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

Seventy-Sixth Session
March 23, 2011

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:42 p.m. on Wednesday, March 23, 2011, 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/76th2011/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).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Oceguera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Jason Frierson, Clark County Assembly District No. 8

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Sara Partida, Committee Counsel
Andrew Diss, Committee Manager
Earlene Miller, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Joanne Levy, Broker, Levy Realty Company, Las Vegas, Nevada; Member, Nevada Association of Realtors
Jack Woodcock, Broker, Prudential America Group Realtors, Las Vegas, Nevada; Member, Nevada Association of Realtors
Bill Uffelman, President and CEO, Nevada Bankers Association
Barbara Buckley, Executive Director, Legal Aid Center of Southern Nevada
Charles McGee, Senior Judge, Washoe County District Court
Michael Joe, Attorney, Legal Aid Center of Southern Nevada
Laila Orellana, Private Citizen, North Las Vegas, Nevada
Mary Scott, Private Citizen, Las Vegas, Nevada
James M. Baker, Attorney, Castro and Baker LLP, and Foreclosure Mediator, Las Vegas, Nevada
Malcolm Doctors, Mediator, Henderson, Nevada
David M. Crosby, Attorney, Las Vegas, Nevada
Barry Gold, Director of Government Affairs, AARP Nevada
Sheila Walther, Supervisory Examiner, Mortgage Lending Division, Department of Business and Industry
Jon Sasser, representing Legal Aid Center of Southern Nevada, Washoe Legal Services, and Washoe County Senior Law Project
Lou Filippo, Owner, Accelerated Training Systems, Las Vegas, Nevada

Chair Atkinson:
[The roll was taken, and a quorum was present.] We have three bills to hear today. We are going to start with Assemblyman Conklin's bill, Assembly Bill 273.

Assembly Bill 273: Revises provisions governing deficiencies existing after foreclosure sales. (BDR 3-561)

Assemblyman Marcus Conklin, Clark County District No. 37:
Have you ever known someone who did all of the right things but could never catch a break? That is what is happening to a lot of people in our state now. It does not matter if they are new homeowners or senior citizens. People have come to Nevada, purchased a home, and taken up residence here. In many cases, through no fault of their own, they have been caught in a tidal wave of negative homeowner activity. I have two bills today about different issues, but related to the same thing. Assembly Bill 273 deals with homeowners who purchase and live in their home and never treat it as an investment and then are forced out and lose their good credit. At the end of the day, they are slapped with a deficiency judgment. This bill deals with those judgments. Under current statute, a court can award deficiency judgments under Chapter 40 of the *Nevada Revised Statutes* (NRS) after a foreclosure sale provided the sale is less than the amount that the borrower owes the lender.

In Assembly Bill No. 471 of the 75th Legislative Session, we tightened the law regarding deficiency judgments to protect homeowners who borrowed from financial institutions to purchase a home on or after October 1, 2009, and who continuously occupied the home as their principal residence and did not refinance. The term we used at that time was "purchased money mortgage." In this bill we are again tightening the rules on deficiency judgments by doing the following things. We are preventing a lender from receiving double payments by obtaining a judgment for a loss that is covered by insurance or some other financial instrument. We are preventing a creditor from profiting from a judgment in excess of the amount the creditor paid for the right to pursue such a judgment. The protections in Assembly Bill No. 471 of the 75th Legislative Session are being extended to borrowers who take out piggyback loans for the purchase of their home, and we are making our laws on deficiencies apply to both senior and junior lenders.

