

Amendment No. 706

Senate Amendment to Assembly Bill No. 308 First Reprint (BDR 54-183)

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

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	☐	Lost	☐ _____	Adopted	☐	Lost	☐ _____
Concurred In	☐	Not	☐ _____	Concurred In	☐	Not	☐ _____
Receded	☐	Not	☐ _____	Receded	☐	Not	☐ _____

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

MSN/TMC



Date: 5/22/2011

A.B. No. 308—Revises provisions governing the regulation of mortgage lending.
(BDR 54-183)



ASSEMBLY BILL NO. 308—ASSEMBLYMEN CONKLIN, KIRKPATRICK, SMITH,
ATKINSON; BUSTAMANTE ADAMS, CARRILLO, DALY, DONDERO LOOP,
FRIERSON, MASTROLUCA, OCEGUERA AND SEGERBLOM

MARCH 17, 2011

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing the regulation of mortgage lending.
(BDR 54-183)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to mortgage lending; revising provisions governing certain mortgage lending professionals to be consistent with certain federal law governing the provision of mortgage assistance relief services; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law regulates the activities of certain mortgage lending professionals who provide counseling, assistance and advice to homeowners whose homes are subject to an outstanding notice of the pendency of an action for foreclosure. (NRS 645F.300-645F.450) The Federal Trade Commission similarly regulates the activities of persons who provide mortgage assistance relief services. (16 C.F.R. Part 322) This bill revises Nevada law to provide protections for homeowners consistent with the protections provided pursuant to the regulations adopted by the Federal Trade Commission.

Section 2 of this bill prohibits a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant from requesting or receiving any compensation before a homeowner executes a written agreement that incorporates an offer of mortgage assistance.

Section 3 of this bill requires a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant to maintain certain records for not less than 24 months. **Section 3** provides that such records are subject to inspection and audit by the Commissioner of Mortgage Lending. **Section 3** also requires a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant to take reasonable steps to ensure that any of his or her employees or independent contractors comply with the laws and regulations governing persons who perform covered services for compensation, foreclosure consultants and loan modification consultants.

Section 4 of this bill requires a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant to make certain disclosures in connection with any commercial communication relating to the provision of any covered service.

Section 5 of this bill requires a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant to provide certain notices to a homeowner at the time the homeowner is presented with a written agreement

incorporating an offer of mortgage assistance obtained from the homeowner's lender or servicer.

Section 6 of this bill prohibits a person who knows or reasonably should know that a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant is not in compliance with the laws and regulations governing covered services from providing substantial assistance or support to the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant.

~~Section 8 of this bill extends to the employees of an attorney at law the exemption from regulation as a foreclosure consultant or foreclosure purchaser that is currently provided under certain circumstances to an attorney at law.~~

Section 9 of this bill prohibits a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant from making certain express or implied representations relating to the provision of covered services, including any representation that: (1) a homeowner cannot or should not contact or communicate with his or her lender; or (2) the covered service is affiliated with or endorsed by the Federal Government, the State of Nevada or any department, agency or political subdivision thereof. **Section 9** also prohibits a person who performs any covered service, a foreclosure consultant or a loan modification consultant from obtaining or attempting to obtain from a homeowner a waiver of any provision of this bill or existing law. Any such waiver is void and unenforceable. A violation of any provision of **section 9** constitutes mortgage lending fraud and is punishable as a category C felony.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 645F of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *A person who performs any covered service for compensation, a foreclosure consultant and a loan modification consultant shall not claim, demand, charge, collect or receive any compensation before a homeowner has executed a written agreement with the lender or servicer incorporating the offer of mortgage assistance obtained from the lender or servicer by the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant.*

Sec. 3. *1. A person who performs any covered service for compensation, a foreclosure consultant and a loan modification consultant shall keep each of the following records for a period of not less than 24 months after the date the record is created:*

(a) Each contract or other agreement between the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant and a homeowner.

(b) A copy of each written communication between the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant and a homeowner which occurred before the date on which the homeowner entered into a contract for covered services.

(c) A copy of every document or telephone recording created in connection with the requirements of subsection 2.

(d) The file of each homeowner, which must include, without limitation, the name of the homeowner, his or her telephone number, the amount of money paid by the homeowner and a description of the covered services purchased by the homeowner.

1 (e) For each covered service, a copy of every materially different sales script,
2 training material, commercial communication or any other marketing material,
3 including, without limitation, any material published on an Internet website.

4 (f) A copy of each disclosure provided to a homeowner pursuant to section 5
5 of this act.

6 2. A person who performs any covered service for compensation, a
7 foreclosure consultant and a loan modification consultant shall:

8 (a) Take reasonable steps to ensure that all employees and independent
9 contractors of the person who performs any covered service for compensation,
10 foreclosure consultant or loan modification consultant comply with the
11 provisions of NRS 645F.300 to 645F.450, inclusive, and sections 2 to 6, inclusive,
12 of this act and any regulations adopted pursuant thereto.

