MINUTES OF THE
JOINT MEETING OF THE ASSEMBLY COMMITTEE ON COMMERCE AND LABOR
AND THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-Fifth Session
February 11, 2009

The Joint Assembly Committee on Commerce and Labor and the Senate Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:40 p.m. on Wednesday, February 11, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

ASSEMBLY COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chairman
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman Ed A. Goedhart
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Mark A. Manendo
Assemblywoman Kathy McClain
Assemblyman John Oceguera
Assemblyman James A. Settelmeyer

SENATE COMMITTEE MEMBERS PRESENT:

Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Warren B. Hardy II

COMMITTEE MEMBERS ABSENT:

Senator Maggie Carlton, Chair (excused)
Senator Mark E. Amodei (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Kelly Gregory, Senate Committee Policy Analyst
Dan Yu, Committee Counsel
Daniel Peinado, Senate Committee Counsel
Andrew Diss, Committee Manager
Patricia Blackburn, Committee Secretary

OTHERS PRESENT:

James W. Hardesty, Chief Justice, Nevada Supreme Court
Jon Sasser, representing Washoe County Senior Law Project and Washoe Legal Services, Reno, Nevada
Ben Alsasua, Housing Counselor, Washoe County Senior Law Project, Reno, Nevada
Azucena Valladolid, Director of Counseling, Consumer Credit Counseling Service, Las Vegas, Nevada
Keith Lynam, Legislative Chairman, Nevada Association of Realtors, Las Vegas, Nevada
Alex Woodley, Code Enforcement Manager, City of Reno, Nevada
George Ross, representing Bank of America, Las Vegas, Nevada
Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada

Larisa Cespedes, Senior Vice President, Government Relations, HSBC, Sacramento, California
Jan Owen, First Vice President and Government Industry Relations Manager, Washington Mutual (now J.P. Morgan/Chase), Sacramento, California
James Wadhams, representing Citigroup, Las Vegas, Nevada
Spencer Judd, Private Citizen, Las Vegas, Nevada
Michael Brooks, representing United Trustees Association, Las Vegas, Nevada
Corinne Cordon, President, Private Lenders Group, Las Vegas, Nevada
Jenny Welsh Reese, representing Nevada Association of Realtors, Reno, Nevada
Brad Spires, Broker/Salesman, Re/Max, Gardnerville, Nevada
Rocky Finseth, representing Nevada Land Title Association, Las Vegas, Nevada
Ron Peterson, President, Northern Nevada Title Company, Carson City, Nevada
Ernest Figueroa, Consumer Counsel, Bureau of Consumer Protection, Office of the Attorney General
Joseph Waltuch, Commissioner, Division of Mortgage Lending, Department of Business and Industry
Brenda Crosbie, Las Vegas Realty Center, Las Vegas, Nevada

[The roll was called. There was a quorum of both the Assembly and the Senate Committees.]

Chairman Conklin:
Today is foreclosure day in this Joint Commerce and Labor Committee meeting. We will open the hearing on Assembly Bill 149.

Assembly Bill 149: Revises provisions governing foreclosures on property. (BDR 9-824)

Assemblywoman Barbara Buckley, Clark County District No. 8:
I am pleased to be the primary sponsor of A.B. 149. This bill is to assist troubled homeowners and to stabilize neighborhoods. I will not spend a lot of time on the background of our foreclosure crisis because I know this Committee is familiar with most of the details. (Exhibit C, PowerPoint presentation.) We had a real estate boom in the early 2000s, fueled by creative financing. We had unregulated mortgage originators having financial incentives to sell risky, unaffordable subprime mortgages to vulnerable buyers. Many of these individuals could have been put into a traditional product, but were not. Nevada

has the highest rate of foreclosures in the United States. In Nevada, in 2008, there were 77,693 properties in foreclosure. That is a 126 percent increase over the year 2007 and a 530 percent increase from 2006. For 2009 we have 72,157 properties projected to be in foreclosure.

The chart in the PowerPoint presentation maps out where the problem spots are, and no one will be surprised to see the large number in Clark County, Las Vegas, North Las Vegas, and southern Nevada. You also can see a surprising number in rural Nevada. The blue in the chart represents the number of subprime loans, the yellow indicates how many are 30 days or more delinquent, and the red is the estimated number of loans already foreclosed. I have these broken out by county if anyone would like to see those.

The high rate of foreclosures affects more than just the homeowner facing foreclosure. There is a spillover effect, and it has caused the resale market to free fall at a precipitous rate. Salestraq now estimates that foreclosures account for 60 to 70 percent of all home sales in November 2008, at a median price of $166,000. This price is now below the actual replacement cost. Falling home prices affect our real estate market, keep our construction industry not working, and affect everyone who is trying to sell their home and move. In 48 percent of the homes in Nevada, the homeowners now owe more on their mortgages than their houses are worth. The spillover effects are astronomical. The lack of feeling of wealth contributes to the overall low consumer confidence in the economy.

We do not see the bottom yet. The median price of a new home declined 14 percent in the past year. New home construction is at its lowest level in 30 years. Overall, in southern Nevada the decline in home prices is expected to result in a net loss of $84.8 billion in housing wealth. The southern Nevada real estate market will not "hit bottom" until late 2009, according to the latest economic projections. The forecasted price change "to the bottom" is estimated to be a negative 42.6 percent from the second quarter of 2008.

We are caught in a vicious cycle, and it continues to spiral downwards. Declining real estate values mean that even homeowners with conventional loans now owe more on their mortgages than their house is worth. The next "wave" of foreclosures is expected to involve the prime mortgages. Falling home prices are leading to bank and investment losses. These losses reduce capital flows, which lead to job losses. Job losses lead to more foreclosures, which lead to more falling home prices.

We see spillover effects beside the financial ones. We see communities suffering from increased crime when the foreclosure rate increases one percent, according to one study. The more vacant homes you have, the more potential you have for neighborhood problems. You also have the other spillover effects of abandoned homes in neighborhoods, unkempt lawns, trash accumulation, pools with West Nile virus, and unattended pools. We see homes not being taken care of in neighborhoods.

There are additional projected impacts from foreclosures in Nevada. In 2008 and 2009, we expect to see 49,605 foreclosures and 557,286 surrounding homes affected by price declines. The decrease in home values is estimated at $6.5 billion, and of course, the loss of property tax revenue, another $8.6 million.

Assembly Bill 149 makes foreclosure a remedy of last resort. First, it applies only to owner-occupied, residential properties. It requires that a lender or mortgage servicer serve a borrower with a notice of default, which would include the following information:

1. Contact information for a person with authority to negotiate a loan modification on behalf of the lender;
2. Information on a local housing counseling agency that is approved by the United State Department of Housing and Urban Development (HUD); and
3. A form explaining that the borrower has the right to request a court mediation to try to reach a loan modification with the lender.

I cannot emphasize enough how important this information and this process will be for many borrowers. When I am not serving in the Legislature, I am a director of a nonprofit legal aid organization. We see people whose houses are being foreclosed. They cannot get a lender on the phone. They cannot get to someone willing to work with them. The reason might be that the loans have been sold so many times that it is not clear who the lender is. Or, the lender has capacity issues; they have so many homes in foreclosure and are trying to work things out with so many borrowers that they cannot even accept another phone call. It does not matter to the borrower what the reason is; they cannot get someone on the phone.

