

ASSEMBLY BILL NO. 440—ASSEMBLYMEN
CONKLIN, BUCKLEY AND OCEGUERA

MARCH 19, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning loans secured by a mortgage or other lien on residential real property. (BDR 52-879)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to financial transactions; prohibiting a person from engaging in certain conduct with the intent to defraud a participant in a mortgage lending transaction; prohibiting certain conduct by a foreclosure consultant; providing an administrative penalty for certain conduct by a foreclosure consultant; providing a civil cause of action against a foreclosure consultant under certain circumstances; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, it is an unfair lending practice for a lender to knowingly or intentionally make a home loan to a borrower based solely on the borrower's equity in the home property and without determining that the borrower has the ability to repay the home loan from income or other assets. (NRS 598D.100) **Section 2** of this bill clarifies that the provision applies to a low-document, no-document or stated-document home loan if the loan is made based solely on the borrower's equity in the property or without determining the borrower's ability to repay the loan.

Section 3 of this bill establishes the crime of mortgage lending fraud, which is a category C felony. **Section 3** also provides that a person who engages in a pattern of mortgage lending fraud is guilty of a category B felony. Chapters 645B and 645E of NRS govern mortgage brokers and mortgage agents and mortgage bankers, respectively.

Sections 4 and 5 of this bill provide that if a person violates any provision of chapter 645B or 645E of NRS or any regulation adopted pursuant thereto, any loan



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relating to that violation is void and the violation is not entitled to any profit from the loan.

Sections 7-20 of this bill establish specific rights and duties concerning foreclosure consultants and foreclosure purchasers. **Section 9** defines a foreclosure consultant as a person who promises to perform, for compensation, various services for a homeowner whose residence is in foreclosure that the foreclosure consultant represents will assist the homeowner to, for example, postpone or prevent a foreclosure sale, obtain an extension of time to repay his mortgage loan, obtain an alternative loan or mortgage, file documents with a bankruptcy court or repair the homeowner's credit after foreclosure. **Section 16** prohibits a foreclosure consultant from claiming or receiving any compensation from a homeowner until after the consultant has fully performed all the services he promised to perform and prohibits other conduct relating to his compensation. **Section 16** also prohibits a foreclosure consultant from acquiring any interest in the residence of the homeowner. **Section 17** authorizes the Commissioner of Mortgage Lending to impose an administrative penalty of not more than \$10,000 on a foreclosure consultant who violates any provision of **section 16**. **Section 18** creates a civil cause of action against a foreclosure consultant for a homeowner who is injured as a result of a foreclosure consultant's violation of any provision of **section 16**. If the homeowner prevails in his action against the foreclosure consultant, the court may award him his actual damages, punitive damages of at least 1 1/2 times his actual damages, his attorney's fees and costs of bringing the action.

Section 10 of this bill defines a foreclosure purchaser as a person who engages in the business of acquiring residences that are in foreclosure from their owners. **Section 19** of this bill provides that a foreclosure purchaser who engages in conduct that defrauds or deceives a homeowner whose residence is in foreclosure is guilty of a gross misdemeanor.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 598D.040 is hereby amended to read as follows:

598D.040 "Home loan" means a consumer credit transaction that ~~is~~

~~—1. Is~~ is secured by a mortgage loan which involves real property located within this State. ~~is; and~~

~~—2. Constitutes a mortgage under § 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1602(aa), and the regulations adopted by the Board of Governors of the Federal Reserve System pursuant thereto, including, without limitation, 12 C.F.R. § 226.32.]~~

Sec. 2. NRS 598D.100 is hereby amended to read as follows:

598D.100 1. It is an unfair lending practice for a lender to:

(a) Require a borrower, as a condition of obtaining or maintaining a home loan secured by home property, to provide property insurance on improvements to home property in an amount that exceeds the reasonable replacement value of the improvements.



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(b) Knowingly or intentionally make a home loan to a borrower ~~based~~, *including, without limitation, a low-document home loan, no-document home loan or stated-document home loan:*

(1) *Based* solely upon the equity of the borrower in the home property ~~and without~~; or

(2) *Without* determining *or verifying* that the borrower has the ability to repay the home loan from other assets, including, without limitation, income.

(c) Finance a prepayment fee or penalty in connection with the refinancing by the original borrower of a home loan owned by the lender or an affiliate of the lender.