13 (b) If the person who performs any covered service for compensation,
14 foreclosure consultant or loan modification consultant is engaged in the
15 telemarketing of covered services, perform random, blind recording and testing of
16 the oral representations made by persons engaged in sales or other customer
17 service functions.

18 (c) Establish a procedure for receiving and responding to all complaints of
19 homeowners.

20 (d) Record the number and nature of complaints of homeowners regarding
21 transactions involving an employee or independent contractor of the person who
22 performs any covered service for compensation, foreclosure consultant or loan
23 modification consultant.

24 (e) Investigate promptly and fully each complaint received from a
25 homeowner.

26 (f) Take corrective action with respect to any employee or independent
27 contractor whom the person who performs any covered service for compensation,
28 foreclosure consultant or loan modification consultant determines is not
29 complying with the provisions of NRS 645F.300 to 645F.450, inclusive, and
30 sections 2 to 6, inclusive, of this act and any regulations adopted pursuant
31 thereto.

32 (g) Maintain any information necessary to demonstrate compliance with the
33 requirements of this subsection.

34 3. All records kept pursuant to this section are subject to inspection and
35 audit by the Commissioner and authorized representatives of the Commissioner.

36 Sec. 4. 1. A person who performs any covered service for compensation, a
37 foreclosure consultant and a loan modification consultant shall:

38 (a) Include with each general commercial communication for any covered
39 service the following disclosures printed in at least 12-point type:

40 (1) "[Name of company] is not associated with the government, and our
41 service is not approved by the government or your lender."

42 (2) In any case in which the person who performs any covered service for
43 compensation, the foreclosure consultant or the loan modification consultant
44 makes an express or implied representation that homeowners will receive covered
45 services:

46 "Even if you accept this offer and use our service, your lender may not
47 agree to change your loan."

48 (b) Include with each commercial communication which is specific to a
49 homeowner the following disclosures printed in at least 12-point type:

50 (1) "You may stop doing business with us at any time. You may accept or
51 reject the offer we obtain from your lender [or servicer]. If you reject the offer,
52 you do not have to pay us. If you accept the offer, you will have to pay us [insert
53 total amount or method of calculating the total amount] for our services."

(2) “[Name of company] is not associated with the government, and our service is not approved by the government or your lender.”

(3) In any case in which the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant makes an express or implied representation that the homeowner will receive covered services:

“Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(c) Include with any commercial communication relating to a covered service in which the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant represents expressly or by implication that a homeowner should temporarily or permanently discontinue payments, in whole or in part, on any mortgage or lien on a residence in foreclosure a clear and prominent statement, in close proximity to the express or implied representation and printed in at least 12-point type, which provides that:

“If you stop paying your mortgage, you could lose your home and damage your credit rating.”

2. The disclosures required by paragraphs (a) and (b) of subsection 1 must be made in a clear and prominent manner and:

(a) In a written communication, the disclosures must appear together and be preceded by the heading “IMPORTANT NOTICE,” printed in at least 14-point bold type; and

(b) In an oral communication, the audio component of the required disclosures must be preceded by the statement “Before using this service, consider the following information” and, if the oral communication is made by telephone, must be made at the beginning of the communication.

3. As used in this section, “total amount” means all amounts the homeowner must pay to purchase, receive and use all covered services that are subject to the contract for covered services, including, without limitation, all fees and charges.

Sec. 5. 1. A person who performs any covered service for compensation, a foreclosure consultant and a loan modification consultant shall, at the time the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant provides a homeowner with a written agreement between the homeowner and the homeowner’s lender or servicer incorporating the offer of mortgage assistance obtained from the homeowner’s lender or servicer:

(a) Provide the following notice printed in at least 12-point type to the homeowner:

“This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [insert total amount or method of calculating the total amount] for our services.”

↪ The notice must be made in a clear and prominent manner on a separate written page and be preceded by the heading “IMPORTANT NOTICE: BEFORE BUYING THIS SERVICE, CONSIDER THE FOLLOWING INFORMATION” printed in at least 14-point bold type.

(b) Provide the homeowner with a notice printed in at least 12-point type from the homeowner’s lender or servicer which includes a complete description of all material differences between the terms, conditions and limitations which

1 apply to the homeowner's current mortgage loan and the terms, conditions and
2 limitations which will apply to the homeowner's mortgage loan if he or she
3 accepts the offer of the lender or servicer, including, without limitation, the
4 differences between the mortgage loans with regard to the:

- 5 (1) Principal balance;
- 6 (2) Contract interest rate, including the maximum rate and any
7 adjustable rates;
- 8 (3) Amount and number of scheduled periodic payments;
- 9 (4) Monthly amounts owed for principal, interest, taxes and mortgage
10 insurance;
- 11 (5) Amount of any delinquent payments owing or outstanding; and
- 12 (6) Term.