We had a case a few weeks ago where a gentleman was being foreclosed upon. He owned a small, modest condominium, and he was current on his mortgage. He could not get anyone from the lender to work with him, even to pick up the phone and talk to him. He actually was current on all of his payments; there was a mistake in the foreclosure process, and the company that was foreclosing

on behalf of the lender transposed condominium numbers. So, he is in the process of losing his home, and he was not delinquent on any payments. Our attorney got on the phone, and the mistake was straightened out within an hour. The gentleman asked, what would have happened if we were not here?

How will this measure work? Requests to mediate will be sent to the Administrative Office of the Courts, who will assign a senior judge, a district judge, a hearing master, or other designee of the Nevada Supreme Court. Justice Hardesty of the Nevada Supreme Court is here to testify. I truly appreciate the Court being willing to step up and say: this is such a crisis facing the entire State of Nevada that, even though it is a herculean task, we will take it on so that borrowers have an opportunity to try to work something out, and we will find an experienced mediator to help make this effective.

The Nevada Supreme Court, or an entity designated by them, will set the rule governing the procedures and the requirements for the mediations. We have heard some good suggestions from some of the lenders who are here to testify today. They want to make it clear how many "bites of the apple" the borrowers will get and how it will actually work. We are setting up a working group within the next few days to talk about some of the suggested procedures, and the Court will set up a rule-making process as soon as the bill passes. One suggestion is to make this opportunity available to the borrower earlier, even before the notice of default is filed. I think we can include that, because so many want to work out something before it gets too far down the road.

The other key component of this bill is that lenders or their representatives must appear or otherwise be available throughout the mediation. They also have to present a certified copy of the deed of trust and the promissory note, so that we know the person who is foreclosing actually owns the note. It is an elemental legal step, but one that is not being followed right now. If the lender or its representative fails to appear, the mediator has the ability, under the bill, to order appropriate relief. So, if the lender chooses not to participate in any mediation, the mediator will have the ability to order relief. If the borrower fails to attend, likewise, the mediator has the ability to dismiss the matter, and the nonjudicial foreclosure proceeding may proceed as it normally would.

What do we expect the results to be? I learned about some programs in other states when I attended a training seminar through the National Consumer Law Center in October 2008. Other states have instituted similar types of mandatory mediation programs to encourage loan modifications. For those who are interested, I have a state-by-state breakdown of the different procedures

that are being utilized in every state, whether the state utilizes judicial foreclosure, nonjudicial foreclosure, redemption rights, deficiency judgments, or mediation. Some states are thinking of moratoriums, the early results of which are not that great, because they delay the foreclosure.

The purpose of mediation is to bring the lender together with the borrower, who is ready, willing, and able to enter into a modification, and to allow those modification terms to be discussed.

This bill does not stop foreclosures, but it can help troubled borrowers. Recent polls done by Freddie Mac show that 57 percent of delinquent borrowers and 65 percent of borrowers in good standing were not aware of the options that they have. Sixty percent of borrowers in good standing and 73 percent of delinquent borrowers felt that financial institutions do not work with people who are struggling financially; and when asked, delinquent borrowers favored options that they were least likely to know about, such as working with a counseling agency, forbearance, adding missed payments to the loan balance, changing the interest rate, extending the mortgage, and the other options that are usually considered.

What do we expect the results may be? It is hard to estimate exactly how many homeowners will take advantage of mediation. There will be those who choose to let the house go, those who pursue a "short sale," and those who will actually take advantage of mediation. The Center for Responsible Lending did their best "guestimate" of how many Nevada homeowners would take advantage of the program, and they estimate that 17,700 homes would be saved and that the total savings would be $1.6 billion. There are interesting numbers coming out of the Congressional Research Service. They estimate the average cost of a foreclosure to the homeowner is $7,200, to the lender is $50,000, and to the neighbors is $78,000. Preventing the foreclosure would cost $3,300 per home.

That is the bill in a nutshell. I am setting up a working group to work with me on improvements to the bill, such as expanding it to allow homeowners the opportunity to seek mediation earlier and work out all the details with the court. The details include determining the length of time for the mediation, making sure those people who have no opportunity to save their home are processed more quickly to avoid delays, and making sure we have adequate judges available to mediate. We crafted the bill to allow not only senior judges, but also hearing masters and others, so that we have adequate personnel. Especially in the beginning, we are going to have many people requesting help. Through the Ways and Means Committee, we will be requesting funds in the

senior judges' budget to make sure we have adequate senior judges available to help fill in. We will also be working with the Judiciary Committee to make sure that we have all the statutory authorization for others who might be asked to fill in.

This would allow an opportunity to try to stabilize our market, to save homes for those borrowers who are ready, willing, and able to work out an agreement with their lender, and to hopefully help the entire Nevada economy by stopping the downward spiral caused by foreclosures in our state.

Chairman Conklin:
This is an excellent presentation. There are some questions from the Committee, but would you prefer that Chief Justice Hardesty speak first?

Assemblywoman Buckley:
I would like the Chief Justice to come up, and then we can answer questions.

James W. Hardesty, Chief Justice, Nevada Supreme Court:
As Chief Justice of the Nevada Supreme Court, neither I nor the Court takes a position on any legislation; we stand neutral with respect to policy decisions. We were asked to evaluate and consider participating in a mediation process, a dispute resolution process that has been outlined by Assemblywoman Buckley. That is what courts do. We conduct settlement conferences and mediations on a regular basis. We are well-trained to accomplish significant objectives in the settlement and mediation process.

I believe that it would be necessary for the Court to adopt a set of rules which would govern the mediation process, and as an outline, we have a couple of sources that we can turn to. First, the Supreme Court can use the current settlement conference rules. Second, we have settlement conference mediation rules for alternate dispute resolution. We also have rules that govern other mediation processes throughout the court system.

This situation is unique in a couple of respects. The process does not begin with a filed court case; it is initiated, instead, through what appears to be a "notice of default and election to sell." It would be necessary for the court to adopt a new set of rules governing how the settlement and mediation process would take place, how it would be administered, the time frames within which it would be conducted, and how it would be supervised.

I suggested to Assemblywoman Buckley, after conferring with the chief judges of the two rural districts (Chief Judge T. Arthur Ritchie Jr., of the

Eighth Judicial District and Chief Judge Connie J. Steinheimer of the Second Judicial District) and the business court judges in those districts, that the best approach is to treat this as a judicial function administered by the Administrative Office of the Courts. We do have in place a structure through the Senior Judge Program to be able to administer a program like this.

There will be a fiscal impact, the full extent of which will need to be evaluated. We would need authority to spend Senior Judge Program money for certain administrative costs to process paperwork, assign judges, and the like. There would also be a fiscal impact because, as you know, the "critical needs bill" will be expiring June 30th, and if that is not revisited, the court may not have senior judges. That is an important issue to be addressed.

I believe that, through an appropriate rule-making process, the court could fashion certain rules for administering a settlement program that is envisioned in this bill.

Timing is important. About three years ago, the court did an extensive evaluation of its own settlement program, and we were very concerned about the fact that settlement cases languished in our program. We completely revised the rules, set time frames for settlement conferences, and presented consequences for failure to address those time frames. I think the revised rules have worked extremely well. These are civil cases in which the district court has entered judgment, and the case is over and now on appeal to the Supreme Court. So, someone won and someone lost. In every civil case the case is referred to the settlement program of the Supreme Court. We have accomplished a settlement rate of 48 percent. I think that is a statistic that could be extended and translated into a program like this.

We are willing to work with everyone we can under the Canons of the Judicial Code. I am not interested in convening the Court to do rule-making until there is a statute. We would like to develop some information in advance as to the areas of concern people have. We could do a review and develop some information on what the rules would provide.

