

## Amendment No. 157

Assembly Amendment to Assembly Bill No. 152

(BDR 54-787)

**Proposed by:** Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of A.B. 152 (§ 3).

| ASSEMBLY ACTION |                          |      |                          | Initial and Date | SENATE ACTION |                          |      |                          | Initial and Date |
|-----------------|--------------------------|------|--------------------------|------------------|---------------|--------------------------|------|--------------------------|------------------|
| Adopted         | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____            | Adopted       | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____            |
| Concurred In    | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____            | Concurred In  | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____            |
| Receded         | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____            | Receded       | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____            |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.

DY/WLK



Date: 4/6/2009

A.B. No. 152—Makes various changes concerning mortgage lending and related professions. (BDR 54-787)



ASSEMBLY BILL NO. 152—ASSEMBLYMEN CONKLIN, BOBZIEN, OCEGUERA, SPIEGEL,  
MCCLAINE; 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 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).

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           1. An attorney at law rendering services in the performance of his duties as an  
2 attorney at law ~~{H}~~, unless the attorney at law is rendering those services in the  
3 course and scope of his employment by or other affiliation with a mortgage  
4 broker or mortgage agent;

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

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

9           ~~—4—~~ 4. A person or the authorized agent of a person acting under the provisions of  
10 a program sponsored by the Federal Government, this State or a local government,  
11 including, without limitation, the Department of Housing and Urban Development,  
12 the Federal Home Loan Mortgage Corporation, the Federal National Mortgage  
13 Association or the Federal Home Loan Bank;

14           ~~{5—}~~ 4. A person who holds or is owed an obligation secured by a mortgage or  
15 other lien on a residence in foreclosure if the person performs services in  
16 connection with this obligation or lien and the obligation or lien did not arise as the  
17 result of or as part of a proposed foreclosure reconveyance;

18           ~~{6—}~~ 5. Any person doing business under the laws of this State or of the  
19 United States relating to banks, trust companies, savings and loan associations,  
20 industrial loan and thrift companies, regulated lenders, credit unions, insurance  
21 companies, or a mortgagee which is a United States Department of Housing and  
22 Urban Development approved mortgagee and any subsidiary or affiliate of those  
23 persons, and any agent or employee of those persons while engaged in the business  
24 of those persons;

25           ~~{7—}~~ 6. A person, other than a mortgage agent or mortgage broker, who is  
26 licensed ~~{as an escrow agent, title agent, mortgage agent, mortgage broker or~~  
27 ~~mortgage banker}~~ pursuant to chapter 692A or any chapter ~~{645A, 692A, 645B or~~  
28 ~~645E}~~ of title 54 of NRS ~~{, respectively,}~~ while acting under the authority of his  
29 license;

30           ~~{8—}~~ 7. A nonprofit agency or organization that offers credit counseling or  
31 advice to a homeowner of a residence in foreclosure or a person in default on a  
32 loan; or

33           ~~{9—}~~ 8. A judgment creditor of the homeowner whose claim accrued before  
34 the recording of the notice of the pendency of an action for foreclosure against the  
35 homeowner pursuant to NRS 14.010 or the recording of the notice of default and  
36 election to sell pursuant to NRS 107.080.

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

38           645F.400 A foreclosure consultant shall not:

39           1. Claim, demand, charge, collect or receive any compensation until after the  
40 foreclosure consultant has fully performed ~~{each}~~ every covered service that he  
41 contracted to perform or represented he would perform.

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

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

48           4. Receive any consideration from any third party in connection with a  
49 covered service provided to a homeowner unless the consideration is first fully  
50 disclosed to the homeowner.

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

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

**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.

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 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.

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

2       205.372 1. A person who, with the intent to defraud a participant in a  
3 mortgage lending transaction:

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

6       (b) Knowingly uses or facilitates the use of a false statement or  
7 misrepresentation made by another person concerning a material fact or deliberately  
8 uses or facilitates the use of another person's concealment or failure to disclose a  
9 material fact;

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

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

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

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

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

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

30       4. Except as otherwise provided in this subsection, if a lender or any agent of  
31 the lender is convicted of the offense of mortgage lending fraud in violation of this  
32 section, the mortgage lending transaction with regard to which the fraud was  
33 committed may be rescinded by the borrower within 6 months after the date of the  
34 conviction if the borrower gives written notice to the lender and records that notice  
35 with the recorder of the county in which the mortgage was recorded. A mortgage  
36 lending transaction may not be rescinded pursuant to this subsection if the lender  
37 has transferred the mortgage to a bona fide purchaser.

38       5. The Attorney General may investigate and prosecute a violation of this  
39 section.

40       6. As used in this section:

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

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

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

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

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

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

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

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

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

~~(10)~~ (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.