13 *↪ The notice required by this paragraph must be made in a clear and prominent*
14 *manner on a separate written page and be preceded by the heading*
15 *"IMPORTANT INFORMATION FROM [name of lender or servicer] ABOUT*
16 *THIS OFFER" printed in at least 14-point bold type.*

17 2. If the offer obtained from the lender or servicer by the person who
18 performs any covered service for compensation, the foreclosure consultant or the
19 loan modification consultant is a trial mortgage loan modification, the notice
20 required by paragraph (b) of subsection 1 must include notice to the homeowner:

21 (a) That the homeowner may not qualify for a permanent mortgage loan
22 modification; and

23 (b) Setting forth the likely amount of scheduled periodic payments and
24 arrears, payments and fees the homeowner would owe if the homeowner failed to
25 qualify for a permanent mortgage loan modification.

26 3. As used in this section, "total amount" has the meaning ascribed to it in
27 section 4 of this act.

28 **Sec. 6.** A person who knows or reasonably should know that another
29 person who performs any covered service for compensation, a foreclosure
30 consultant or a loan modification consultant is in violation of any provision of
31 NRS 645F.300 to 645F.450, inclusive, and sections 2 to 6, inclusive, of this act
32 and any regulations adopted pursuant thereto shall not provide substantial
33 assistance or support to the person who performs any covered service for
34 compensation, foreclosure consultant or loan modification consultant.

35 **Sec. 7.** NRS 645F.300 is hereby amended to read as follows:

36 645F.300 As used in NRS 645F.300 to 645F.450, inclusive, *and sections 2 to*
37 *6, inclusive, of this act*, unless the context otherwise requires, the words and terms
38 defined in NRS 645F.310 to 645F.370, inclusive, have the meanings ascribed to
39 them in those sections.

40 **Sec. 8.** NRS 645F.380 is hereby amended to read as follows:

41 645F.380 The provisions of NRS 645F.300 to 645F.450, inclusive, *and*
42 *sections 2 to 6, inclusive, of this act* do not apply to, and the terms "foreclosure
43 consultant" and "foreclosure purchaser" do not include:

44 1. An attorney at law rendering services in the performance of his or her
45 duties as an attorney at law ~~and his or her employees,~~ unless the attorney at law
46 ~~is for his or her employees are~~ rendering those services in the course and scope of
47 his or her employment by or other affiliation with a ~~mortgage broker or mortgage~~
48 ~~agent~~ *person who is licensed or required to be licensed pursuant to NRS*
49 *645F.390;*

50 2. A provider of debt-management services registered pursuant to chapter
51 676A of NRS while providing debt-management services pursuant to chapter 676A
52 of NRS;

3. A person or the authorized agent of a person acting under the provisions of a program sponsored by the Federal Government, this State or a local government, including, without limitation, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Federal Home Loan Bank ~~++~~ **System;**

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

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

6. A person, other than a person who is licensed pursuant to NRS 645F.390, who is licensed pursuant to chapter 692A or any chapter of title 54 of NRS while acting under the authority of the license;

7. A nonprofit agency or organization that offers credit counseling or advice to a homeowner of a residence in foreclosure or a person in default on a loan; or

8. A judgment creditor of the homeowner whose claim accrued before the recording of the notice of the pendency of an action for foreclosure against the homeowner pursuant to NRS 14.010 or the recording of the notice of default and election to sell pursuant to NRS 107.080.

Sec. 9. NRS 645F.400 is hereby amended to read as follows:

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

(a) Claim, demand, charge, collect or receive any compensation except in accordance with ~~NRS 645F.394.~~ **the terms of a contract for covered services.**

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

(c) Take **or acquire, directly or indirectly,** any wage assignment, lien on real or personal property, assignment of a homeowner's equity ~~for other,~~ **any** interest in a residence ~~in foreclosure~~ or other security for the payment of compensation. Any such **assignment or** security is void and unenforceable.

(d) Receive any consideration from any third party in connection with a covered service provided to a homeowner unless the consideration is first fully disclosed to the homeowner.