Chairman Conklin:
Are there any questions for the Speaker or Chief Justice?

Assemblyman Christensen:
What level of judicial oversight will be involved in this process?

Assemblywoman Buckley:
The way the bill was drafted, we allow a senior judge, a district judge, a hearing master, or other designee to conduct the mediation. This was to give the Administrative Office of the Courts as much flexibility as possible. For example, if you have a foreclosure in Battle Mountain, we would allow the Administrative Office of the Courts to figure out who would be the most appropriate mediator. In some cases, the district judge may be able to conduct the mediation. In Clark County, it would not be realistic to think that any district court judge could handle the mountain of requests for mediation. So, in that jurisdiction, there will be senior judges assigned, and/or the courts will also look at their existing alternative dispute resolution process to see what additional time that master might be able to spend on these mediations.

The bill allows all those alternatives, and it allows the court to evaluate its own resources to assign whatever is appropriate depending on which part of the state the mediation would be in. For the senior judge funding, we will be asking the Ways and Means Committee to make sure the budget stays funded, so the Court can have the resources to pay the senior judges for their time.

Justice Hardesty will be working with us on a proposal to the Ways and Means Committee and the Senate Finance Committee, after we ascertain how much of the mediation can be done by judges, how much by district hearing masters, and what additional resources are needed based on these projected numbers.

Assemblyman Christensen:
This is a huge issue. The appropriation does not concern me. I worry about the judicial backlog and how we can address that.

Chief Justice Hardesty:
I would not want anyone to get the impression that we have a lot of time in the judiciary to take on a task like this one. The truth is, you have a judiciary that is buried. You have one of the busiest state supreme courts in the United States. We recognize the importance of this issue to the citizens of the state. This is an "all hands on deck" issue. We will be reaching out to lawyers who serve as settlement conference judges in our settlement conference program to participate as mediators in this process.

My concern is that we appropriately, effectively, and timely administer a program like this because you need to do it right in the beginning. My concern, also, is that we need appropriate training for anyone who serves as a mediator. It does no good to put a person in the room and not have adequate training to deal with subjects like you are dealing with in foreclosures. There is a

considerable amount of front-end effort that the court will need to address in its rule process.

Assemblywoman Gansert:
My first question concerns logistics. The bill talks about sending certified mail "return receipt requested." If they cannot find the person, and the notice never reaches the person, does that qualify as not returning the form?

Assemblywoman Buckley:
If the individual does not claim the notice, if they choose not to file, then the foreclosure procedures would be allowed to occur. There are many instances where the homeowners are gone or they have no desire to work with the lender. Under this process, the lender will be entitled to proceed with foreclosure if the borrower has no interest in engaging in mediation.

Assemblywoman Gansert:
I see no time frames in this bill. Justice Hardesty, what happens if they do not reach an agreement? What type of time frame are you expecting these to have, and what type of time lines are you expecting to develop?

Chief Justice Hardesty:
I would not want to be presumptuous on the issue, and I think those are all important questions to any rule that is entered on this subject. You cannot have an indefinite mediation that never comes to an end, especially in this context, so there need to be some very definite rules that start and stop the process.

Assemblywoman Gansert:
So, it is difficult because there is nothing in the bill currently. Is there more information we can put into the bill as far as setting parameters?

Assemblywoman Buckley:
I think we are going to have to discuss that in processing the bill. On one hand, we could put an outside time parameter on it, but on the other hand, I do not want to tie the court's hands. We might say that a decision has to be made within 30 days of mediation, but the court may find that it is easier to make the decision that day. We might want to consider setting an outside time frame to prevent delays, but I am also concerned that too many specifics may not result in the best operating plan. We need to balance that in our final amendments, and it will be among the items we discuss.

We are going to clarify the language to make it absolutely clear that the lenders, and not the intermediaries, are the ones required to come to the mediation. We do not want anyone who has no beneficial interest in the process to be required to attend the mediation. This is for the holder of the note. That is another area we will clarify.

Assemblyman Anderson:
What about people who abandon property because of construction defects and other kinds of issues? Has anyone explored that scenario?

Assemblywoman Buckley:
I have not done any specific analysis with regard to construction defects and their impact on the foreclosure process. I hope we will be able to settle on appropriate language to allow the homeowner in difficulty to request mediation prior to the first foreclosure notice. We will have opened up an avenue to a borrower who may be facing that situation. I am hopeful that we may be able to expand this, because there are many people who want to work something out before they are in default.

Court processes need to be worked out. I am confident that we can add a step prior to the notice of default. How much earlier, I am not sure. The working group will try to make it as expansive as we can, while fitting within the current system.

If there is anyone in the audience who wishes to participate in the working group, please contact my office. I would be happy to include them.

Assemblyman Arberry:
Will this be retroactive?

Assemblywoman Buckley:
We are going to work with the Court on the effective date. You can see from the bill that the effective date is July 1, 2009. We are going to ask the Court to make it effective at the very earliest opportunity. It will then apply to all borrowers who wish to take advantage of it and who fit within the statutory parameters. It certainly will not set up a mediation process for anyone who has already lost their home through foreclosure. Under state law, we cannot do that, but we can make the process effective for anyone who has not yet been foreclosed upon. The goal is to help as many people as possible, but also to recognize that we need to work with the court to make sure they do not receive 10,000 requests on day one without time to put the rule-making in place to handle the requests.

Assemblyman Arberry:
Does the bill address the situation where a party does not attend and then calls with a good excuse?

Assemblywoman Buckley:
In that instance, it would be rescheduled. The remedies are for someone who chooses not to participate.

Senator Hardy:
Thank you for taking on such a tough issue. This bill represents the kind of intervention into the private sector that I would generally be uncomfortable with. Clearly, these are not normal times. I need to understand how the voluntary loan modification process has broken down. Do you have access to data, or can you point me in a direction to research that point? I would like this to be a voluntary modification. A lender does not want a home back, so it makes sense that they would work with the borrower.

Assemblywoman Buckley:
I would be happy to give you my research materials. The breakdown in the voluntary modification process does seem counter-intuitive. Even if a lender takes back a house, they cannot sell it right away. It makes no rational business sense. The lender asks why they should rewrite a loan now, when the house is worth less. Or, where the loan has been securitized, the borrower cannot even get in touch with anybody with authority. As a lawyer I see these cases at my legal aid office, and I say "get me somebody on the phone with authority, and I can work out a deal that will be in the best interests of the lender and the borrower." But, the servicer will not tell you who the real lender is; half the time, because they do not know. The loan has already been splintered and securitized. For those lenders that are local and own the loans, part of their problem is capacity. They have so many loans in default that they cannot set up the necessary infrastructure to be able to respond. Most lenders here in Nevada say they are already working with their borrowers, but they are not the majority.

Senator Hardy:
It would make sense for the people to come to the table and negotiate loan modifications. If borrowers can no longer qualify for a modified loan, mediation will not help. I do not want to fix one problem and create another. These are not normal times.

Chief Justice Hardesty:
I would exercise some caution and concern that you not constrain the court's capability to adjust, as necessary, the effectiveness of the program. We adopted, by rule, the business court. That has been enormously successful. It has been successful because the court has been able to make modifications, as appropriate through rules, without extensive time delays. I can appreciate some concerns, and they need to be taken into consideration. It is oftentimes discovered that a rule will not be as effective as thought. If the court can make modifications, we can accommodate those situations. Outside parameters make sense, but we need flexibility to make this work. Everyone will be learning as we work though it.

