labor intensive and expensive (door to door, television). Second, many victims are too embarrassed to seek help

In terms of assistance from the industry, there is a false belief that, as a practical matter, mortgage brokers represent, through a fiduciary relationship, borrowers. The reality is mortgage brokers, like most industry professionals, such as lawyers or doctors, represent the client who pays the bill. Brokers are "retained" by lenders and mortgage originators to reduce labor costs. Moreover, they have a direct financial incentive to close loans with rates and fees that make the most profit. Most borrowers don't know when they are dealing with a mortgage broker verses a lender. In short, there is a disincentive to protect borrowers.

D. Economic Impact Of Increased Foreclosures In Nevada

Nevada's FHA foreclosure rate currently exceeds 7%. Specific lenders in Nevada have foreclosure rates in excess of 20%. The impact on the economy, while not immediate, can be devastating. Whole neighborhoods can see decline when the "boom" of mortgage lending due to reduced interest rates subsides.

Nevada Fair Housing Center Inc supports the passage of AB 284. The bill provides a balance between consumer protection and market legislation.

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