(d) Finance, directly or indirectly in connection with a home loan, any credit insurance.

2. As used in this section:

(a) "Credit insurance" has the meaning ascribed to it in NRS 690A.015.

(b) *"Low-document home loan" means a home loan:*

(1) *Whose terms allow a borrower to establish his ability to repay the home loan by providing only limited verification of his income and other assets; or*

(2) *Which is evidenced only by a deed transferring some or all of the interest of the borrower in the home property to the creditor.*

(c) *"No-document home loan" means a home loan whose terms allow a borrower to establish his ability to repay the home loan without providing any verification of his income and other assets.*

(d) "Prepayment fee or penalty" means any fee or penalty imposed by a lender if a borrower repays the balance of a loan or otherwise makes a payment on a loan before the regularly scheduled time for repayment.

(e) *"Stated-document home loan" means a home loan whose terms allow a borrower to establish his ability to repay the home loan by providing only his own statement of verification of his income and other assets.*

Sec. 3. Chapter 205 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person who, with the intent to defraud a participant in a mortgage lending transaction:

(a) *Knowingly makes a false statement or misrepresentation concerning a material fact or deliberately conceals or fails to disclose a material fact;*

(b) *Knowingly uses or facilitates the use of a false statement or misrepresentation made by another person concerning a material*



1 *fact or deliberately uses or facilitates the use of another person's*
2 *concealment or failure to disclose a material fact;*

3 (c) *Receives any proceeds or any other money in connection*
4 *with a mortgage lending transaction that the person knows*
5 *resulted from a violation of paragraph (a) or (b);*

6 (d) *Conspires with another person to violate any of the*
7 *provisions of paragraph (a), (b) or (c); or*

8 (e) *Files or causes to be filed with a county recorder any*
9 *document that the person knows to include a misstatement,*
10 *misrepresentation or omission concerning a material fact,*

11 *↳ commits the offense of mortgage lending fraud which is a*
12 *category C felony and, upon conviction, shall be punished by*
13 *imprisonment in the state prison for a minimum term of not less*
14 *than 1 year and a maximum term of not more than 10 years, or by*
15 *a fine of not more than \$10,000, or by both fine and*
16 *imprisonment.*

17 2. *A person who engages in a pattern of mortgage lending*
18 *fraud or conspires or attempts to engage in a pattern of mortgage*
19 *lending fraud is guilty of a category B felony and, upon*
20 *conviction, shall be punished by imprisonment in the state prison*
21 *for a minimum term of not less than 3 years and a maximum term*
22 *of not more than 20 years, or by a fine of not more than \$50,000,*
23 *or by both fine and imprisonment.*

24 3. *Each mortgage lending transaction in which a person*
25 *violates any provision of subsection 1 constitutes a separate*
26 *violation.*

27 4. *The Attorney General shall investigate and prosecute a*
28 *violation of this section.*

29 5. *As used in this section:*

30 (a) *"Mortgage lending transaction" means any transaction*
31 *between two or more persons for the purpose of making or*
32 *obtaining, attempting to make or obtain, or assisting another*
33 *person to make or obtain a loan that is secured by a mortgage or*
34 *other lien on residential real property. The term includes, without*
35 *limitation:*

36 (1) *The solicitation of a person to make or obtain the loan;*

37 (2) *The representation or offer to represent another person*
38 *to make or obtain the loan;*

39 (3) *The negotiation of the terms of the loan;*

40 (4) *The provision of services in connection with the loan;*
41 *and*

42 (5) *The execution of any document in connection with*
43 *making or obtaining the loan.*

44 (b) *"Participant in a mortgage lending transaction" includes,*
45 *without limitation:*



- (1) *A borrower as defined in NRS 598D.020;*
- (2) *An escrow agent as defined in NRS 645A.010;*
- (3) *A foreclosure consultant as defined in section 9 of this act;*
- (4) *A foreclosure purchaser as defined in section 10 of this act;*
- (5) *An investor as defined in NRS 645B.0121;*
- (6) *A lender as defined in NRS 598D.050;*
- (7) *A mortgage agent as defined in NRS 645B.0125;*
- (8) *A mortgage banker as defined in NRS 645E.100; and*
- (9) *A mortgage broker as defined in NRS 645B.0127.*

(c) *“Pattern of mortgage lending fraud” means one or more violations of a provision of subsection 1 committed in two or more mortgage lending transactions which have the same or similar intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics.*

Sec. 4. NRS 645B.950 is hereby amended to read as follows:

645B.950 1. Except as otherwise provided in NRS 645B.960, a person, or any general partner, director, officer, agent or employee of a person, who violates any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner is guilty of a misdemeanor.