Senator Hardy:
I think we may have been making the same point a different way. I want to make sure that we have the ability to adjust to things that we are not thinking about right now.

Assemblyman Horne:
If there is boilerplate language in a mortgage contract, is mediation allowed?

Assemblywoman Buckley:
When we crafted this bill, I had our legal counsel examine our rights. We cannot impair the ability of any private party to contract, and where there is a contractual agreement, the state cannot override that. However, the foreclosure process is uniquely within the province of state law under Chapter 107 of the *Nevada Revised Statutes* (NRS). We were advised that we could set forth the procedure on how foreclosures occur, and that is why all the other states could engage in similar mediation programs. Originally, many of these mediation programs cropped up in states with farm foreclosures. Those states utilized the same method.

Assemblyman Settelmeyer:
I was very leery of this bill when it first came out. This is nothing new. It happened during the Great Depression, when the Supreme Court said it was acceptable, as a temporary restriction. I am appreciative of the fact that you involved the courts. I worry that this bill is not temporary in nature. Can we put something into the bill to make it temporary in nature?

Assemblywoman Buckley:
I struggled with that. Should this be a two-year program? We may not need it past that time. At a minimum, we are probably going to be dealing with this problem for the next two years. During the next legislative session, we can

reexamine how well it worked and change anything that needs changing, including extending it or repealing it. If it turns out that the bill keeps people in their homes or reduces costs to the lender, we might want to keep it on the books.

Assemblyman Settelmeyer:
I think it has such potential to help out all of our constituents that I am afraid, without a temporary number in it, the Supreme Court could rule that it is not valid. We would have to have a special session or wait two years to fix it again.

Assemblywoman Buckley:
Our legal counsel thinks we are solid on that point. There are so many other states that have done it under different circumstances. I feel confident about the legality and feel it would not be challenged successfully.

Assemblywoman Kirkpatrick:
One of my constituents had an out-of-state lender and tried to work with the lender, but could not, because the lender was not licensed in the State of Nevada. How do we deal with the out-of-state lenders?

Assemblywoman Buckley:
The lender, regardless of where they are located, will not be able to foreclose unless they go through the process. If we are able to expand the bill to allow an earlier opportunity, then that homeowner will be able to take advantage of it immediately.

Senator Schneider:
We now have mortgages that are greater than the current value of the homes. These are straight, 30-year loans. Would the mediators have the right to negotiate those mortgages down?

Assemblywoman Buckley:
As you point out, there are a lot of forces that need to "right" themselves before we can get our housing economy on-track. We need the Troubled Asset Relief Program (TARP) money to make sense; we need credit markets, lending, and financial health to come back. The pieces of the economy are so interdependent. This bill is not going to magically cure all of those problems. It will require a national and international recovery.

This bill allows mediation, and allows the parties to come together in good faith to make decisions and create solutions that make sense for the individual

homeowner. The judge will not be allowed to order lenders to reduce their loan by 20 percent, for instance. Mediation allows the lender and the borrower to come together with an independent, trained, skilled settlement mediator to see if resolution can be achieved.

If the judge has before him a lender, who says it will cost $100,000 to take back the house and $50,000 to work out something appropriate, and a credit-worthy borrower, who has monthly income, then the judge is going to make the prudent business decision. Again, it is up to the lender, considering the individual circumstances of the borrower, to work out an agreement with the settlement judge.

Chairman Conklin:
Are there any additional questions? I see none.

Assemblywoman Buckley:
I look forward to working with the entire Committee and all those interested in our working group on the details of the bill. I hope to get back to the Committee in 10 to 14 days.

Jon Sasser, representing Washoe County Senior Law Project and Washoe Legal Services, Reno, Nevada:
Ms. Buckley mentioned in her bill that people will be notified about certified Department of Housing and Urban Development (HUD) counselors. The Senior Law Project has been a certified HUD counselor since 1998 and, under two recent rounds of funding, has been able to add three counselors starting last summer. Mr. Alsasua had a background in the private sector before becoming a counselor, so I brought him with me today to talk about his work and the types of clients he is seeing. He also has letters from clients telling their situations.

Ben Alsasua, Housing Counselor, Washoe County Senior Law Project, Reno, Nevada:
I support this bill. We have submitted a handout (Exhibit D) explaining some of the hardships borrowers have had in dealing with their lenders. I feel the bill will improve the situation as far as housing counselors are concerned. Many times we are stuck with requests for loan modifications that are denied, and can offer no help because of the strict investor guidelines which do not allow loan modification. The borrower is denied any type of assistance. When we do get loan modifications, they do not always make sense. It would be to everyone's advantage to have a different set of eyes take a look at the modification proposal. Oftentimes we will see modifications or payments that are bound to fail, and the borrowers are back to the default scenario. It would be nice to

have a mediator take a look at these modifications to make sure that the borrower does not fail.

We have seen a large number of our cases denied because of income deficiency. The reason these borrowers are seeking assistance is that they cannot afford their mortgage payments. We go over each client's income and debts and determine what type of structure would be suitable for the borrower, but often the lender denies our proposal. This bill would allow us to present our proposals to a mediator, another set of eyes, to determine if the structure is reasonable and affordable to the borrower.

Chairman Conklin:
Are there any questions for Mr. Sasser or Mr. Alsasua? I see none.

Azucena Valladolid, Director of Counseling, Consumer Credit Counseling Service, Las Vegas, Nevada:
I have been with the Consumer Credit Counseling Service for seven and a half years. I am here to testify in favor of the proposed bill. I worked as a counselor when the September 11th attacks occurred, causing thousands of people to become unemployed or underemployed and creating a foreclosure crisis on a minor level compared to today. The housing crisis is a widespread epidemic in Nevada. There are a large percentage of at-risk homeowners facing foreclosure due to unaffordable mortgages, rising or adjusting interest rates, rising mortgage payments, negative home equity, negative amortizing, or interest-only mortgages.

There are, however, several thousand homeowners in Nevada who would be able to avoid foreclosure and keep their homes if a loan modification of some sort could be worked out with the lenders. Loan modifications can include freezing or reducing interest rates, converting adjustable-rate mortgages into fixed-rate mortgages, reducing principal balances, adding delinquent payments into new loan amounts, reducing mortgage payments, or extending the loan terms to 30 or 40 years.

These types of concessions would allow consumers to convert unaffordable mortgages into affordable mortgages that they can sustain and allow the banks to avoid more foreclosures on their books.

Lenders commonly use loan servicers to handle the management of their mortgages. Loan servicers often do not have the authorization to approve, grant, or offer loan modifications to borrowers. This creates a long application process, a longer review period, and a longer decision period, as loan servicers

must first obtain the approval of the lenders or investors prior to communicating loan modifications to borrowers. Oftentimes servicers are inundated and do not have the manpower to review the applications. Consumers who would have a viable option to keep their homes if a modification was to be worked out are not being given that option. The difficulty in obtaining modifications has a direct affect on the number of people who are facing foreclosure. The end result is that borrowers lose their home anyway.

Dealing directly with the lenders or authorized personnel would decrease the time frame to get loan modifications approved. It could also stop foreclosure or reduce foreclosure fees. Requiring mediation between a lender and a borrower prior to a foreclosure would give those borrowers who have the financial ability to meet reasonable mortgage terms a fair and equitable opportunity to have their mortgage reviewed for a possible loan modification.