In section 2, subsection 1, and also in section 5, the bill eliminates the ability of a lender to go to court to get a judgment against the borrower for a loss that is covered by insurance. The court must reduce the amount of the judgment by the amount of any insurance proceeds received by or payable to the lender. Section 2 covers the junior lenders, and section 5 covers the senior lenders. Because of the complex nature of what we have been through starting around 2007, many banks have failed and were purchased by larger banks. The Federal Deposit Insurance Corporation (FDIC) has insured the new banks. They said that for any loan that the previous bank secured for the purchase of a house, they would insure against loss for the new bank so they would not be

assuming all the risk of the purchase. That insurance is upwards of 80 percent of any loss. A lot of homes were purchased with private mortgage insurance (PMI), which covers the borrower in the case where he cannot make his mortgage payments; if the home is repossessed by the bank, the deficiency between the value of the home and the balance of the loan is covered by the PMI.

We are trying to establish in statute that those insurance instruments must be exercised first, before the amount of the deficiency is determined in a court action, thereby minimizing the potential deficiency for which a borrower can be sued. The insurance instruments have to be collected first. The insurance companies have been shored up for this purpose, sometimes through American Recovery and Reinvestment Act of 2009 (ARRA) funds. I do not want to suggest there is factual evidence that it is not being done. The problem is that the law is not perfectly clear that it cannot be done. There are ways that a court can file against the loan without going to foreclosure, thereby skipping the deficiency part. This makes it clear to the court that all instruments must be exercised before determining the final deficiency between the borrowed amount and the asset amount collected back by the bank. We are attempting to prevent a lender from profiting from a judgment.

In section 2, subsection 2, and also in section 5, the bill prevents a person who has purchased the rights to a loan from receiving a judgment for more than what he paid plus interest. This applies to both junior and senior lenders. A junior lender is one who holds a second or third lien. The junior lender is not first in line to collect on a home. The primary lienholder has first right to the house. These provisions say if a bank chooses to pursue someone for a deficiency judgment in a situation where a house was purchased for $200,000 and the value dropped to $100,000—and the bank decided to pursue the homeowner for the $100,000 and then sold it to a collection agency for $20,000—all the collection agency could collect is the $20,000 plus interest and fees. If the bank was willing to accept $20,000, then why did the bank not negotiate with the homeowner for the $20,000? The homeowner's credit is being destroyed for $20,000, but it appears on his credit report as $100,000. Why not have the discussion take place between the original lender and the homeowner for the true amount the bank is willing to accept in the first place?

The third provision extends protections from Assembly Bill No. 471 of the 75th Legislation Session to the piggyback loans, which are basically the junior lenders. When we drafted that bill, we attempted to deal with purchase money mortgages, which are the original loan that secured the house. You buy and live in the house and do not take out additional loans secured by the house. The loan is strictly to purchase a house in which you reside. You are now

protected against deficiency judgments. What was not in that bill was that some loans are complicated and have junior lienholders. We are attempting to go back to include in that legislation that all of the loans that are originally used to secure the house are now covered under deficiency. If it is part of the original purchase money mortgage deal, it will now be covered under deficiency protection.

There are two proposed amendments. The first amendment (Exhibit C) deals with the statute of limitations on the junior lienholder and was part of the original intent, but was never part of the bill. There are a lot of homes going through the foreclosure process because they cannot find a suitable short sale. In a short sale, particularly for a home that has two lienholders, is the junior lienholder has a statute of limitations after foreclosure of six years to get a deficiency judgment. The first lienholder has a statute of limitation of six months. The first lienholder sees that if he approves the short sale, he will never have to own or maintain the property, and he will take a loss no matter what he does. It is a simple transaction to a new homeowner. The lienholder can write off the asset, write off the loan, and walk away because he knows in six months the situation will not improve and the transaction does not make sense anymore. The second lienholder does not want to approve the short sale because he knows if he goes to foreclosure, he will have six years to wait for the economic circumstances to improve for the borrower before he chooses to sue them for any deficiency he did not get paid. Why should the second lienholder be in a better position than the first? The result is the first lienholder is not able to get a short sale done because the junior lienholder is holding up the short sale process. This amendment seeks to put the second lienholder in the same statute of limitations position of six months as the primary lienholder. It seems fair for the property owner because there will be more short sales and fewer properties waiting in foreclosure and more transactions taking place. I believe it will help the homeowner and the economy get back on track.

