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SECOND REPRINT

A.B. 152

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; establishing certain requirements for the provision of services by certain mortgage lending professionals; establishing provisions governing compensation of certain mortgage lending professionals; establishing certain powers of the Commissioner of Mortgage Lending; revising provisions relating to the imposition of certain fees and assessments on certain mortgage lending professionals; 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; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 **Section 2** of this bill defines the term “loan modification consultant.”
- 2 Existing law does not currently require a foreclosure consultant to be licensed.
- 3 (NRS 645F.300-645F.450) **Section 3** of this bill requires the Commissioner of
- 4 Mortgage Lending to adopt separate regulations for the licensing of a person who



performs any of a variety of specified services for compensation, a foreclosure consultant and a loan modification consultant.

Section 3.1 of this bill requires such persons to execute a written contract with a homeowner before providing certain services for compensation. **Section 3.1** also requires the Commissioner to adopt regulations describing the information that must be contained in such a written contract.

Sections 3.3 and **6.5** of this bill require a person who performs certain services for compensation, a foreclosure consultant and a loan modification consultant to deposit any money received as compensation for the performance of certain services in a trust account. **Section 3.3** also requires such persons to maintain certain records regarding such trust accounts and prohibits withdrawals from such trust accounts until the completion of certain services as agreed upon in a written contract for the performance of such services. **Section 3.3** further authorizes the Commissioner or his authorized agents to inspect and audit the records associated with the trust accounts.

Section 3.5 of this bill grants certain additional powers to the Commissioner with regard to the conduct of any examination, periodic or special audit, investigation or hearing.

Section 3.7 of this bill requires the Commissioner to adopt regulations to establish rates to be paid by a person who performs certain services for compensation, a foreclosure consultant and a loan modification consultant for supervision and examinations by the Commissioner or the Division of Mortgage Lending of the Department of Business and Industry. (NRS 645F.280) **Section 3.9** of this bill requires the Commissioner to collect an assessment from such persons for deposit in the Fund for Mortgage Lending. (NRS 645F.290)

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)

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 provides that the violation of certain provisions by such persons shall be deemed to constitute mortgage lending fraud, as that term is described in NRS 205.372. (NRS 645F.400)

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 to 3.5, inclusive, 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*



1 *adjust the terms of a mortgage loan in a manner not provided for*
2 *in the original or previously modified mortgage loan. Such an*
3 *adjustment includes, without limitation:*

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

9 **Sec. 3.** *1. The Commissioner shall adopt separate*
10 *regulations for the licensing of:*

11 *(a) A person who performs any covered service for*
12 *compensation;*

13 *(b) A foreclosure consultant; and*

14 *(c) A loan modification consultant.*

15 *2. The regulations must prescribe, without limitation:*

16 *(a) The method and form of application for a license;*

17 *(b) The method and form of the issuance, denial or renewal of*
18 *a license;*

19 *(c) The grounds and procedures for the revocation, suspension*
20 *or nonrenewal of a license; and*

21 *(d) The imposition of reasonable fees for application and*
22 *licensure.*

23 **Sec. 3.1.** *1. A person who performs any covered service for*
24 *compensation, a foreclosure consultant and a loan modification*
25 *consultant shall execute a written contract with a homeowner*
26 *before providing any covered service.*

27 *2. The Commissioner shall adopt regulations describing the*
28 *information that must be contained in a written contract for*
29 *covered services.*

30 **Sec. 3.3.** *1. All money paid to a person who performs any*
31 *covered service for compensation, a foreclosure consultant or a*
32 *loan modification consultant by a person in full or partial payment*
33 *of covered services to be performed:*

34 *(a) Must be deposited in a separate checking account located*
35 *in a federally insured depository financial institution or credit*
36 *union in this State which must be designated a trust account;*

37 *(b) Must be kept separate from money belonging to the person*
38 *who performs any covered service for compensation, the*
39 *foreclosure consultant or the loan modification consultant; and*

40 *(c) Must not be withdrawn by the person who performs any*
41 *covered service for compensation, foreclosure consultant or loan*
42 *modification consultant until the completion of every covered*
43 *service as agreed upon in the contract for covered services.*

44 *2. The person who performs any covered service for*
45 *compensation, the foreclosure consultant or the loan modification*



1 *consultant shall keep records of all money deposited in a trust*
2 *account pursuant to subsection 1. The records must clearly*
3 *indicate the date and from whom he received money, the date*
4 *deposited, the dates of withdrawals, and other pertinent*
5 *information concerning the transaction, and must show clearly for*
6 *whose account the money is deposited and to whom the money*
7 *belongs. The person who performs any covered service for*
8 *compensation, the foreclosure consultant or the loan modification*
9 *consultant shall balance each separate trust account at least*
10 *monthly and provide to the Commissioner, on a form provided by*
11 *the Commissioner, an annual accounting which shows an annual*
12 *reconciliation of each separate trust account. All such records and*
13 *money are subject to inspection and audit by the Commissioner*
14 *and his authorized representatives.*