The Consumer Credit Counseling Service counsels approximately 14 clients every month. The majority of consumers are seeking assistance with their housing issue. It is astounding how many homeowners are unaware of what loan modification is or unaware of other programs available from the lender to stop foreclosure. Most are unaware that lenders have the ability to modify existing mortgages into more realistic and affordable mortgages. Many times, we receive phone calls from consumers who have sell dates only days away and have never contacted their lenders, their loan servicers, or any other entity for help. They lack the knowledge that help is out there and that loan modifications can possibly stop foreclosures.

The consumers are unaware of who to contact or what resources are available. Requiring mediation as an option to homeowners would clearly present the opportunity for loan modification to all homeowners. The lack of information regarding assistance and the heavy lender workload increase the number of foreclosed homes in Nevada. More homeowners could keep their homes and banks could decrease their foreclosure caseload if only: (1) homeowners were fully aware that loan modifications exist; (2) homeowners could receive free, comprehensive housing counseling from HUD-approved agencies; (3) those who could afford a reasonable mortgage were given modified mortgage terms; and (4) lenders were mandated to review mortgages for loan modifications.

After all, lenders would end up selling these homes at a later date anyway at depreciated sales prices. Why not consider reducing the principal balance, reducing interest rates, or converting adjustable-rate mortgages into fixed-rate mortgages, which would allow current homeowners to stay in their homes and would avoid more foreclosures?

I am strongly in favor of A.B. 149.

Chairman Conklin:
Your organization has done and continues to do good work on behalf of consumers; and we recognize that not all homes can be saved; but the fact that borrowers have someplace to go to navigate the system and have some opportunity to become homeowners again is an incredibly valuable service.

Are there any questions from the Committee? I see none.

Keith Lynam, Legislative Chairman, Nevada Association of Realtors, Las Vegas, Nevada:
We believe this bill will bring some stabilization in our neighborhoods that is very badly needed. We do have some concerns with regard to noncommercial lenders and seller carry-back provisions. We are more than willing and able to work with the author and supporters of this bill. We are in support of A.B. 149.

Chairman Conklin:
Are there any questions for Mr. Lynam? I see none.

Alex Woodley, Code Enforcement Manager, City of Reno, Nevada:
I would like to thank Speaker Buckley for this bill. This bill will be a benefit to the communities because every home that does not become vacant due to foreclosure is one less home that we need to address. Prior to coming here from Reno, I received a call from one of our police officers who had already visited two homes this morning that had transients in them. They were both foreclosures. We support this bill.

Chairman Conklin:
Are there any questions for Mr. Woodley? I see none.

George Ross, representing Bank of America, Las Vegas, Nevada:
Bank of America would like to express our great appreciation to Speaker Buckley and her co-sponsors. We think this is a commendable bill, and we appreciate the effort she has put into it. We think this bill can be a major step towards resolving our foreclosure process. We are happy to have been involved in the early consultation. The way this bill was crafted and the comments that the Speaker made after presenting it directly addressed any issues we might have had. We are pleased that Chief Justice Hardesty is involved in this process. We appreciate the flexibility of this bill.

Bank of America, as well as several other large banks, has very aggressive programs to try to keep their customers in their homes. Between the loans that Bank of America and Countrywide (purchased last year) have made, we committed over $48 million. We believe that our active program of loan modification will keep well over 400,000 people in their homes. We currently have 6,000 associates working on that program, nationwide.

We have had a lot of experience in other states dealing with mediation, and we have learned some things. We believe the working group the Speaker has proposed will address those. We are pleased to participate in that and to share our knowledge.

One or two things have not been spoken of yet, and I would like to get them on the record. No one wants to waste a justice's or judge's time. We feel that is important. When a homeowner involves themselves in this process, it would also be good that, at least two weeks prior to mediation, they provide the lender and the judge with income statements, pay statements, and a statement of their expenses, so that they can review what might work. It might be possible to negotiate before the date of the mediation. This gives the homeowner a deadline. If that information is not forthcoming, it will waste the judge's time as well as the lender's. We look forward to working with the others.

Chairman Conklin:
Are there any questions for Mr. Ross? There are none.

Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:
I represent over 50 "Federal Deposit Insurance Corporation (FDIC) insured" banks in the State of Nevada, 90 percent of which never made any residential loans. Those who did make residential loans have all implemented robust workout programs with borrowers who are having problems. Those programs are beginning to show some success. The banks have devoted a great deal of resources and are making extensive efforts. The workout programs include term extensions, rate reductions, and principal reductions. The primary effort is to achieve sustainable, affordable mortgage payments with ideas such as a 38 percent "mortgage payment to income" ratio for willing borrowers. We appreciate the chance to work with the working group, and we look forward to improving the bill and filling in the details with Chief Justice Hardesty, the Speaker, and the rest of the members of the Committee.

The Office of Thrift Supervision has asked all of the banks they supervise to implement foreclosure freezes while the office works out the neighborhood

stabilization program details. We need to work with the federal law so there are no conflicts.

Chairman Conklin:
Are there any questions for Mr. Uffelman? I see none.

Larisa Cespedes, Senior Vice President, Government Relations, HSBC, Sacramento, California:
I know you called for those in support; we have no official position. We do support the efforts of Speaker Buckley. HSBC is a multinational financial institution. We offer a full range of consumer, commercial, and financial products, including mortgages. We would like to commend the leadership of Speaker Buckley and the co-sponsors of this bill because we know this is a very important issue, not only for Nevada homeowners, but for the future economic status of Nevada.

HSBC is strongly committed to home preservation. We have instituted, and have had in place for some time, a comprehensive loan modification program. We are primarily a portfolio lender, which means we have the opportunity to work with borrowers on a case-by-case basis to modify their loans as needed. We recognize that we are in a dire situation in Nevada. We look forward to working with the Speaker and the Chief Justice, and thank the Speaker for her leadership and willingness to address some of our concerns.

Chairman Conklin:
Are there any questions? I see none.

Jan Owen, First Vice President and Government Industry Relations Manager, Washington Mutual (now J.P. Morgan/Chase), Sacramento, California:
On December 25, 2008, J.P. Morgan/Chase acquired Washington Mutual assets in Nevada. I am not going to repeat what my colleague, Ms. Cespedes, said. We are here to help and would like to be part of the working group. We want to be part of the solution.

James Wadhams, representing Citigroup, Las Vegas, Nevada:
We are supportive of this effort, and we will be happy to work with the working group. We support the bill.

Spencer Judd, Private Citizen, Las Vegas, Nevada:
I am neutral on this bill, but I do have a few questions I would like to present. My first question concerns the process Speaker Buckley spoke of instigating before the notice of default is filed. If that process is implemented, that would

be great; but if it is not, what are the time limits? At what point does this stop and foreclosure start?

My second question is, would this process have any impact on the lender's ability, if they are unwilling or unable to modify a loan, to collect any deficiency?

Chairman Conklin:
We will take those questions under consideration.

Michael Brooks, representing United Trustees Association, Las Vegas, Nevada:
[Distributed (Exhibit E).] I represent the third party in this equation, not the lender, not the borrower, but the trustee who is responsible for carrying out the power of sale and the deed of trust. We are in support of this effort, and we would like to be a part of the working group since we can provide some insight. We have been working with legislatures in other states.

One of our concerns, initially, was with regard to the designation of the trustee as the party responsible for negotiating the loan modification. Everyone needs to understand that the trustee has no beneficial interest and no authority to negotiate. We have an interest in seeing this done properly.

Chairman Conklin:
We appreciate your input. If you have some written recommendations, please forward them to us.

