

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

**Seventy-fifth Session
February 25, 2009**

The joint meeting of the Senate Committee on Commerce and Labor and the Assembly Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:46 p.m. on Wednesday, February 25, 2009, in Room 4100 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SENATE COMMITTEE MEMBERS PRESENT:

Senator Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Mark E. Amodei
Senator Warren B. Hardy II

ASSEMBLY COMMITTEE MEMBERS PRESENT:

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

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 2

STAFF MEMBERS PRESENT:

Karen Fox, Assembly Committee Secretary
Kelly S. Gregory, Senate Committee Policy Analyst
Daniel Peinado, Senate Committee Counsel
Daniel Yu, Assembly Committee Counsel
Dave Ziegler, Assembly Committee Policy Analyst
Suzanne Efford, Senate Committee Secretary

OTHERS PRESENT:

Jon Sasser, Washoe Legal Services; Washoe County Senior Law Project
Bill Uffelman, President and CEO, Nevada Bankers Association
George Ross, Bank of America
Renny Ashleman, City of Henderson
Rhea Gertken, Directing Attorney, Nevada Legal Services, Las Vegas Office
Robert "Bobby G" Gronauer, Constable, Las Vegas Township
Steve Kilgore, Deputy Director, Henderson Constable's Office
Alex Woodley, Code Enforcement Manager, City of Reno
John Radocha
Michele Johnson, President and CEO, Consumer Credit Counseling Service
Leticia Gardea, Director, Nevada Fair Housing Center
Ernie Nielson, Washoe County Senior Law Project

ASSEMBLYMAN CONKLIN (Cochair):

Before the joint committee today are Assembly Bill (A.B.) 140, Assembly Bill (A.B.) 151 and Bill Draft Request (BDR) 10-795. We will take the Assembly bills first.

SENATOR MAGGIE CARLTON (Cochair):

We will open the hearing on A.B. 140.

ASSEMBLY BILL 140: Makes various changes to provisions relating to foreclosures of real property. (BDR 54-228)

ASSEMBLYMAN CONKLIN:

I represent Clark County Assembly District No. 37, in northwest Las Vegas. Between January 1, 2007, and December 31, 2008, about 32,000 homes were

foreclosed in Nevada. Approximately 85 percent of those were in Clark County. Eight and one-half percent of all loans in Nevada are past due, and many of those are about to go into foreclosure. As of January, 1 out of every 76 homes in Nevada was in foreclosure. Also, two-thirds of Nevada sub-prime loans are adjustable rate mortgages and about 17 percent of those will adjust in the next 12 months as listed in the handout ([Exhibit C](#), original is on file in the Research Library).

I will quickly run through some of the provisions of this bill, [Exhibit C](#). Section 1 creates an Office of the Ombudsman for Foreclosures within the Division of Mortgage Lending, Department of Business and Industry.

Section 2 requires the State Board of Health be notified of foreclosures if the property is a licensed health-care facility. The notice of sale must include contact information for the Office of the Ombudsman for Foreclosures and for the lender's loss-mitigation department. A tenant must receive notice of foreclosure by either personal delivery or certified mail with a list of specific information. A sheriff may not conduct a sale of property if any person who is entitled to be notified has not been properly notified.

Section 3 makes it unlawful to deface the notice of sale and references penalties. Section 4 requires foreclosed residential properties be maintained as specified, and institutes a process for fines and appeals. Section 5 requires tenants to receive notice when the residence they are occupying has a change of ownership. Section 9 requires the landlord to disclose to the tenant if the property being occupied is part of any foreclosure proceeding.

There are still some items that need to be addressed in this bill. The provisions of the notification do not apply to commercial and other non-single-family residences. There were some questions regarding the time the tenant is allowed to stay in the residence after being notified of the foreclosure. The original intent was a 60-day maximum, but the bill simply reads whatever the term of payment is in the agreement. If you had a weekly payment, you had a week. If it was a monthly payment, you had a month. If it was an annual payment, you had a maximum of 60 days. We are clearing that up so it is 60 days and the only way to get out of 60 days is if you have a nontraditional lease.

There are four other issues of which the committee needs to be aware. I have been contacted by the Nevada Land Title Association which has concerns with section 7 of the bill. Their concerns are that as we revise the language for the time a person has to be notified, it becomes easier to make a mistake. Title insurance is there to protect a new buyer who will actually own the property. We have some concerns that, as we change the language, we may need to reconsider the time frames provided in section 7, subsection 2.