15 3. *Each person who performs any covered service for*
16 *compensation, each foreclosure consultant and each loan*
17 *modification consultant shall notify the Commissioner of the*
18 *names of the banks and credit unions in which he maintains trust*
19 *accounts and specify the names of the accounts on forms provided*
20 *by the Commissioner.*

21 4. *As used in this section, "completion of every covered*
22 *service" means:*

23 (a) *Successful results with respect to what the performance of*
24 *each covered service was intended to yield for the homeowner, as*
25 *described in the contract for covered services; or*

26 (b) *If the performance of one or more covered service has an*
27 *unsuccessful result with respect to what the performance of that*
28 *covered service was intended to yield for the homeowner, a*
29 *showing that every reasonable effort was made, under the*
30 *particular circumstances, to obtain successful results,*

31 *as verified in a written statement provided to the homeowner.*

32 **Sec. 3.5. 1.** *In the conduct of any examination, periodic or*
33 *special audit, investigation or hearing, the Commissioner may:*

34 (a) *Compel the attendance of any person by subpoena.*

35 (b) *Administer oaths.*

36 (c) *Examine any person under oath concerning the business*
37 *and conduct of affairs of any person subject to the provisions of*
38 *this chapter and in connection therewith require the production of*
39 *any books, records or papers relevant to the inquiry.*

40 2. *Any person subpoenaed under the provisions of this*
41 *section who willfully refuses or willfully neglects to appear at the*
42 *time and place named in the subpoena or to produce books,*
43 *records or papers required by the Commissioner, or who refuses to*
44 *be sworn or answer as a witness, is guilty of a misdemeanor.*



1 **3. In addition to the authority to recover attorney's fees and**
2 **costs pursuant to any other statute, the Commissioner may assess**
3 **against and collect from a person all costs, including, without**
4 **limitation, reasonable attorney's fees, that are attributable to any**
5 **examination, periodic or special audit, investigation or hearing**
6 **that is conducted to examine or investigate the conduct, activities**
7 **or business of the person pursuant to this chapter.**

8 **Sec. 3.7.** NRS 645F.280 is hereby amended to read as follows:

9 645F.280 1. The Commissioner shall establish by regulation
10 rates to be paid by escrow agencies, mortgage agents, mortgage
11 brokers , ~~and~~ mortgage bankers , **persons who perform any**
12 **covered service for compensation, foreclosure consultants and**
13 **loan modification consultants** for supervision and examinations by
14 the Commissioner or the Division.

15 2. In establishing a rate pursuant to subsection 1, the
16 Commissioner shall consider:

17 (a) The complexity of the various examinations to which the rate
18 applies;

19 (b) The skill required to conduct the examinations;

20 (c) The expenses associated with conducting the examination
21 and preparing a report; and

22 (d) Any other factors the Commissioner deems relevant.

23 **Sec. 3.9.** NRS 645F.290 is hereby amended to read as follows:

24 645F.290 1. The Commissioner shall collect an assessment
25 pursuant to this section from each:

26 (a) Escrow agency that is supervised pursuant to chapter 645A
27 of NRS;

28 (b) Mortgage broker that is supervised pursuant to chapter 645B
29 of NRS; ~~and~~

30 (c) Mortgage banker that is supervised pursuant to chapter 645E
31 of NRS ~~and~~; **and**

32 **(d) Person who performs any covered service for**
33 **compensation, each foreclosure consultant and each loan**
34 **modification consultant that is supervised pursuant to this**
35 **chapter.**

36 2. The Commissioner shall determine the total amount of all
37 assessments to be collected from the entities identified in subsection
38 1, but that amount must not exceed the amount necessary to recover
39 the cost of legal services provided by the Attorney General to the
40 Commissioner and to the Division. The total amount of all
41 assessments collected must be reduced by any amounts collected by
42 the Commissioner from an entity for the recovery of the costs of
43 legal services provided by the Attorney General in a specific case.

44 3. The Commissioner shall collect from each entity identified
45 in subsection 1 an assessment that is based on:



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(a) An equal basis; or

(b) Any other reasonable basis adopted by the Commissioner.

4. The assessment required by this section is in addition to any other assessment, fee or cost required by law to be paid by an entity identified in subsection 1.

5. Money collected by the Commissioner pursuant to this section must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.