Is there any more neutral testimony? I see none. Is there anyone wishing to testify in opposition to this bill?

Corinne Cordon, President, Private Lenders Group, Las Vegas, Nevada:
On one side, I am very much in favor of this bill. It has been a long time coming. There are a couple of unintended consequences, and I need to clarify exactly which loans this bill addresses. This bill refers to *Nevada Revised Statutes* (NRS) 107.085, which has to do only with Home Ownership and Equity Protection Act of 1994 (HOEPA) and "Section 32" loans. A HOEPA loan is a high-cost loan which requires that, under the Truth in Lending Act (TILA) Section 32, certain disclosures must be given to a borrower. *Nevada Revised Statutes* 107.085 applies to the exercise of a power of sale pursuant to NRS 107.080. On the date the trust agreement is made, the trust agreement is subject to the provisions of section 152 of HOEPA.

According to the research I was able to do in the past 24 hours, HOEPA applies only to a small percentage of loans done in the State of Nevada. In fact, there have been no such loans done by any institutional lenders in Nevada for over five years. The only other "Section 32" loans that I know of that are made in Nevada are made by private money lenders. There are only three private lenders in southern Nevada that will actually lend on an owner-occupied, single family residence. I would like clarification on whether this bill has to do with all loans in the State of Nevada, or only with HOEPA loans.

Chairman Conklin:
Ms. Cordon, just to clarify, this is testimony. If you have issues, now is the time to bring them up, but the Committee does not answer questions. We are taking your testimony under consideration.

Corinne Cordon:
I will go forward. Assuming this bill has to do with all loans made in the State of Nevada during the past few years where homeowners are now in difficulty, this bill makes sense; except, most of the loans are securitized. That is how the markets work in the United States. Investors from around the world buy into these securities. When I first talked to people about loan modifications, they told me the investor might be a pension fund from Scotland or the Teamsters Union. It would be impossible for the servicer to give approval to do a loan modification. If that is the case, then the representative or the actual investor has to be present at the mediation. We are going to have difficulty getting that done by the lenders, and when you start allowing mandatory mediation and modification, you will then have an impact on those investors.

Another concern is: what if the lender refuses to modify? At that point, what happens to the foreclosure? Does it start where it left off, or do you have to restart the foreclosure? What if you do modify the loan to 3 percent interest for the borrower, and then the borrower does not make any payments again? Do you need to start your foreclosure again and go the full 120 days?

My last concern: what is this going to do to lending in the State of Nevada? I heard a lot of the institutional lenders state they were in favor of this bill, but as a private money lender, I have concerns. If I made a loan to somebody at 12 percent and they agreed to pay that percentage, but then later they could not afford to pay that rate and wanted a modification to 4 or 5 percent, then I could no longer do those types of loans. Would I be compelled to modify those types of loans?

Chairman Conklin:
Are there any questions of Ms. Cordon?

Assemblywoman Buckley:
If the witness would like to call my office, I would be happy to add her to the working group. For the record, the bill is applicable to all loans, and we will be sure to clarify that it is not applicable only to HOEPA loans.

The language is intended to allow any securitized lender to send a representative. Certainly you could not require every investor to send a representative.

The timing is something the working group is going to work on. We may choose not to be too specific because we want to allow the Court to help guide us and want to have flexibility on what makes sense.

The bill does not authorize the Court to modify loan terms necessarily; that provision is there in case the lender refuses to participate.

Again, please call my office, and we will be happy to have you in the working group and will consider your points in our draft to the Committee.

Chairman Conklin:
Are there any additional questions for this witness? I see none. Are there any others wishing to testify? I see none.

I will close the hearing on A.B. 149.

I will open the hearing on Senate Bill 128.

[Vice Chair Schneider presides.]

Senate Bill 128: Requires certain persons to record foreclosure sales and sales of real property under a deed of trust within a certain period of time. (BDR 9-841)

Senator David R. Parks, Clark County District No. 7:
This bill requires that foreclosed properties be recorded with the county recorder within 30 days of the day of the foreclosure. This would help keep track of who truly owns the property, whether it is for legal purposes or for the payment of fees and taxes. It has been my experience that some homes remain in the

name of the foreclosed, former owner for many months after the foreclosure has been finalized.

With me this afternoon to provide further testimony on S.B. 128 are Jenny Reese and Brad Spires, here in Carson City, and in Las Vegas, we have Keith Lynam.

Jenny Welsh Reese, representing Nevada Association of Realtors, Reno, Nevada:
We would like to thank Senator Parks for introducing this bill. With me today is Mr. Brad Spires, who is a realtor in Douglas County. And in Las Vegas, we have Keith Lynam, who is the Legislative Chairman and will be testifying on behalf of the Association of Realtors.

Brad Spires, Broker/Salesman, Re/Max, Gardnerville, Nevada:
We are moving into unchartered territory. In Douglas County, depending on the area of the county, 20 to 35 percent of the current "listings" in the Multiple Listing Service (MLS) are short sales or foreclosures. The greater part of the story is that between 60 and 75 percent of the "sales" are short sales and foreclosures. There is some good news there. Because the prices have gone down, we have brought first-time buyers into the market, buyers that we have not had in a long time, and we are bringing former homeowners back into the process. These buyers are able to qualify with 5 or 10 percent down payments. These buyers have limited amounts of cash. They have enough to purchase the home.

The bad news is that, after the home has been foreclosed, there is no requirement for that deed of trust to be recorded. The deed on the home may sit unrecorded for months, or even a year. As the deed sits unrecorded, the county or city is filing liens, attorney fees are being filed, and fines from homeowners associations continue to accrue because no one is held accountable. At the time of closing, a new buyer is faced with an additional amount of money due because of these liens that the buyer was not aware of. If we know of these costs up front, before the transaction is entered into, we have the opportunity to roll the costs into the financing or not take the consumer down the road where they are told at the end that more money is necessary.

If we can get the foreclosures recorded, we can circumvent the problem, and the consumer will be better protected. There is another dilemma that we are causing, and that is for the homeowners associations.

Keith Lynam, Legislative Chairman, Nevada Association of Realtors, Las Vegas, Nevada:

I echo much of what Mr. Spires just relayed to you. I will attempt to further explain the impact of the lack of a requirement for recordation of the deed after foreclosure on homeowners associations (HOA) and, just as importantly, on the homeowners and neighborhoods of Nevada. When a property is in foreclosure, *Nevada Revised Statutes* (NRS) 107.090 requires that a "notice of default and sale" be given to subordinate lien holders, such as the homeowners association. We have been told that less than 10 percent of foreclosures actually notice the homeowners association. In addition, the foreclosures are, many times, done in a nominee's name, with no address or contact information. Without notice of this foreclosure sale, the homeowners association continues to make their collection efforts against the previous owner, unaware of the new ownership change that has just transpired. Uncollected assessments accrue, and notices concerning property maintenance do not reach the bank and are ignored by the previous owner. This causes the property to fall into further disrepair and further devalues the neighborhood.

Homeowners associations must continue to maintain the roads, lighting, and common areas of the association, along with fund reserve accounts and other large-ticket expenses. The HOAs simply cannot absorb these costs, and they do not have large contingency funds. These costs are passed directly to the remaining homeowners in the HOA through an increase in HOA assessments. Many of these homeowners are hanging on by a thread. Any increase in the HOA dues just might be the straw that breaks the camel's back.

In the meantime, as the "legal record" owner of the property, the bank is avoiding paying assessments, and avoiding maintaining the property in most cases; and the HOAs have a lien for only six months of prior assessments. It is not uncommon for a bank to own a property for far longer than six months. There are cases of properties held in Clark County for well over a year. These unpaid assessments past that six-month period are then lost.