The second proposed amendment (Exhibit D) deals with commercial lending. This amendment revises *Nevada Revised Statutes* 40.495. If you are a guarantor of a loan, there is a loophole in the law that allows the bank to file a suit but not take the property when the loan is secured by the property, which may bankrupt the guarantor. The bank has as much risk as the borrower, and that is why they use property as collateral. I am trying to close that loophole with this amendment. If a bank wants to take action against a borrower to purchase land, and the loan is secured by the land, then before they can sue for money, they have to at least get a judicial appraisal of the property and subtract its value from the amount of the loan. Otherwise, what was the reason for the secured loan in the first place? The amendment provides that, in order to

secure a judgment against a creditor who has a loan that is secured by property, you must get a judicial appraisal and subtract the value from any loan amount.

Chair Atkinson:
Thank you for this bill, because it will help our constituents. My district was the number-one district in growth and is the number-one district in foreclosures. People are looking for relief but feel their hands are tied. They are concerned about the banks coming after them in six years. If a bank and the second lender sign off on the short sale, does that take the borrower out of the six years or six months for the deficiency collection?

Assemblyman Conklin:
There is no statute of limitations on a transaction of sale prior to foreclosure. It is the standard practice of a trained real estate agent that if we are going to conduct a short sale, there is a release for deficiency. What homeowner would "short sale" their house without a document? It is a standard course of practice. The law does not prevent a deficiency judgment for a transaction of sale that takes place prior to foreclosure. That is a standard practice and is what the homeowners expect. The bank is losing less, in that they never have to own or maintain the property or transfer a deed, and can sell it and write it off the books as opposed to a lengthy court process and ownership. It is a win-win situation, but when there are two banks dealing with this and one has a much longer period to collect for a deficiency, why would they ever sign away that right?

Chair Atkinson:
Do you feel that second lenders will be less likely to sign?

Assemblyman Conklin:
We have real estate salespeople who are negotiating these deals daily in Las Vegas, but the reality is there is currently no incentive for the junior lienholder to sign a transaction of sale prior to foreclosure. They have six years to wait for the economy to improve and collect their deficiency. By shortening the time and putting the junior lender on equal footing with the primary lender, it would be more likely that they would be willing to deal at the front end, because they know things are not going to get better before the statute of limitations runs out.

Chair Atkinson:
So the real estate people will say that the homeowners are insisting that the bank sign?

Assemblyman Conklin:
I wonder if a primary bank would say it could do more if the junior lender would agree. There is no incentive for them to do it.

Chair Atkinson:
Are there any questions from the Committee?

Assemblyman Segerblom:
Is this bill retroactive?

Assemblyman Conklin:
No, it is not. You would be reaching back into contracts that were made under certain circumstances. If that were done, who would ever want to sign a contract or do business in a state that would nullify contracts? Our laws should have been better, but we have also never been in the situation we are in today. We never envisioned a bubble so massive that literally 20 percent of the homes in the state would be delinquent at one time, that 5 out of every 100 people would be foreclosed, and 80 percent of the homeowners in Las Vegas would owe more than their homes are worth. We did not craft our laws in anticipation of this scenario, and we should not. To retroactively pass laws would set a remarkably dangerous precedent for individuals and businesses that enter into contracts because you will wonder how it can be enforced or how it can change. The statute of limitations amendments will go forward from passage and approval, so any action from that date forward will be subject to a statute of limitations amendment of six months.

[The Chair turned the gavel over to Assemblywoman Kirkpatrick.]

Acting Chair Kirkpatrick:
Go ahead, Assemblyman Segerblom.

Assemblyman Segerblom:
After this bill is passed, will a second mortgage made ten years ago be the same as the first mortgage?

Assemblyman Conklin:
That is correct, because it is triggered off a legal action. They will still have the right to the deficiency which they will not have on a new loan going forward providing it is a purchase money mortgage.