2. In addition to any other penalty ~~[-if-]~~:

(a) *If a person is convicted of or enters a plea of nolo contendere to a violation described in subsection 1, the court shall order the person to pay:*

~~[(a)]~~ (1) Court costs; and

~~[(b)]~~ (2) Reasonable costs of the investigation and prosecution of the violation.

(b) *If a person, or any general partner, director, officer, agent or employee of a person, violates any provision of this chapter or a regulation adopted pursuant to this chapter any loan relating to that violation is void and the person is not entitled to collect, receive or retain any principal, interest or other charges or fees with respect to that loan.*

Sec. 5. NRS 645E.950 is hereby amended to read as follows:

645E.950 1. Except as otherwise provided in NRS 645E.960, a person, or any general partner, director, officer, agent or employee of a person, who violates any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner is guilty of a misdemeanor.

2. *In addition to any other penalty, if a person, or any general partner, director, officer, agent or employee of a person, violates any provision of this chapter or any regulation adopted pursuant to this chapter any loan relating to that violation is void and the*



1 *person is not entitled to collect, receive or retain any principal,*
2 *interest or other charges or fees with respect to that loan.*

3 **Sec. 6.** Chapter 645F of NRS is hereby amended by adding
4 thereto the provisions set forth as sections 7 to 20, inclusive, of this
5 act.

6 **Sec. 7.** *As used in sections 7 to 20, inclusive, of this act,*
7 *unless the context otherwise requires, the words and terms defined*
8 *in sections 8 to 14, inclusive, of this act have the meanings*
9 *ascribed to them in those sections.*

10 **Sec. 8.** *“Covered service” includes, without limitation:*

11 *1. Financial counseling, including, without limitation, debt*
12 *counseling and budget counseling.*

13 *2. Receiving money for the purpose of distributing it to*
14 *creditors in payment or partial payment of any obligation secured*
15 *by a mortgage or other lien on a residence in foreclosure.*

16 *3. Contacting a creditor on behalf of a homeowner.*

17 *4. Arranging or attempting to arrange for an extension of the*
18 *period within which a homeowner may cure his default and*
19 *reinstate his obligation pursuant to a note, mortgage or deed of*
20 *trust.*

21 *5. Arranging or attempting to arrange for any delay or*
22 *postponement of the time of a foreclosure sale.*

23 *6. Advising the filing of any document or assisting in any*
24 *manner in the preparation of any document for filing with a*
25 *bankruptcy court.*

26 *7. Giving any advice, explanation or instruction to a*
27 *homeowner which in any manner relates to the cure of a default*
28 *in or the reinstatement of an obligation secured by a mortgage or*
29 *other lien on the residence in foreclosure, the full satisfaction of*
30 *the obligation, or the postponement or avoidance of a foreclosure*
31 *sale.*

32 **Sec. 9.** *“Foreclosure consultant” means a person who,*
33 *directly or indirectly, makes any solicitation, representation or*
34 *offer to a homeowner to perform for compensation, or who, for*
35 *compensation, performs any covered service that the person*
36 *represents will do any of the following:*

37 *1. Prevent or postpone a foreclosure sale;*

38 *2. Obtain any forbearance from any mortgagee or beneficiary*
39 *of a deed of trust;*

40 *3. Assist the homeowner to exercise the right of reinstatement*
41 *provided in the legal documents;*

42 *4. Obtain any extension of the period within which the*
43 *homeowner may reinstate the homeowner’s obligation;*

44 *5. Obtain any waiver of an acceleration clause contained in*
45 *any promissory note or contract secured by a mortgage on a*



1 *residence in foreclosure or included in the mortgage or deed of*
2 *trust;*

3 6. *Assist the homeowner in foreclosure or loan default to*
4 *obtain a loan or advance of money;*

5 7. *Avoid or ameliorate the impairment of the homeowner's*
6 *credit resulting from the recording of a notice of default or the*
7 *conduct of a foreclosure sale;*