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

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

(f) *Make any representation, express or implied, that a homeowner cannot or should not contact or communicate with his or her lender or servicer.*

(g) *Misrepresent any aspect of any covered service.*

(h) *Make any representation, express or implied, that a covered service is affiliated with, associated with or endorsed or approved by:*

(1) *The Federal Government, the State of Nevada or any department, agency or political subdivision thereof;*

(2) *Any governmental plan for homeowner assistance;*

(3) *Any nonprofit housing counselor agency or program;*

1 (4) *The maker, holder or servicer of a homeowner's mortgage loan; or*

2 (5) *Any other person, entity or program.*

3 (i) *Make any representation, express or implied, about the benefits,*
4 *performance or efficacy of any covered service unless, at the time the*
5 *representation is made, the person who performs any covered service, the*
6 *foreclosure consultant or the loan modification consultant possesses and relies*
7 *upon competent and reliable evidence which substantiates that the representation*
8 *is true. As used in this paragraph, "competent and reliable evidence" means tests,*
9 *analyses, research, studies or other evidence based on the expertise of*
10 *professionals in the relevant area that have been conducted and evaluated in an*
11 *objective manner by persons qualified to do so using procedures generally*
12 *accepted in the profession to yield accurate and reliable results.*

13 (j) *Obtain or attempt to obtain any waiver of the provisions of NRS 645F.300*
14 *to 645F.450, inclusive, and sections 2 to 6, inclusive, of this act or any*
15 *regulations adopted pursuant thereto. Any such waiver is void and*
16 *unenforceable.*

17 2. In addition to any other penalty, a violation of any provision of this section
18 shall be deemed to constitute mortgage lending fraud for the purposes of NRS
19 205.372.

20 **Sec. 10.** NRS 645F.430 is hereby amended to read as follows:

21 645F.430 A foreclosure purchaser who engages in any conduct that operates
22 as a fraud or deceit upon a homeowner in connection with a transaction that is
23 subject to the provisions of NRS 645F.300 to 645F.450, inclusive, **and sections 2 to**
24 **6, inclusive, of this act**, including, without limitation, a foreclosure reconveyance,
25 is guilty of a gross misdemeanor and shall be punished by imprisonment in the
26 county jail for not more than 1 year, or by a fine of not more than \$50,000, or by
27 both fine and imprisonment.

28 **Sec. 11.** NRS 645F.440 is hereby amended to read as follows:

29 645F.440 1. In addition to the penalty provided in NRS 645F.430 and
30 except as otherwise provided in subsection 5, if a foreclosure purchaser engages in
31 any conduct that operates as a fraud or deceit upon a homeowner in connection with
32 a transaction that is subject to the provisions of NRS 645F.300 to 645F.450,
33 inclusive, **and sections 2 to 6, inclusive, of this act**, including, without limitation, a
34 foreclosure reconveyance, the transaction in which the foreclosure purchaser
35 acquired title to the residence in foreclosure may be rescinded by the homeowner
36 within 2 years after the date of the recording of the conveyance.

37 2. To rescind a transaction pursuant to subsection 1, the homeowner must
38 give written notice to the foreclosure purchaser and a successor in interest to the
39 foreclosure purchaser, if the successor in interest is not a bona fide purchaser, and
40 record that notice with the recorder of the county in which the property is located.
41 The notice of rescission must contain:

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

44 (b) A description of the property.

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

46 (a) The foreclosure purchaser and the successor in interest, if the successor in
47 interest is not a bona fide purchaser, shall reconvey to the homeowner title to the
48 property free and clear of encumbrances which were created subsequent to the
49 rescinded transaction and which are due to the actions of the foreclosure purchaser;
50 and

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

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

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

6. As used in this section, "bona fide purchaser" means any person who purchases an interest in a residence in foreclosure from a foreclosure purchaser in good faith and for valuable consideration and who does not know or have reasonable cause to believe that the foreclosure purchaser engaged in conduct which violates subsection 1.

Sec. 12. NRS 645F.450 is hereby amended to read as follows:

645F.450 The rights, remedies and penalties provided pursuant to the provisions of NRS 645F.300 to 645F.450, inclusive, *and sections 2 to 6, inclusive, of this act* are cumulative and do not abrogate and are in addition to any other rights, remedies and penalties that may exist at law or in equity, including, without limitation, any criminal penalty that may be imposed pursuant to NRS 645F.430.

Sec. 13. NRS 645F.394 is hereby repealed.

Sec. 14. This act becomes effective on July 1, 2011.

TEXT OF REPEALED SECTION

645F.394 Foreclosure consultants, loan modification consultants and persons performing covered services for compensation: Deposits and trust accounts; commingling; records; inspection and audit.

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

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

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

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

2. The person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant shall keep records of all money deposited in a trust account pursuant to subsection 1. The records must clearly indicate the date and from whom he or she received money, the date deposited, the dates of withdrawals, and other pertinent information concerning the transaction, and must show clearly for whose account the money is deposited and to whom the money belongs. The person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant shall balance each separate trust account at least monthly and provide to the Commissioner, on a form provided by the Commissioner, an annual accounting which shows an annual reconciliation of each separate trust account. All such

records and money are subject to inspection and audit by the Commissioner and authorized representatives of the Commissioner.

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

4. As used in this section, “completion of every covered service” means:

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

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

➤ as verified in a written statement provided to the homeowner.