[Chair Atkinson reassumed the Chair.]

Chair Atkinson:
Are there any other questions from the Committee?

Assemblywoman Carlton:
Could you go over the part about the collection agency again?

Assemblyman Conklin:
On page 2 of the bill, section 2, subsection 2 reads: "If a person: (a) Acquired the right to enforce an obligation secured by a junior mortgage or lien on real property from a person who previously held that right." In other words, if a company buys the right to file a deficiency judgment, which can be done or files "a civil action to obtain a money judgment against the debtor after a foreclosure sale or a sale in lieu of a foreclosure sale . . . then the court shall not render judgment for more than the amount of the consideration paid for that right, plus interest from the date of the default." If I am the bank, and you are the borrower, and your house is only worth half of what you borrowed, I take you to foreclosure; I take your house and sue you for the deficiency. In this case we are talking about the second lienholder; there are provisions in section 5 that provide to the primary lienholder, but the action is the same. I win the judgment, but I am not a collection agency and I do not think you will pay the balance, so I sell the court judgment to a collection agency for less. The collection agency can collect from you the original amount of the deficiency. If the bank is willing to sell the deficiency for less, the borrower should have the right to pay the lower amount to the bank.

Assemblywoman Kirkpatrick:
I have a constituent with a $92,000 garnishment because that was done in a short sale. This will not help him, but it may help others. Now he is homeless, and his employer has to have extra paperwork when it could have been resolved.

Assemblyman Conklin:
I wish we could do something in retrospect, but the consequences would be dire. That does not mean we cannot learn from our situation and make our process better so our future prospects are better.

Assemblywoman Kirkpatrick:
If they already have a garnishment, there is nothing we can do, but if it goes to a short sale, will they be able to benefit?

Assemblyman Conklin:
Once the action is finished, they will have to appeal the court action. Should we pass this bill, people in this situation will find their chances of having a fairer deficiency, or no deficiency, are significantly improved.

Assemblyman Grady:
Would filing bankruptcy have an effect on the deficiency judgment?

Assemblyman Conklin:
My limited understanding is that this does not affect bankruptcy and deals only with a bank and a borrower to negotiate a deficiency judgment on a mortgage secured by a home.

Chair Atkinson:
We will clarify that with Legal. Are there any other questions?

Assemblyman Conklin:
I would like to have the Realtors in support of this bill in Las Vegas speak first.

Chair Atkinson:
Is there anyone to testify in favor?

Joanne Levy, Broker, Levy Realty Company, Las Vegas, Nevada; Member, Nevada Association of Realtors:
I have been a real estate licensee for 34 years and a broker for 32 years. We are here in support of A.B. 273. I would like to thank Assemblyman Conklin for introducing this legislation. The Nevada Association of Realtors embarked on a multiyear research project called "The Face of Foreclosure," which has been given to the Assemblymen. This is a comprehensive analysis of the foreclosure crisis in Nevada. Foreclosures have impacted nearly every family, business, and government entity in some way. You should all have a copy of this report along with a breakdown of notices of default, notices of foreclosures, real estate owned (REO) and foreclosures in each of your districts. It is the Realtors' belief that the information contained in this report is a vital contribution to the conversation on how we can move Nevada forward together. It is our hope that elected leaders, lenders, foreclosure counselors, Realtors and, most importantly, those facing the challenges of foreclosure will learn from this report. Together we can make a way forward to a long-term future for Nevada that is as strong and resilient as our people have been throughout these trying times. This bill is a start to achieving those goals. It will help homeowners in our state and offers great consumer protection provisions.