8 8. *Save the homeowner's residence from foreclosure; or*

9 9. *Assist the homeowner to obtain a foreclosure*
10 *reconveyance.*

11 **Sec. 10.** *"Foreclosure purchaser" means a person who, in*
12 *the course of his business, vocation or occupation, acquires or*
13 *attempts to acquire title to a residence in foreclosure from a*
14 *homeowner.*

15 **Sec. 11.** 1. *"Foreclosure reconveyance" means a*
16 *transaction that involves:*

17 (a) *The transfer of title to a residence in foreclosure by a*
18 *homeowner during a foreclosure proceeding by:*

19 (1) *The transfer of an interest in the residence in*
20 *foreclosure from the homeowner; or*

21 (2) *The creation of a mortgage or other lien during the*
22 *foreclosure process that allows the acquirer to obtain title to the*
23 *residence in foreclosure by redeeming the property as a junior lien*
24 *holder; and*

25 (b) *The subsequent conveyance, or promise of a subsequent*
26 *conveyance, of an interest in the residence to the former*
27 *homeowner by the acquirer, or a person acting in concert with the*
28 *acquirer, that allows the former homeowner to remain in*
29 *possession of the residence following the completion of the*
30 *foreclosure proceeding.*

31 2. *As used in this section, "interest in the residence" includes,*
32 *without limitation, an interest in a contract for a deed, a purchase*
33 *agreement, and an option to purchase or lease.*

34 **Sec. 12.** *"Foreclosure sale" means the sale of real property*
35 *to enforce an obligation secured by a mortgage or lien on the*
36 *property, including the exercise of a trustee's power of sale*
37 *pursuant to NRS 107.080.*

38 **Sec. 13.** *"Homeowner" means the record owner of a*
39 *residence in foreclosure at the time the notice of the pendency of*
40 *an action for foreclosure is recorded pursuant to NRS 14.010 or*
41 *the notice of default and election to sell is recorded pursuant to*
42 *NRS 107.080.*

43 **Sec. 14.** *"Residence in foreclosure" means residential real*
44 *property consisting of not more than four family dwelling units,*
45 *one of which the homeowner occupies as his principal place of*



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1 *residence, and against which there is an outstanding notice of the*
2 *pendency of an action for foreclosure recorded pursuant to NRS*
3 *14.010 or notice of default and election to sell recorded pursuant*
4 *to NRS 107.080.*

5 **Sec. 15.** *The provisions of sections 7 to 20, inclusive, of this*
6 *act do not apply to, and the terms “foreclosure consultant” and*
7 *“foreclosure purchaser” do not include:*

8 *1. An attorney at law rendering services in the performance*
9 *of his duties as an attorney at law;*

10 *2. A person, firm, company or corporation licensed to engage*
11 *in the business of debt adjustment pursuant to chapter 676 of NRS*
12 *while engaging in that business;*

13 *3. A person licensed as a real estate broker, broker-salesman*
14 *or salesman pursuant to chapter 645 of NRS while acting under*
15 *the authority of that license;*

16 *4. A person or the authorized agent of a person acting under*
17 *the provisions of a program sponsored by the Federal*
18 *Government, this State or a local government, including, without*
19 *limitation, the Department of Housing and Urban Development,*
20 *the Federal Home Loan Mortgage Corporation, the Federal*
21 *National Mortgage Association or the Federal Home Loan Bank;*

22 *5. A person who holds or is owed an obligation secured by a*
23 *mortgage or other lien on a residence in foreclosure if the person*
24 *performs services in connection with this obligation or lien and*
25 *the obligation or lien did not arise as the result of or as part of a*
26 *proposed foreclosure reconveyance;*

27 *6. Any person doing business under the laws of this State or*
28 *of the United States relating to banks, trust companies, savings*
29 *and loan associations, industrial loan and thrift companies,*
30 *regulated lenders, credit unions, insurance companies, or a*
31 *mortgagee which is a United States Department of Housing and*
32 *Urban Development approved mortgagee and any subsidiary or*
33 *affiliate of those persons, and any agent or employee of those*
34 *persons while engaged in the business of those persons;*

35 *7. A person licensed as an escrow agent, mortgage agent,*
36 *mortgage broker or mortgage banker pursuant to chapter 645A,*
37 *645B or 645E of NRS, while acting under the authority of his*
38 *license;*

39 *8. A nonprofit agency or organization that offers credit*
40 *counseling or advice to a homeowner of a residence in foreclosure*
41 *or a person in default on a loan; or*