When a new buyer is ready to close on a bank-owned property, the title company contacts the HOA for a payoff amount, at which time the HOA becomes aware of the previous transfer of ownership. The new buyer is then required to pay the unanticipated expense of unpaid assessments for the previous six months in order to close. This has caused many buyers to simply walk away from the sale of this now-vacant home. As a direct result of the delay in recordation, the HOAs are being forced to shoulder the burden of unpaid assessments and deteriorating neighborhoods. The longer a record owner is unknown, the greater the burden.

Vice Chair Schneider:
Are there any questions for the witness? I see none.

Senator David Parks:
The Nevada Land Title Association has proposed an amendment.

Vice Chair Schneider:
I assume each house will consider the bill.

Rocky Finseth, representing Nevada Land Title Association, Las Vegas, Nevada:
I have asked Ron Peterson to come to the table to explain the proposed amendment.

Ron Peterson, President, Northern Nevada Title Company, Carson City, Nevada:
We are essentially in favor of this bill. We have some wording suggestions that would make it more palatable for everyone concerned (Exhibit F). We understand the intent of the measure is to force the recordation of deeds conveying title after the foreclosure proceedings set out in NRS 107.080. The concern has been that these deeds are not being recorded in a timely fashion. I would like to take a few moments to explain to all of you the foreclosure process.

In a foreclosure, a trustee acts as an agent for the beneficiary, and is hired by the bank or the lenders to record a notice of default, mail the notice of default to all parties entitled to notice, post the sale in three public places and a local newspaper, record the notice of sale after three months has expired, mail the notice, post and publish the notice, and cause the sale to be cried as noticed.

The lending institution, in many cases, "credit bids" the amount they are owned under the loan and becomes the one entitled to the trustee's deed, which has the effect of vesting whatever interest was encumbered by the loan in the name of the successful bidder at foreclosure.

Our concern with S.B. 128 in its current form is the way subparagraph (a) is worded, in that the beneficiary does not pay anything at sale, because of their credit bid, and clear title is not necessarily obtained by the successful bidder at a trustee sale. The successful bidder, whether it is a lending institution or a third party, takes the property subject to all matters that are senior to the foreclosed deed of trust. We are concerned that the trustee would be overburdened by the requirements set out in paragraph (b). We would be forced to record the trustee's deed and pay those fees before we have been paid the transfer to comply with the 30-day requirement. In Clark County, for instance,

the transfer tax is $5.10 per thousand. We would have to advance $510 in connection with a $100,000 foreclosure, and $51,000 in connection with a $10 million foreclosure. In Reno, the transfer tax is $4.10 per thousand.

Therefore, we would like to offer an amendment to clarify this situation.

Vice Chair Schneider:
Are there any questions? I see none. Is there any other testimony? I see none. I will close the hearing on S.B. 128.

I will open the hearing on Assembly Bill 152.

Assembly Bill 152: Makes various changes concerning mortgage lending and related professions. (BDR 54-787)

Assemblyman Marcus Conklin, Clark County District No. 37:
You have before you A.B. 152. I will shorten my testimony because most of the members on these committees were here in 2007 when we took up Assembly Bill No. 440 of the 74th Legislative Session. As you may recall, A.B. No. 440 dealt with many things, but most importantly, it dealt with the issue of foreclosure consultants. It is a common practice, in marketplaces where foreclosures are on the rise, to have businesses appear that offer to provide foreclosure services and help through the process. That help can be anything, from preventing or postponing the foreclosure sale, to obtaining a forbearance, obtaining a time extension, or helping the homeowner obtain a loan or advance in an effort to save the home from foreclosure.

Many states regulate this practice, as does Nevada now, as a result of A.B. No. 440. Specifically, this bill prohibited certain acts by foreclosure consultants, including accepting any compensation until services contracted for are fully completed, claiming any compensation not fully disclosed to the homeowner, taking any interest or other security in a home in foreclosure for the payment of compensation, and so on.

Clearly, these provisions were there to protect homeowners from losing value in their homes, from having somebody steal value or equity in their homes, and also from paying for services never received. In an interim subcommittee, Nevada Legislative Commission's Subcommittee to Study Mortgage Lending and Housing Issues, we heard testimony that there are people in the community who provide mortgage services for a fee, who are unregulated, and who never provide that service. Not everyone does that, but it does happen.

It also came to our attention, during the interim subcommittee on mortgage lending, that there was a dispute as to who was governed under A.B. No. 440. Naturally, you will find that some businesses have come into existence and, instead of getting to the borrower when in foreclosure (late in the process), they start just before foreclosure. By coming just before the foreclosure, they deem themselves not to be foreclosure consultants, but loan modification consultants, and therefore, do not have to comply with any of these statutes. Everything we tried to protect the homeowners from is no longer protected.

That is the nexus of A.B. 152: to extend all of the protections that were wrapped in the foreclosure consultant statute to both the loan modification process and to anyone else that is not directly involved with the loan. If consultants are attempting to adjust somebody else's loan and accepting compensation for doing so, they should be regulated under these statutes.

Section 2 of the bill puts in a new definition in Chapter 645F of *Nevada Revised* Statutes (NRS) for a loan modification consultant. Section 3 says that a foreclosure consultant, a loan modification consultant, and anyone else who performs the covered services for compensation must be licensed as a mortgage broker or agent under NRS Chapter 645B. This is the area that allows the Mortgage Lending Division to regulate, under our statutes, those people who are modifying the loans. Section 5 amends the definition of a homeowner in order to plug the loophole through which loan modifiers were operating, free from regulations, until the recording of the notice of default.

Section 6 adjusts the applicability provisions of NRS Chapter 645F to harmonize them with section 3 of the bill. Sections 7 through 10 adjust the penalty provisions of A.B. No. 440 to include loan modification consultants. The effective date of this would be July 1, 2009.

I have been notified by the realtors that they may have some concerns regarding section 6, which may unintentionally affect some realtors. I am more than willing to talk to them to resolve any differences.

As Chairman of the interim subcommittee that studied mortgage lending, I know there are some interim subcommittee recommendations coming forth in other bills: one that clarifies the Mortgage Lending Division's enforcement authority over foreclosure consultants; also, one that requires the Mortgage Lending Division to adopt regulations to carry out the statutory provisions. What is missing from these, however, is the authority to create a licensing scheme or to capture these people under the regulatory body of the Mortgage Lending Division.

Vice Chair Schneider:
Are there any questions?

Assemblywoman Buckley:
My concern is that some unscrupulous mortgage brokers, now that they cannot lend anyone money, are putting out a shingle stating they can help restructure loans. I do not have much faith in the enforcement by the Mortgage Lending Division. How can this statute help consumers?

Assemblyman Conklin:
It was the original intent of A.B. No. 440 that we would have an aggressive standing to go after people who were violating consumers' rights in terms of reducing home value for a fee. In other words, I am going to charge you $2,000; and when all is done, I own your house; and you are renting it from me. Then I evict you after 30 days. I would like to say that we have a really aggressive Mortgage Lending Division that looks at the statute and enforces it. But, the Division has taken the position that, unless the statute expressly says that the Division can do it, then they cannot. While I disagree with that idea, it is my intent to expressly put in the bill that certain practices are prohibited, and to pressure the Division until the "bad players" are brought to justice.

Vice Chair Schneider:
Are there any other questions? I see none.