I have also been contacted by a municipality which is concerned about the provisions in section 4, subsection 8 and section 6, subsection 8. Subsection 8 in both sections reads, "The applicable governmental entity may not assess any penalty pursuant to this section in addition to any penalty prescribed by local ordinance. This section shall not be deemed to preempt any local ordinance." Traditionally, the *Nevada Revised Statutes* (NRS) would take precedence over any city or county ordinance. These provisions will apply when the city or county does not have their own ordinances. However, if a local government entity has ordinances, those provisions will take precedence over the NRS. The local government may use this statute or use their own ordinances, but an entity that has no ordinances will now have a tool to use to make sure properties are properly maintained after the notice of foreclosure.

Another issue to address is whether or not to include a requirement that all notices be served by law enforcement. In this way, there will be certification that proper notification has been given.

We need to consider if the Office of the Ombudsman for Foreclosures makes practical sense. We have a Division of Mortgage Lending which may not be the most aggressive in dealing with these issues and may not have the resources to make an ombudsman part of its division.

Another issue is there are several foreclosure bills. Through the addition of some of these bills, if the loopholes are closed, there may be no need for an ombudsman.

ASSEMBLYWOMAN KIRKPATRICK:

In section 6, subsection 3, notification is to be sent by first-class mail. I thought we had discussed using certified mail to be certain the notice got to the

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 5

responsible party. We would have a record with certified mail, with first-class mail there is no record.

ASSEMBLYMAN CONKLIN:

You may be correct. I am certainly amenable to it. We can look into it.

ASSEMBLYWOMAN GANSERT:

I am looking at the notice portion of the bill which discusses the contact information of the lender's loss-mitigation department. Are we able to identify the lender? Is this still a problem?

ASSEMBLYMAN CONKLIN:

In some cases we have that problem. However, I will point your attention to two other pieces of legislation. The first bill deals with deeds and the recording of deeds in a timely fashion. This would give us an accurate record of who owns the home. The second bill addresses the issue of third-party servicers and our ability to require them to be licensed in Nevada so we can identify them. Hopefully, by passing both of these bills, we will be able to determine who is the lender.

ASSEMBLYMAN SETTELMAYER:

Section 2, subsection 3, requires the notice of sale of property be served to any tenant by personal delivery or certified mail, with a return receipt. This means the owner would not be able to sell the property until the tenants have been notified. What if the tenants cannot be located?

ASSEMBLYMAN CONKLIN:

My understanding of being served by personal delivery or certified mail is that it might include the notice which is posted on the door of the residence by the justice of the peace. The justice of the peace certifies the notice was posted by indicating the date and time of the posting.

ASSEMBLYMAN MANENDO:

Section 4, subsection 2, paragraph (c), refers to standing water and mosquito larvae. Was there any discussion about draining pools or ponds and making sure they are fenced?

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 6

ASSEMBLYMAN CONKLIN:

It is my understanding that in certain jurisdictions they do exactly what you are talking about. When they find a foreclosed home that is not owner occupied, and it presents a public nuisance, they can drain the pool and lock and fence off the yard.

ASSEMBLYMAN MANENDO:

One of my constituents has concerns about the diminishing value of properties surrounding a foreclosed home in a neighborhood that is older and run-down anyway. The diminished value is addressed in section 4, subsection 2, paragraph (a). What happens in this situation?

ASSEMBLYMAN CONKLIN:

I am not sure. If you have a house, it needs to be kept to certain standards. Those standards are either prescribed in this bill or by ordinance of the city of the residence. It is my interpretation that the house must be kept up, at the minimum, to the standards of the other houses in the surrounding neighborhood. Anything less than the minimum would be diminishing the value of those homes regardless of the initial value.

We might consider changing that part of the bill to read limiting the excessive growth of foliage which would otherwise diminish the value of that property or surrounding property.

ASSEMBLYMAN MANENDO:

I like your wording.

ASSEMBLYWOMAN GANSERT:

I am concerned that the language is very broad in section 4, subsection 2, paragraph (d) and section 4, subsection 9, paragraph (c). If the property is in a common-interest community, the board of the association might create fines, and do other things regarding a home. The definition of an "applicable governmental entity" includes the executive board of the association of a common-interest community. I would not consider the board of an association in a common-interest community a governmental entity.

ASSEMBLYMAN CONKLIN:

I had the same concern.

