

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; revising provisions governing the applicability of requirements regarding foreclosure consultants and loan modification consultants; revising provisions governing compensation of foreclosure consultants; 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



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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)

**Section 6** of this bill provides that an attorney at law is exempt from the provisions governing a person who performs any covered service for compensation, a loan modification consultant, a foreclosure consultant or a foreclosure purchaser unless the services rendered by the attorney are performed in the course and scope of his employment by or other affiliation with a mortgage broker or mortgage agent. (NRS 645F.380)

**Section 6.5** of this bill clarifies that a foreclosure consultant is prohibited from claiming, demanding, charging, collecting or receiving any compensation until after the foreclosure consultant has fully performed every covered service he contracted to perform or represented he would perform, rather than after the performance of any individual service. (NRS 645F.400)

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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.*



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

2     645F.300 As used in NRS 645F.300 to 645F.450, inclusive,  
3     *and sections 2 and 3 of this act*, unless the context otherwise  
4     requires, the words and terms defined in NRS 645F.310 to  
5     645F.370, inclusive, *and section 2 of this act* have the meanings  
6     ascribed to them in those sections.

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

8     645F.360 “Homeowner” means the record owner of a  
9     residence , *including, without limitation, the record owner of a*  
10    *residence* in foreclosure at the time the notice of the pendency of an  
11    action for foreclosure is recorded pursuant to NRS 14.010 or the  
12    notice of default and election to sell is recorded pursuant to  
13    NRS 107.080.

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

15    645F.380 The provisions of NRS 645F.300 to 645F.450,  
16    inclusive, *and sections 2 and 3 of this act* do not apply to, and the  
17    terms “foreclosure consultant” and “foreclosure purchaser” do not  
18    include:

19    1. An attorney at law rendering services in the performance of  
20    his duties as an attorney at law ~~§4~~ , *unless the attorney at law is*  
21    *rendering those services in the course and scope of his*  
22    *employment by or other affiliation with a mortgage broker or*  
23    *mortgage agent;*

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

27    3. ~~§4~~ *A person licensed as a real estate broker, broker-salesman*  
28    ~~or salesman pursuant to chapter 645 of NRS while acting under the~~  
29    ~~authority of that license;~~

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

36    ~~§5.~~ 4. A person who holds or is owed an obligation secured by  
37    a mortgage or other lien on a residence in foreclosure if the person  
38    performs services in connection with this obligation or lien and the  
39    obligation or lien did not arise as the result of or as part of a  
40    proposed foreclosure reconveyance;

41    ~~§6.~~ 5. Any person doing business under the laws of this State  
42    or of the United States relating to banks, trust companies, savings  
43    and loan associations, industrial loan and thrift companies, regulated  
44    lenders, credit unions, insurance companies, or a mortgagee which  
45    is a United States Department of Housing and Urban Development



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1 approved mortgagee and any subsidiary or affiliate of those persons,  
2 and any agent or employee of those persons while engaged in the  
3 business of those persons;

4 ~~[7.]~~ 6. A person , *other than a mortgage agent or mortgage*  
5 *broker, who is* licensed ~~[as an escrow agent, title agent, mortgage~~  
6 ~~agent, mortgage broker or mortgage banker]~~ pursuant to *chapter*  
7 *692A or any chapter [645A, 692A, 645B or 645E] of title 54* of  
8 NRS ~~[, respectively,]~~ while acting under the authority of his license;

9 ~~[8.]~~ 7. A nonprofit agency or organization that offers credit  
10 counseling or advice to a homeowner of a residence in foreclosure  
11 or a person in default on a loan; or

12 ~~[9.]~~ 8. A judgment creditor of the homeowner whose claim  
13 accrued before the recording of the notice of the pendency of an  
14 action for foreclosure against the homeowner pursuant to  
15 NRS 14.010 or the recording of the notice of default and election to  
16 sell pursuant to NRS 107.080.

17 **Sec. 6.5.** NRS 645F.400 is hereby amended to read as follows:

18 645F.400 A foreclosure consultant shall not:

19 1. Claim, demand, charge, collect or receive any compensation  
20 until after the foreclosure consultant has fully performed ~~[each]~~  
21 *every* covered service that he contracted to perform or represented  
22 he would perform.

