
ASSEMBLY BILL NO. 152—ASSEMBLYMEN CONKLIN, BOBZIEN,
OCEGUERA, SPIEGEL, MCCLAIN; AIZLEY, DONDERO LOOP
AND MASTROLUCA

FEBRUARY 10, 2009

JOINT SPONSOR: SENATOR PARKS

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning mortgage lending
and related professions. (BDR 54-787)

FISCAL NOTE: Effect on Local Government: No.
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 mortgage lending; defining the term “loan
modification consultant”; requiring certain mortgage
lending professionals to be licensed as a mortgage agent
or mortgage broker; revising the definition of
“homeowner” as it applies to services performed by
certain mortgage lending professionals; and providing
other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 2 of this bill defines the term “loan modification consultant.”

Existing law does not currently require a foreclosure consultant to be licensed.
(NRS 645F.300-645F.450) **Section 3** of this bill requires a person who performs
any of a variety of specified services for compensation, a foreclosure consultant and
a loan modification consultant to be licensed under the provisions of chapter 645B
of NRS, which governs mortgage brokers and mortgage agents. This licensing
requirement makes such persons subject to the regulatory and penalty provisions set
forth in chapter 645B of NRS.

Section 5 of this bill revises the definition of “homeowner” as it applies to
services performed by foreclosure consultants by expanding the definition to
include any record owner of residence, rather than only the record owner of a
residence in foreclosure at the time the notice of the pendency of an action for
foreclosure is recorded or the notice of default and election to sell is recorded.
(NRS 645F.360)



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

Section 1. Chapter 645F of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *“Loan modification consultant” means a person who, directly or indirectly, makes any solicitation, representation or offer to a homeowner to perform for compensation, or who, for compensation, performs any act that the person represents will adjust the terms of a mortgage loan in a manner not provided for in the original or previously modified mortgage loan. Such an adjustment includes, without limitation:*

- 1. A change in the payment amount;*
- 2. A change in the loan amount;*
- 3. A loan forbearance;*
- 4. A change in the loan maturity; and*
- 5. A change in the interest rate.*

Sec. 3. *A person who performs any covered service for compensation, a foreclosure consultant and a loan modification consultant must be licensed pursuant to chapter 645B of NRS in the following manner:*

- 1. As a mortgage broker; or*
- 2. If the person:*

(a) Is an employee or independent contractor of a foreclosure consultant or loan modification consultant; and

(b) Is authorized by the foreclosure consultant or loan modification consultant to engage in, on behalf of the foreclosure consultant or loan modification consultant, any activity that would require the person, if he were not an employee or independent contractor of the foreclosure consultant or loan modification consultant, to be licensed pursuant to subsection 1, as a mortgage agent.

Sec. 4. NRS 645F.300 is hereby amended to read as follows:

645F.300 As used in NRS 645F.300 to 645F.450, inclusive, *and sections 2 and 3 of this act*, unless the context otherwise requires, the words and terms defined in NRS 645F.310 to 645F.370, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 5. NRS 645F.360 is hereby amended to read as follows:

645F.360 “Homeowner” means the record owner of a residence , *including, without limitation, the record owner of a residence* in foreclosure at the time the notice of the pendency of an action for foreclosure is recorded pursuant to NRS 14.010 or the notice of default and election to sell is recorded pursuant to NRS 107.080.