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 7

DANIEL YU (Assembly Committee Counsel):

If the property is located within the boundaries of the city, the governing body of the city would be responsible for imposing the civil penalty. If the property is outside the boundaries of the city, but within a county, the board of county commissioners would be responsible for the penalty. If the property is in a common-interest community, with a homeowners' association (HOA), the HOA would be responsible for imposing the penalty. The statutory cap on the fine is up to \$1,000 per day. If there are 5 violations on one home, the maximum fine would be \$1,000 per day.

ASSEMBLYMAN CONKLIN:

The penalties may be challenged in a court of appropriate jurisdiction.

ASSEMBLYWOMAN GANSERT:

Does the HOA ordinance take precedence over county or city ordinances?

ASSEMBLYMAN CONKLIN:

The association ordinance does have precedence according to the provisions of this bill. These provisions would apply if there is no local ordinance. Where there is a local ordinance, the association could use the provisions in this bill or choose to apply the local ordinance.

SENATOR SCHNEIDER:

Right now, the HOA, by law can only fine up to \$100 a day, and the fine is capped at \$500 for the same offense. Will the HOAs be able to fine \$1,000 a day with no cap? Are we setting aside what is already in law?

MR. YU:

I am not familiar with the provision. That would be in chapter 116 of the NRS. I would have to take a closer look at the specific provision to determine what sort of violations would warrant a \$500 penalty. This bill would not allow any other additional penalties to be added onto the penalties that are provided for in the bill. It would prevent "double dipping" with respect to imposing penalties. It would have to be one or the other. If there is a local ordinance already in place, this bill is not meant to supersede the local ordinance.

SENATOR SCHNEIDER:

I have serious concerns with allowing an HOA to fine \$1,000 a day.

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 8

ASSEMBLYMAN CONKLIN:

It is important for the committee to note this is not a provision for HOAs. This is a provision for a foreclosed property and the ability to keep the foreclosed property from affecting the value of the homes in the surrounding neighborhood. This has nothing to do with the ability of the HOA to fine someone for violating the covenants, conditions and restrictions (CC&Rs). This is a different statute in NRS.

SENATOR SCHNEIDER:

I would prefer that HOAs notify the city or the county on foreclosed properties. The HOA could do that within a few days. The city or the county should handle the problem.

ASSEMBLYWOMAN BUCKLEY:

I am supportive of the provisions that give renters the right to know about foreclosures and sale of the property. Was there a discussion about giving the notice earlier to the renter? Perhaps the notice could be given during the three-month period following the recording of the notice of default and the election to sell the property.

ASSEMBLYMAN CONKLIN:

There were some concerns that when a home is in foreclosure, after the first 90 days, particularly if it is rented, there is still an opportunity for the bank to work out terms with the owner. If we notice early, do we prevent the property from not going into foreclosure or would we be better off noticing?

When a person stops making payments on a home that is leased and rent is being paid, under common law there is a standard that the rental contract becomes null and void. The renter would have the option to leave the residence at any time. We do not want to create more foreclosures by giving too much notice, but we want to protect the renter by giving them ample notice to move.

ASSEMBLYWOMAN BUCKLEY:

I appreciate that explanation. I will continue to give that some thought as we process this bill. It is definitely important that the tenant gets notice.

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 9

JON SASSER (Washoe Legal Services; Washoe County Senior Law Project):
I have provided written testimony in support of A.B. 140, which is labeled incorrectly. It says "Testimony in support of AB 143, Assembly Government Affairs, February 23, 2009" ([Exhibit D](#)).

ASSEMBLYWOMAN BUCKLEY:

The provision requiring the landlord to notify the tenant the property is in foreclosure is likely to be violated all the time. Is the 21-day notice prior to the sale sufficient? If the time following the three-day notice is expanded, that time can be added to the 21-day period. What are your thoughts on having the notice process to the tenant begin prior to the notice of sale?

MR. SASSER:

The earlier the better because it gives the tenant more time to explore all options to break the lease and move on. There is a possibility the property will be saved, but if the tenants leave, it is more likely the property will go into foreclosure.

There are 21 days, then 60 days, then another 21 days, if the court process happens, before the tenant has to leave the property. If the tenant waits, once the bank takes over, they might be able to participate in the "cash for keys" program. In this program, some banks pay the tenant up to \$1,500 to move as soon as possible.

Should the bank give the 90-day notice, or is it an obligation of the landlord? The banks have some discomfort taking that role and the landlord probably will not do it either.