42 *9. A judgment creditor of the homeowner whose claim*
43 *accrued before the recording of the notice of the pendency of an*
44 *action for foreclosure against the homeowner pursuant to NRS*



1 *14.010 or the recording of the notice of default and election to sell*
2 *pursuant to NRS 107.080.*

3 **Sec. 16.** *A foreclosure consultant shall not:*

4 *1. Claim, demand, charge, collect or receive any*
5 *compensation until after the foreclosure consultant has fully*
6 *performed each covered service that he contracted to perform or*
7 *represented he would perform.*

8 *2. Claim, demand, charge, collect or receive any fee, interest*
9 *or other compensation for any reason which is not fully disclosed*
10 *to the homeowner.*

11 *3. Take any wage assignment, lien on real or personal*
12 *property, assignment of a homeowner's equity or other interest in*
13 *a residence in foreclosure or other security for the payment of*
14 *compensation. Any such security is void and unenforceable.*

15 *4. Receive any consideration from any third party in*
16 *connection with a covered service provided to a homeowner unless*
17 *the consideration is first fully disclosed to the homeowner.*

18 *5. Acquire, directly or indirectly, any interest in the residence*
19 *in foreclosure of a homeowner with whom the foreclosure*
20 *consultant has contracted to perform a covered service.*

21 *6. Accept a power of attorney from a homeowner for any*
22 *purpose, other than to inspect documents as provided by law.*

23 **Sec. 17.** *1. In addition to any other remedy or penalty, the*
24 *Commissioner may, after giving notice and opportunity to be*
25 *heard, impose an administrative penalty of not more than \$10,000*
26 *on a foreclosure consultant who violates any provision of section*
27 *16 of this act.*

28 *2. Except as otherwise provided in this section, all money*
29 *collected from administrative penalties imposed pursuant to this*
30 *section must be deposited in the State General Fund.*

31 *3. The money collected from an administrative penalty may*
32 *be deposited with the State Treasurer for credit to the Fund for*
33 *Mortgage Lending created by NRS 645F.270 if:*

34 *(a) The person pays the administrative penalty without*
35 *exercising his right to a hearing to contest the penalty; or*

36 *(b) The administrative penalty is imposed in a hearing*
37 *conducted by a hearing officer or panel appointed by the*
38 *Commissioner.*

39 *4. The Commissioner may appoint one or more hearing*
40 *officers or panels and may delegate to those hearing officers or*
41 *panels the power of the Commissioner to conduct hearings,*
42 *determine violations and impose the penalties authorized by this*
43 *section.*

44 *5. If money collected from an administrative penalty is*
45 *deposited in the State General Fund, the Commissioner may*



1 *present a claim to the State Board of Examiners for*
2 *recommendation to the Interim Finance Committee if money is*
3 *needed to pay attorney's fees or the costs of an investigation, or*
4 *both.*

5 **Sec. 18.** *1. A homeowner who is injured as a result of a*
6 *foreclosure consultant's violation of a provision of section 16 of*
7 *this act may bring an action against the foreclosure consultant to*
8 *recover damages caused by the violation, together with reasonable*
9 *attorney's fees and costs.*

10 *2. If the homeowner prevails in the action, the court may*
11 *award such punitive damages as may be determined by a jury, or*
12 *by a court sitting without a jury, but in no case may the punitive*
13 *damages be less than 1 1/2 times the amount awarded to the*
14 *homeowner as actual damages.*

15 **Sec. 19.** *A foreclosure purchaser who engages in any*
16 *conduct that operates as a fraud or deceit upon a homeowner in*
17 *connection with a transaction that is subject to the provisions of*
18 *sections 7 to 20, inclusive, of this act, including, without*
19 *limitation, a foreclosure reconveyance, is guilty of a gross*
20 *misdemeanor and shall be punished by imprisonment in the*
21 *county jail for not more than 1 year, or by a fine of not more than*
22 *\$50,000, or by both fine and imprisonment.*

23 **Sec. 20.** *The rights, remedies and penalties provided*
24 *pursuant to the provisions of sections 7 to 20, inclusive, of this act*
25 *are cumulative and do not abrogate and are in addition to any*
26 *other rights, remedies and penalties that may exist at law or in*
27 *equity, including, without limitation, any criminal penalty that*
28 *may be imposed pursuant to section 19 of this act.*