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 to 3.5, inclusive, 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 to 3.5, inclusive, 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 ~~§ 4~~ , *unless the attorney at law is rendering those services in the course and scope of his employment by or other affiliation with a mortgage broker or mortgage agent*;

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



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1 performs services in connection with this obligation or lien and the
2 obligation or lien did not arise as the result of or as part of a
3 proposed foreclosure reconveyance;

4 ~~[6.]~~ 5. Any person doing business under the laws of this State
5 or of the United States relating to banks, trust companies, savings
6 and loan associations, industrial loan and thrift companies, regulated
7 lenders, credit unions, insurance companies, or a mortgagee which
8 is a United States Department of Housing and Urban Development
9 approved mortgagee and any subsidiary or affiliate of those persons,
10 and any agent or employee of those persons while engaged in the
11 business of those persons;

12 ~~[7.]~~ 6. A person , *other than a person who is licensed*
13 *pursuant to section 3 of this act, who is* licensed ~~[as an escrow~~
14 ~~agent, title agent, mortgage agent, mortgage broker or mortgage~~
15 ~~banker]~~ pursuant to *chapter 692A or any* chapter ~~[645A, 692A,~~
16 ~~645B or 645E]~~ *of title 54* of NRS ~~[, respectively,]~~ while acting
17 under the authority of his license;

18 ~~[8.]~~ 7. A nonprofit agency or organization that offers credit
19 counseling or advice to a homeowner of a residence in foreclosure
20 or a person in default on a loan; or

21 ~~[9.]~~ 8. A judgment creditor of the homeowner whose claim
22 accrued before the recording of the notice of the pendency of an
23 action for foreclosure against the homeowner pursuant to
24 NRS 14.010 or the recording of the notice of default and election to
25 sell pursuant to NRS 107.080.

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

27 645F.400 1. A *person who performs any covered service, a*
28 foreclosure consultant *and a loan modification consultant* shall not:

29 ~~[1. —Claim,]~~

30 (a) *Claim*, demand, charge, collect or receive any compensation
31 ~~[until after the foreclosure consultant has fully performed each~~
32 ~~covered service that he contracted to perform or represented he~~
33 ~~would perform.~~

34 ~~—2.]~~ *except in accordance with section 3.3 of this act.*

35 (b) Claim, demand, charge, collect or receive any fee, interest or
36 other compensation for any reason which is not fully disclosed to
37 the homeowner.

38 ~~[3.]~~ (c) Take any wage assignment, lien on real or personal
39 property, assignment of a homeowner's equity or other interest in a
40 residence in foreclosure or other security for the payment of
41 compensation. Any such security is void and unenforceable.

42 ~~[4.]~~ (d) Receive any consideration from any third party in
43 connection with a covered service provided to a homeowner unless
44 the consideration is first fully disclosed to the homeowner.



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~~[5-]~~ (e) Acquire, directly or indirectly, any interest in the residence in foreclosure of a homeowner with whom the foreclosure consultant has contracted to perform a covered service.

~~[6-]~~ (f) Accept a power of attorney from a homeowner for any purpose, other than to inspect documents as provided by law.

2. In addition to any other penalty, a violation of any provision of this section shall be deemed to constitute mortgage lending fraud for the purposes of NRS 205.372.

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 to 3.5, inclusive, 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 to 3.5, inclusive, 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



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(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.

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

6. As used in this section, "bona fide purchaser" means any person who purchases an interest in a residence in foreclosure from a foreclosure purchaser in good faith and for valuable consideration and who does not know or have reasonable cause to believe that the 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 to 3.5, inclusive, 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



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1 imprisonment in the state prison for a minimum term of not less
2 than 1 year and a maximum term of not more than 10 years, or by a
3 fine of not more than \$10,000, or by both fine and imprisonment.

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

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

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

24 5. The Attorney General may investigate and prosecute a
25 violation of this section.

26 6. As used in this section:

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

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

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

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

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

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

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



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(c) "Participant in a mortgage lending transaction" includes, 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 NRS 645F.320;
- (4) A foreclosure purchaser as defined in NRS 645F.330;
- (5) An investor as defined in NRS 645B.0121;
- (6) A lender as defined in NRS 598D.050;
- (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. 10.5. The Commissioner of Mortgage Lending shall adopt regulations required by sections 3 and 3.1 of this act and submit the regulations to the Legislative Commission for review within 90 days after the passage and approval of this act.

Sec. 11. This act becomes effective:

1. Upon passage and approval for the purposes of adopting regulations and performing any other preparatory actions that are necessary to carry out the provisions of this act; and

2. On July 1, 2009 for all other purposes.