ASSEMBLYWOMAN BUCKLEY:

With regard to the security deposit, are most tenants getting their deposits back?

MR. SASSER:

The law already takes care of that. When there is a transfer of ownership, the new owner is responsible to the tenant for the security deposit. When the bank forecloses, the bank is responsible for the security deposit. Unfortunately, a lot of tenants and some banks do not know that.

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 10

BILL UFFELMAN (President and CEO, Nevada Bankers Association):

I represent all the banks in Nevada except Bank of America and J.P. Morgan Chase. The 90-day notice of default and election to sell is the first public notice indicating someone is in default relative to a property. We had suggested that at the 90-day notice there be a "nail and mail" service on the property. The notice is posted on the residence with contact information, which would alert anyone with an interest in the property that there is a problem.

With respect to the 60 days and the tenant who is the unwitting victim, it should never be noted they were evicted from the property, unless they chose to stay past the 60 days.

ASSEMBLYWOMAN BUCKLEY:

What was your point with giving notice earlier? Did you say you were in favor of it or not?

MR. UFFELMAN:

We are in favor of the "earlier the better." An appropriate time to give notice is at the 90-day "notice of default and election to sell." It is a public record.

ASSEMBLYWOMAN BUCKLEY:

It is being recorded and it is a public record, but most people do not know to check at the recorder's office.

GEORGE ROSS (Bank of America):

We support this bill.

RENNY ASHLEMAN (City of Henderson):

There was a question earlier on nuisance statutes. The City of Henderson does have nuisance statutes which cover the same things as the provisions of this bill.

On page 8, lines 16 through 20, it is up to the applicable governmental entity to apply to a court of competent jurisdiction. With the problems we have in Clark County in getting a court hearing, this is not going to be enforceable. It should be the other way around, with the party who has been cited getting the court hearing.

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 11

RHEA GERTKEN (Directing Attorney, Las Vegas Office, Nevada Legal Services):
I support the bill and I have submitted written comments ([Exhibit E](#)). Our clients are subsidized tenants, very low income and often disabled. The more time they can get to move out is always going to be beneficial for them.

Service on the occupant of the notice of sale in addition to all of the eviction notices is extremely important. The earlier the notice is given the better. This will give them time to prepare to move out and find a new home.

With our federally subsidized tenants, the federal government has also been paying the landlords their portion of the rent. This is money that is not being provided to the mortgage company.

I would hesitate to name the tenants in any court actions regarding the eviction. If you are holding the tenants responsible in the court action for the eviction, you are affecting their credit history. This becomes a judgment of eviction on their record.

ROBERT "BOBBY G" GRONAUER (Constable, Las Vegas Township):
We support this bill. I have a concern regarding the notification. The constables of southern Nevada would like to have the notice served by a law enforcement official with a proper affidavit noting the results. This would greatly enhance the bill.

STEVE KILGORE (Deputy Director, Henderson Constable's Office):
We support this bill. We agree that the notice should be served by a certified law enforcement agency with a signed affidavit that notification has been served. The law provides that only a constable or a sheriff's office can serve eviction notices. Foreclosure notices should be handled in the same manner.

CONSTABLE GRONAUER:
Does 60 days mean court days, calendar days or business days? Does it exclude holidays and weekends? The meaning of "days" needs to be clarified.

MR. KILGORE:
The affidavit of service helps to clarify for the courts that the noticing has been handled correctly by law enforcement.

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 12

ALEX WOODLEY (Code Enforcement Manager, City of Reno):
Cities, counties and health departments have the authority to address pool and foliage issues on a property. The intent of the law is to prevent someone from reporting foliage as a nuisance when it really is not.

Code enforcement would like to see the portion of the bill dealing with HOAs removed from the bill. Allowing an HOA to issue \$1,000 citations can be a serious problem for the code-enforcement agency.

In section 9, subsection 1, we would like to see the word "prospective" removed from, "... A landlord shall disclose in writing to a prospective tenant ..." It would be beneficial to be able to assist tenants already living in a residence.

JOHN RADOCHA:

I am a homeowner in a common-interest community. In section 6, subsection 1 it states, "... Any vacant residential property purchased or acquired by a person ..." What do you mean by "person?" Could this be an individual, a corporation, a limited liability company or a bank?

ASSEMBLYMAN CONKLIN:

A "person" means the bank who has repossessed the property or a new buyer who has purchased the property through the foreclosure process.

MR. YU:

That is correct.