Sec. 6. NRS 645F.380 is hereby amended to read as follows:

645F.380 The provisions of NRS 645F.300 to 645F.450, inclusive, *and sections 2 and 3 of this act* do not apply to, and the terms “foreclosure consultant” and “foreclosure purchaser” do not include:

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

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

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

~~—4.]~~ A person or the authorized agent of a person acting under the provisions of a program sponsored by the Federal Government, this State or a local government, including, without limitation, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Federal Home Loan Bank;

~~[5.]~~ 4. A person who holds or is owed an obligation secured by a mortgage or other lien on a residence in foreclosure if the person performs services in connection with this obligation or lien and the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;

~~[6.]~~ 5. Any person doing business under the laws of this State or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of those persons, and any agent or employee of those persons while engaged in the business of those persons;

~~[7.]~~ 6. A person, *other than a mortgage agent or mortgage broker, who is* licensed ~~[as an escrow agent, title agent, mortgage agent, mortgage broker or mortgage banker]~~ pursuant to *any* chapter ~~[645A, 692A, 645B or 645E]~~ *of title 54* of NRS ~~[, respectively,]~~ while acting under the authority of his license;

~~[8.]~~ 7. A nonprofit agency or organization that offers credit counseling or advice to a homeowner of a residence in foreclosure or a person in default on a loan; or

~~[9.]~~ 8. A judgment creditor of the homeowner whose claim accrued before the recording of the notice of the pendency of an action for foreclosure against the homeowner pursuant to NRS 14.010 or the recording of the notice of default and election to sell pursuant to NRS 107.080.



Sec. 7. NRS 645F.430 is hereby amended to read as follows:

645F.430 A foreclosure purchaser who engages in any conduct that operates as a fraud or deceit upon a homeowner in connection with a transaction that is subject to the provisions of NRS 645F.300 to 645F.450, inclusive, *and sections 2 and 3 of this act*, including, without limitation, a foreclosure reconveyance, is guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$50,000, or by both fine and imprisonment.

Sec. 8. NRS 645F.440 is hereby amended to read as follows:

645F.440 1. In addition to the penalty provided in NRS 645F.430 and except as otherwise provided in subsection 5, if a foreclosure purchaser engages in any conduct that operates as a fraud or deceit upon a homeowner in connection with a transaction that is subject to the provisions of NRS 645F.300 to 645F.450, inclusive, *and sections 2 and 3 of this act*, including, without limitation, a foreclosure reconveyance, the transaction in which the foreclosure purchaser acquired title to the residence in foreclosure may be rescinded by the homeowner within 2 years after the date of the recording of the conveyance.

2. To rescind a transaction pursuant to subsection 1, the homeowner must give written notice to the foreclosure purchaser and a successor in interest to the foreclosure purchaser, if the successor in interest is not a bona fide purchaser, and record that notice with the recorder of the county in which the property is located. The notice of rescission must contain:

(a) The name of the homeowner, the foreclosure purchaser and any successor in interest who holds title to the property; and

(b) A description of the property.

3. Within 20 days after receiving notice pursuant to subsection 2:

(a) The foreclosure purchaser and the successor in interest, if the successor in interest is not a bona fide purchaser, shall reconvey to the homeowner title to the property free and clear of encumbrances which were created subsequent to the rescinded transaction and which are due to the actions of the foreclosure purchaser; and

(b) The homeowner shall return to the foreclosure purchaser any consideration received from the foreclosure purchaser in exchange for the property.

4. If the foreclosure purchaser has not reconveyed to the homeowner title to the property within the period described in subsection 3, the homeowner may bring an action to enforce the rescission in the district court of the county in which the property is located.



1 5. A transaction may not be rescinded pursuant to this section
2 if the foreclosure purchaser has transferred the property to a bona
3 fide purchaser.

4 6. As used in this section, "bona fide purchaser" means any
5 person who purchases an interest in a residence in foreclosure from
6 a foreclosure purchaser in good faith and for valuable consideration
7 and who does not know or have reasonable cause to believe that the
8 foreclosure purchaser engaged in conduct which violates
9 subsection 1.

10 **Sec. 9.** NRS 645F.450 is hereby amended to read as follows:

11 645F.450 The rights, remedies and penalties provided pursuant
12 to the provisions of NRS 645F.300 to 645F.450, inclusive, *and*
13 *sections 2 and 3 of this act* are cumulative and do not abrogate and
14 are in addition to any other rights, remedies and penalties that may
15 exist at law or in equity, including, without limitation, any criminal
16 penalty that may be imposed pursuant to NRS 645F.430.