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

Jack Woodcock, Broker, Prudential America Group Realtors, Las Vegas, Nevada; Member, Nevada Association of Realtors
I have been a real estate licensee for 38 years and a broker for 36 years. I am in support of A.B. 273. I have served on three bank boards and have reviewed this bill from a consumer's perspective and from the perspective of an institution where one has the duty to insure the profitability and success of that institution. There is an undeniable tie between business survival and consumer health. Consumer recovery from this economic downturn is vital to the survival of businesses and banks. This bill offers an initial step towards consumer recovery where it counts. Homeowners who occupied homes used loans to purchase their homes. It also requires lenders to look at the real property for the recovery of debt first and not gain a windfall through unconscionable collection practices that do not account for insurance proceeds.

To answer an earlier question, if a bank forecloses, it has six months to enter into a deficiency judgment. On a short sale, it has six years. Every real estate licensee attempts to ensure that he gets a signed statement from the institution upon approval of a short sale that it will not pursue the borrower for the deficiency; however, every institution will not do that. Many short sales do not give the borrower that relief.

Chair Atkinson:
Would a sale go through anyway?

Jack Woodcock:
Yes. Even though the borrower asks for the statement, they usually go through with the short sale even though they have the six-year time frame.

Chair Atkinson:
Are they aware of that?

Jack Woodcock:
They have to be made aware of that. Anyone who puts a transaction together is obligated to tell the seller.

Chair Atkinson:
They are aware that even if the first signs off and the second refuses that the second lender has six years to collect deficiencies.

Jack Woodcock:
Typically, the second is much less than the first mortgage. It is a judgment call that the seller makes.

Chair Atkinson:
How often does it happen that the second does not agree to the short sale?

Jack Woodcock:
Most of the time; the second holder is the one who holds up the short sale the most. The first is better prepared to go through with the transaction.

Chair Atkinson:
I assumed that the first mortgage holder would get something and, in some of the cases, the second would not.

Jack Woodcock:
In most cases, the first will allow a certain amount to go to the second.

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

Bill Uffelman, President and CEO, Nevada Bankers Association:
This bill amends a law passed last session. Because it applies the same principles and is not retroactive, the Nevada Bankers Association supports the initial piece of the bill. I have talked to Assemblyman Conklin about his amendment on the commercial side and will reserve judgment on it.

Chair Atkinson:
Are there any questions from the Committee? I see none. Is there anyone else to testify in favor of A.B. 273? Is there anyone wishing to testify in opposition? Is there anyone to testify in a neutral position?

Assemblyman Conklin:
I will follow up with Mr. Uffelman after the banks have a chance to look at the second amendment. I want to clarify one thing. There are two potential sales that take place. There is a potential transaction of sale before a foreclosure. The actual foreclosure itself is called a foreclosure sale. It is the foreclosure sale where the second lienholder has a superior position because it has six years. It is in the short sale where both banks are relatively equal, except that the junior lienholder knows that he has a backup, plan and the first lienholder does not. It is in the first lienholder's best interest, if a deal can be struck, to let the house go, and it is not in the best interest of the second lienholder.

Assemblyman Segerblom:
I would like to see this bill moved quickly.

Chair Atkinson:
Do you need more time, Assemblyman Conklin?

Assemblyman Conklin:
I need at least two days.

Chair Atkinson:
We also need to answer Assemblyman Grady's question. Are there any further questions or comments on this bill? I will close the hearing on A.B. 273. I will open the hearing on Assembly Bill 300.

Assembly Bill 300: Revises provisions governing foreclosures on property. (BDR 9-668)

Assemblyman Jason Frierson, Clark County District No. 8:
You are aware of the problems we have in Nevada regarding our home foreclosure rates. Last session, we passed landmark legislation to create the Foreclosure Mediation Program. This was Assembly Bill No. 149 of the 75th Session, which was sponsored by former Speaker Barbara Buckley to bring lenders and homeowners together to create an atmosphere where they could discuss options with the hope of keeping as many homeowners as possible in their homes. That program produced tremendous results. From 2009 through June 2010, the program mediated over 6,000 disputes. Nearly 90 percent resulted in no foreclosures. That could mean a homeowner remained in his home, that there was a short sale, or other options that allowed the homeowner to resolve his situation with dignity. Late last fall, former Assembly Speaker Barbara Buckley and I met separately with representatives of lenders, representatives of homeowners, and mediators to find out how the program was working. Those discussions resulted in Assembly Bill 300, which is an attempt to make changes in the program to adapt to some of those issues.