MR. RADOCHA:

Is the bank, which owns the property, required to maintain the property and pay HOA dues?

SENATOR CARLTON:

Those issues are addressed in other bills.

ASSEMBLYMAN CONKLIN:

The intent of this bill is to make it clear that the cities and the counties and the HOAs have a right to go to the new owner of the foreclosed property and collect the dues and enforce the CC&Rs.

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 13

It is the opinion of this committee that we remove paragraph (c) in section 4, subsection 9. Removing paragraph (c) from section 4, subsection 9 may be appropriate given the fact that Senator Schneider has a bill which goes into the ability of the common-interest community to enforce their codes on a foreclosed property. Senator Schneider's bill includes enforcing CC&Rs and collecting dues on the home.

SENATOR CARLTON:

The hearing on A.B. 140 is closed. We will open the hearing on A.B. 151.

ASSEMBLY BILL 151: Makes various changes concerning mortgage lending.
(BDR 54-567)

ASSEMBLYMAN CONKLIN:

I represent Assembly District No. 37, in northwest Las Vegas. We need a process which discloses the cost of a nontraditional loan to someone who is buying a home. Assembly Bill 151 addresses this issue and the lack of current guidance.

Every loan product that is nontraditional will have a disclosure with it clarifying the payments and the total value of the home. We are allowing banking institutions, under the provisions of this bill, to obtain their own disclosures certified by a state agency or a nonprofit organization to be included with the loan.

Assembly Bill 151 also requires mortgage brokers to include their license number with the loan. A broker has an obligation to pass on the disclosure with the loan product. The broker's license number will allow us to track who has made the loan if there is no disclosure.

ASSEMBLYWOMAN GANSERT:

The bill says the financial institution is required to make a disclosure which must be approved or certified by the Commissioner of Financial Institutions, Division of Financial Institutions, Department of Business and Industry. Is it correct that the certification of the disclosure can also be made by a nonprofit consumer credit-counseling agency?

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 14

ASSEMBLYMAN CONKLIN:

Yes, that is correct. The financial institution may contract with a nonprofit consumer credit-counseling agency to certify the disclosure.

ASSEMBLYWOMAN GANSERT:

Must the consumer credit-counseling agency be certified in credit counseling?

ASSEMBLYMAN CONKLIN:

It is not identified in the bill. The consumer counseling agency is certifying that the loan documents reflect what the person has been told in the disclosure. The loan itself is not being certified.

ASSEMBLYMAN ARBERRY:

When a title company presents the loan documents to a borrower, are they not certified since the title company is licensed and certified?

ASSEMBLYMAN CONKLIN:

The title agency is going to give the documents they are required to provide. The bill addresses the disclosure of the real costs of the loan.

SENATOR CARLTON:

Are the disclosure forms going to be in addition to the large number of forms that a borrower signs, or are they going to be substituted for another form?

ASSEMBLYMAN CONKLIN:

That was not discussed. Many of the forms are not State-required forms, they are federally required forms. I am not sure how many forms we can remove from the process. The form that clearly discloses what is being paid on a loan cannot be substituted for a federally required form.

MICHELE JOHNSON (President and CEO, Consumer Credit Counseling Service):

I have provided written testimony on section 2, subsection 3, of A.B. 151 ([Exhibit F](#)) and a written statement from a client of Consumer Credit Counseling Service, Geraldine Tierney ([Exhibit G](#)).

LETICIA GARDEA (Director, Nevada Fair Housing Center):

I have provided written testimony in support of A.B. 151 ([Exhibit H](#)).

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 15

MR. UFFELMAN:
We support A.B. 151.

ERNIE NIELSON (Washoe County Senior Law Project):
We are a certified HUD housing counseling agency. We support A.B. 151.

SENATOR CARLTON:
I will close the hearing on A.B. 151 and defer to Senator Schneider, the sponsor of Bill Draft Request (BDR) 10-795.

BILL DRAFT REQUEST 10-795: Revise provisions relating to common-interest communities. (Later introduced as [Senate Bill 182](#).)

SENATOR SCHNEIDER:
I would be more than happy to meet again with the Assembly Committee on Commerce and Labor once BDR 10-795 has become a bill.

Senate Committee on Commerce and Labor
Assembly Committee on Commerce and Labor
February 25, 2009
Page 16

ASSEMBLYMAN CONKLIN:

There being no further testimony on this joint committee, we are adjourned at
3:44 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____

Assemblyman Marcus Conklin, Chair

DATE: _____