Ben Alsasua, Housing Counselor, Washoe Senior Law Project, Reno, Nevada:
I am in favor of A.B. 152. I have had several clients approach us after they have hired these loan modification consultants. Essentially, when these consultants drop the ball, people turn to us and seek our counsel. If there was some basic education and training regarding loan terminology, the consumers would be more successful. These loan modification consultants should be held accountable for their actions and be regulated. There is also an issue regarding the collection of fees. The collection of fees, according to the law, is not allowed until the service has been completed and fully performed. We have been seeing loan modification consultants get around that by accepting monies from the borrowers and placing the funds in an escrow account.

Ernest Figueroa, Consumer Counsel, Bureau of Consumer Protection, Office of the Attorney General:
[Read from prepared testimony (Exhibit G).]

Vice Chair Schneider:
Are there are questions? I see none.

Keith Lynam, Legislative Chairman, Nevada Association of Realtors, Las Vegas, Nevada:
We strongly support A.B. 152 and the efforts of Assemblyman Conklin.

Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:
We are in support of this bill. We worked with Assemblyman Conklin on the previous bill and thought we had fixed the problem; obviously, it was not quite fixed. As everyone is aware, banks and their agents and the workout specialists that the banks employ are exempt from the bill as it is written.

Joseph Waltuch, Commissioner, Division of Mortgage Lending, Department of Business and Industry
The Division offers its enthusiastic support for this bill, and we welcome the tools that it provides to the Division to rein in the activities of unregulated foreclosure consultants and loan modification companies. We have some technical comments, regarding some of the wording of the bill, which I will present to the Committee for its review (Exhibit H). We think our changes will clarify and enhance the ability of the Division to adequately regulate these consultants; my written comments may become moot.

Vice Chair Schneider:
Are there any questions?

Assemblywoman Buckley:
I am confused about why we have to revisit this. I thought the intent was clear last session. If you adopt the provision that a statute does not allow you to protect borrowers and that you will have to wait two years, we are never going to enforce any law against anybody, ever.

Joe Waltuch:
It is my understanding, of the current statutes in NRS Chapter 645F pertaining to foreclosure consultants, that they are only covered in the event the notice of default has been recorded to institute the foreclosure proceedings. As I believe Assemblyman Conklin stated earlier, short of the notice being recorded, these people who call themselves loan modification consultants are unregulated unless their acts fall under deceptive trade practices under NRS Chapter 598, which is outside of our jurisdiction.

Assemblywoman Buckley:
How many cases of someone falling under that jurisdiction have your referred to the Attorney General's Office under NRS Chapter 598?

Joe Waltuch:
I cannot give you that number. I can tell you that I and the Commissioner of Consumer Affairs and a senior Deputy Attorney General refer matters back and forth routinely when they fall within the respective jurisdiction of the other agency. I can try to provide the numbers to you.

Vice Chair Schneider:
Are there any other questions? I see none. Is there anyone else wishing to testify in favor or in opposition to this bill?

Spencer Judd, Private Citizen, Las Vegas, Nevada:
I have a great deal of experience in working with loan modifications and loan workouts with people. Assemblyman Conklin may remember, from last week in a budget committee hearing, that I am of the opinion that this is already covered under NRS Chapter 645F. That is my own personal opinion. There are two items I would like to comment on. *Nevada Revised Statutes* 645F.400 does already indicate that consultants cannot claim, demand, charge, collect, or receive any compensation for work they have done until after they have fully performed their covered service. I know that it happens frequently today. If you go on the Internet and do a web search on loan modification, you will see companies charging $1,500 to $3,000 to help people, and they collect the fees up front.

Section 11 of the bill indicates it will be effective July 1, 2009. I wonder if there is a way to make this an emergency bill and make it effective sooner than that date. The sooner this is effective, the sooner these mortgage consultants could be prosecuted.

Vice Chair Schneider:
I have one question. Why do you think loan modifications are already covered?

Spencer Judd:
The language of NRS 645F.320 has loopholes. One of the definitions is: if the consultant saves the homeowner's residence from foreclosure. If they are trying to modify a loan, I think the purpose is to save the home from foreclosure. I think that alone can be interpreted to say that this is covered.

Vice Chair Schneider:
Are there any questions from the Committee? I see none. Is there further testimony from Las Vegas?

Corinne Cordon, President, Private Lending Group, Las Vegas, Nevada:
We are in favor of this bill but would like to add an amendment to it. The good news is that if A.B. 149 gets passed, loan modifications will probably be handled by judges, so this may become a moot point. Right now, in Nevada, there are a number of out-of-state attorney firms calling Nevada consumers and saying they are attorney-affiliated. We would like to eliminate the ability of out-of-state attorneys to become affiliated with other out-of-state people who say they are attorney-affiliated and therefore exempt from the provisions of this bill.

Assemblywoman Buckley:
I do not think we could do that. Attorneys are regulated by the Nevada State Bar under the umbrella of the Nevada Supreme Court. If there is an attorney who is not licensed in the State of Nevada performing legal work within the State of Nevada, they can be prosecuted already for the unauthorized practice of law. If you are aware of any of that, you can call the Nevada State Bar, and they will do an investigation. If they will not, you can call me, and I will call them.

Brenda Crosbie, Las Vegas Realty Center, Las Vegas, Nevada:
I am in support of A.B. 152, and I am also in support of the Mortgage Lending Division handling this.

I have filed complaints with the Attorney General's Office and the Nevada State Bar against individuals who are taking money up front and who are not licensed. No one seems to want to do anything about it. The Mortgage Lending Division told me the bill did not cover this situation, and there was nothing they could do.

I have seen many victims of loan modification fraud. These loan modification consultants know up front that the borrowers cannot make the payments.

I would like to see the effective date earlier than July 1, 2009.

Vice Chair Schneider:
Are there any questions of the witness? I see none. Is there anyone wishing to testify? I see none. I will close the hearing on A.B. 152 and return the gavel to Chairman Conklin.

Chairman Conklin:
Just a reminder to the Committee, this is one of several joint hearings. We will have another foreclosure hearing on February 25th. We will be highlighting several bills. One of them, sponsored by Vice Chair Schneider, requires institutions in possession of foreclosed homes to maintain them to HOA standards or, where there are no HOA standards, to nuisance standards. We will also have a bill sponsored by Senator Breeden that gives additional notice to overseas military personnel in foreclosure actions, so that military personnel have an opportunity to seek loan modifications or alternatives to foreclosures.

We have another bill that requires brokers to inform homeowners in writing about the total cost of their mortgage. Then we have, from the Legislative Commission's Subcommittee to Study Mortgage Lending and Housing Issues, a bill that protects renters from a surprise eviction when the home they are living in is about to be foreclosed.

We have a full plate. I see no further business or public comment to come before this Committee.

[The meeting was adjourned at 4:06 p.m.]

RESPECTFULLY SUBMITTED:

Patricia Blackburn
Committee Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE:

Senator Michael Schneider, Vice Chair

DATE:

EXHIBITS

Committee Name: Assembly Committee on Commerce and Labor/Senate Committee on Commerce and Labor

Date: February 11, 2009 Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B.149	C	Barbara Buckley	PowerPoint Presentation
A.B.149	D	Ben Alsasua	Copies of letters from his clients regarding foreclosures
A.B.149	E	Michael Brooks	Additional testimony
S.B.128	F	Ron Peterson	Proposed Amendment
A.B.152	G	Ernest Figueroa	Prepared testimony
A.B.152	H	Joseph Waltuch	Comments