23 2. Claim, demand, charge, collect or receive any fee, interest or  
24 other compensation for any reason which is not fully disclosed to  
25 the homeowner.

26 3. Take any wage assignment, lien on real or personal property,  
27 assignment of a homeowner's equity or other interest in a residence  
28 in foreclosure or other security for the payment of compensation.  
29 Any such security is void and unenforceable.

30 4. Receive any consideration from any third party in  
31 connection with a covered service provided to a homeowner unless  
32 the consideration is first fully disclosed to the homeowner.

33 5. Acquire, directly or indirectly, any interest in the residence  
34 in foreclosure of a homeowner with whom the foreclosure  
35 consultant has contracted to perform a covered service.

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

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

39 645F.430 A foreclosure purchaser who engages in any conduct  
40 that operates as a fraud or deceit upon a homeowner in connection  
41 with a transaction that is subject to the provisions of NRS 645F.300  
42 to 645F.450, inclusive, *and sections 2 and 3 of this act*, including,  
43 without limitation, a foreclosure reconveyance, is guilty of a gross  
44 misdemeanor and shall be punished by imprisonment in the county



1 jail for not more than 1 year, or by a fine of not more than \$50,000,  
2 or by both fine and imprisonment.

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

4 645F.440 1. In addition to the penalty provided in NRS  
5 645F.430 and except as otherwise provided in subsection 5, if a  
6 foreclosure purchaser engages in any conduct that operates as a  
7 fraud or deceit upon a homeowner in connection with a transaction  
8 that is subject to the provisions of NRS 645F.300 to 645F.450,  
9 inclusive, *and sections 2 and 3 of this act*, including, without  
10 limitation, a foreclosure reconveyance, the transaction in which the  
11 foreclosure purchaser acquired title to the residence in foreclosure  
12 may be rescinded by the homeowner within 2 years after the date of  
13 the recording of the conveyance.

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

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

22 (b) A description of the property.

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

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

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

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

38 5. A transaction may not be rescinded pursuant to this section  
39 if the foreclosure purchaser has transferred the property to a bona  
40 fide purchaser.

41 6. As used in this section, "bona fide purchaser" means any  
42 person who purchases an interest in a residence in foreclosure from  
43 a foreclosure purchaser in good faith and for valuable consideration  
44 and who does not know or have reasonable cause to believe that the



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foreclosure purchaser engaged in conduct which violates subsection 1.

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

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

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

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

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

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

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

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

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

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

4. Except as otherwise provided in this subsection, if a lender or any agent of the lender is convicted of the offense of mortgage lending fraud in violation of this section, the mortgage lending



1 transaction with regard to which the fraud was committed may be  
2 rescinded by the borrower within 6 months after the date of the  
3 conviction if the borrower gives written notice to the lender and  
4 records that notice with the recorder of the county in which the  
5 mortgage was recorded. A mortgage lending transaction may not be  
6 rescinded pursuant to this subsection if the lender has transferred the  
7 mortgage to a bona fide purchaser.

8 5. The Attorney General may investigate and prosecute a  
9 violation of this section.

10 6. As used in this section:

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

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

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

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

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

25 (4) The provision of services in connection with the loan;  
26 and

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

29 (c) "Participant in a mortgage lending transaction" includes,  
30 without limitation:

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

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

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

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

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

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

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

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

40 ~~[(8)]~~ (9) A mortgage banker as defined in NRS 645E.100;  
41 and

42 ~~[(9)]~~ (10) A mortgage broker as defined in NRS 645B.0127.

43 (d) "Pattern of mortgage lending fraud" means one or more  
44 violations of a provision of subsection 1 committed in two or more  
45 mortgage lending transactions which have the same or similar



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- 1 intents, results, accomplices, victims or methods of commission, or
- 2 are otherwise interrelated by distinguishing characteristics.
- 3     **Sec. 11.** This act becomes effective on July 1, 2009.