Sections 2 through 5 of the bill deal with definitions that apply to the program and to the amendment. Section 6 deals with the collection of data to study what is working and what the participants of the program are doing, so we can have an easier opportunity to review that information and make adjustments legislatively or administratively to improve the program. This section may need some work. We have been discussing with interested parties how to implement it, and I think we can make that work within the confines of the existing program so we do not overburden it. Section 7 deals with sanctions and is one of the most important provisions of this bill. It attempts to define and give

better direction to the participants of the program about how to deal in good faith. It gives the mediator the tools we believe he needs to address sanctions if necessary. Section 8 deals with the judicial review, which is part of the existing program. Section 9 deals with existing provisions of the administration of the program. Section 10 addresses the process as it applies to short sales. We met with real estate people and heard their concerns about the short sale process, and I hope we can develop something that will last long-term. On page 12 of the bill, it is proposed to delete subsection 5. Subsection 7 on page 13 addresses the fees paid to participate in this program. Currently, the lenders and the homeowners pay half of the fees. This prevents the lender from being able to apply its fees to the balance of the loan.

Our proposed amendments (Exhibit E) address some concerns of interested parties to make this bill work more effectively. The first amendment proposes to delete section 7, subsection 2(a), which deals with modification. This is not being done now, and we believe the mediator and the court system must have the tools they need.

Chair Atkinson:
What section are you deleting?

Assemblyman Frierson:
The amendment will propose to delete the two lines in section 7, subsection 2(a), which are lines 19 and 20 on page 3 of the bill. We propose to add new language to that section that says, "Such other relief as the court deems appropriate," which makes it clear that the court has a multitude of options to deal with a party that is not acting in good faith. The next amendment is on page 5, line 3, which is section 10, subsection 1. We are removing the terminology "short sale" and defining it so this will be applicable regardless what the state does in the future with short sales. We believe this accomplishes the same goal, but addresses the concerns of some of the parties in using this terminology long-term. We propose to remove "short" on line 4 and add "where the sales price would be insufficient to pay to the beneficiary of the deed of trust the outstanding balance of the lien in full and costs of sale." Throughout that section, we are removing the short sale provisions. In subsection 1(a) we propose to remove "the short sale amount" and add "an agreed upon listing price which must include costs of sale." Throughout section 10 we remove short sale provisions and add language that describes that process. The last addition is in subsection 3, on line 25 on page 5. We remove "short sale" and add several lines to describe that process to make it clear what we are trying to do.

Chair Atkinson:
We are glad to welcome former Assembly Speaker Barbara Buckley.

Barbara Buckley, Executive Director, Legal Aid Center of Southern Nevada:
I am pleased to be here with Assemblyman Frierson to collaborate and testify in favor of this bill. [She presented a PowerPoint (Exhibit F).] We are here due to Nevada's trifecta. We are number one in the nation in foreclosure, with 1 in 93 homes in foreclosure. We are number one in the unemployment rate, at 14.1 percent. We are number one in the country in homes being underwater, meaning there is more owed on a home than it is worth. The visual shows that we have the highest rate of foreclosure in the nation. The next group includes Arizona, California, and Florida, but we are at the top.