17 **Sec. 10.** NRS 205.372 is hereby amended to read as follows:

18 205.372 1. A person who, with the intent to defraud a
19 participant in a mortgage lending transaction:

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

23 (b) Knowingly uses or facilitates the use of a false statement or
24 misrepresentation made by another person concerning a material
25 fact or deliberately uses or facilitates the use of another person's
26 concealment or failure to disclose a material fact;

27 (c) Receives any proceeds or any other money in connection
28 with a mortgage lending transaction that the person knows resulted
29 from a violation of paragraph (a) or (b);

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

32 (e) Files or causes to be filed with a county recorder any
33 document that the person knows to include a misstatement,
34 misrepresentation or omission concerning a material fact,

35 ➤ commits the offense of mortgage lending fraud which is a
36 category C felony and, upon conviction, shall be punished by
37 imprisonment in the state prison for a minimum term of not less
38 than 1 year and a maximum term of not more than 10 years, or by a
39 fine of not more than \$10,000, or by both fine and imprisonment.

40 2. A person who engages in a pattern of mortgage lending
41 fraud or conspires or attempts to engage in a pattern of mortgage
42 lending fraud is guilty of a category B felony and, upon conviction,
43 shall be punished by imprisonment in the state prison for a
44 minimum term of not less than 3 years and a maximum term of not



1 more than 20 years, or by a fine of not more than \$50,000, or by
2 both fine and imprisonment.

3 3. Each mortgage lending transaction in which a person
4 violates any provision of subsection 1 constitutes a separate
5 violation.

6 4. Except as otherwise provided in this subsection, if a lender
7 or any agent of the lender is convicted of the offense of mortgage
8 lending fraud in violation of this section, the mortgage lending
9 transaction with regard to which the fraud was committed may be
10 rescinded by the borrower within 6 months after the date of the
11 conviction if the borrower gives written notice to the lender and
12 records that notice with the recorder of the county in which the
13 mortgage was recorded. A mortgage lending transaction may not be
14 rescinded pursuant to this subsection if the lender has transferred the
15 mortgage to a bona fide purchaser.

16 5. The Attorney General may investigate and prosecute a
17 violation of this section.

18 6. As used in this section:

19 (a) "Bona fide purchaser" means any person who purchases a
20 mortgage in good faith and for valuable consideration and who does
21 not know or have reasonable cause to believe that the lender or any
22 agent of the lender engaged in mortgage lending fraud in violation
23 of this section.

24 (b) "Mortgage lending transaction" means any transaction
25 between two or more persons for the purpose of making or
26 obtaining, attempting to make or obtain, or assisting another person
27 to make or obtain a loan that is secured by a mortgage or other lien
28 on residential real property. The term includes, without limitation:

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

30 (2) The representation or offer to represent another person to
31 make or obtain the loan;

32 (3) The negotiation of the terms of the loan;

33 (4) The provision of services in connection with the loan;
34 and

35 (5) The execution of any document in connection with
36 making or obtaining the loan.

37 (c) "Participant in a mortgage lending transaction" includes,
38 without limitation:

39 (1) A borrower as defined in NRS 598D.020;

40 (2) An escrow agent as defined in NRS 645A.010;

41 (3) A foreclosure consultant as defined in NRS 645F.320;

42 (4) A foreclosure purchaser as defined in NRS 645F.330;

43 (5) An investor as defined in NRS 645B.0121;

44 (6) A lender as defined in NRS 598D.050;



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(7) *A loan modification consultant as defined in section 2 of this act;*

(8) A mortgage agent as defined in NRS 645B.0125;

~~[(8)]~~ (9) A mortgage banker as defined in NRS 645E.100; and

~~[(9)]~~ (10) A mortgage broker as defined in NRS 645B.0127.

(d) "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. 11. This act becomes effective on July 1, 2009.