Assembly Bill No. 149 of the 75th Session was enacted by the Legislature and signed by the Governor in response to the foreclosure crisis. The premise is simple—let us bring together, in mediation, homeowners and lenders to try to work out alternatives to foreclosure. We heard complaints that homeowners could not get a hold of their bank; they were getting the runaround, and banks admitted that they were not prepared for the scope of the crisis and did not have people they could train quickly enough. It was a disastrous situation. That bill created the opportunity for lenders and homeowners to discuss options such as loan modification, short sale, and alternatives to foreclosure. The program was placed under the administration of the Nevada Supreme Court. Across the country, states placed these programs in either the Judicial Branch or Executive Branch. We were pleased and impressed that the Nevada Supreme Court stepped up to undertake this program. They have one of the highest caseloads in the country and could have easily said that they were too busy, and they would have been right. They were concerned about Nevadans in trouble and agreed to undertake this program. In my 21 years with Legal Aid and my 16 years in the Legislature, I have never seen an entity take a statute and implement it as quickly and as well as the Nevada Supreme Court did this program. They had to begin taking cases, train 300 mediators, create an information technology system, and hire a staff. They got it up and running. We passed this bill on July 1, 2009, and the first mediation occurred on September 14, 2009. That never happens in state government. It is truly a credit to the Nevada Supreme Court and the amazing administrator and staff they hired.

The previous bill required four things of lenders. It required they attend the mediation, they have the authority to do something like a loan modification, they bring their documents, and they agree to participate in good faith. One of the slides shows the statistics from September 14, 2009, through June 30, 2010. In that period 6,100 mediations were assigned, 4,200 were

completed, 89 percent of the mediations resulted in no foreclosure, 46 percent resulted with the homeowner remaining in the home, and 15 percent resulted in the homeowners vacating the home and exiting with dignity, which could be a short sale or cash for keys. In the second fiscal year, 2,600 mediations were done between July 1, 2010, and September 30, 2010. Of those mediations, 84 percent resulted in no foreclosure, 43 percent resulted in homeowners remaining in their homes, and 21 percent resulted in an agreed exit. These numbers are a true tribute to the amazing mediators who have been trained by the program. We have amazing mediators getting amazing results every day of the week in every part of the state. The good news is that out of 6,370 mediations, 3,963 cases resulted in agreement. The bad news is that in 1,613 cases, lenders either failed to attend in person, have authority, bring required documentation, or participate in good faith.

This bill attempts to continue the great work of the program by preserving most of it while adding some things. The first major section is section 6, which asks the court to place the data for the program on the website. It would say how many mediation hearings a bank participated in, how many times agreements were reached, and how many times the bank failed to participate in good faith or not show. It shows the aggregate data.

Section 7 clarifies penalties and sanctions. In the original bill, we included the provision that said the mediator can issue "a petition and recommendation" for sanctions. Mediators do not feel comfortable recommending sanctions to the court, so it has not happened. What has happened is the mediator writes a statement and, if either party is dissatisfied, they file a petition for judicial review, and a judge can impose the sanctions. So, the next major part of A.B. 300 strikes the language from last time that said the mediator shall submit "a petition and recommendation;" instead, it says that the mediator shall describe with particularity what happened, and the judge can decide the appropriate sanctions. They can consider the website in their determination and such things as whether the conduct was intentional to make appropriate financial sanctions. It is my personal opinion that all a judge has to do is issue one or two heavy sanctions against lenders who do not participate and, in the next case, they will participate. I also believe that, regarding the website, no one likes to be ranked poorly in public. We have seen it often in legislation that when entities are ranked poorly, they change their behavior. We think that between these combinations of strengthening the sanctions and having the penalties clearly be set forth as financial, as opposed to loan modification, that the program shall be improved.

Section 9 clarifies the short sale process along with section 10. Section 13 eliminates the prior procedure where the mediator was envisioned to be

recommending sanctions. Sanctions make programs work. If there is no penalty for violating the rules, it is easy to violate the rules. Other states, such as Indiana and New York, are imposing sanctions in their foreclosure mediation programs. Since we passed Nevada's foreclosure mediation program last session, the number of foreclosure mediation programs nationwide has doubled. I was asked to testify for bills in California and Washington. I had a conference call with Hawaiian legislators. I think our program is seen as effective and a way to create alternatives to foreclosure.

The importance of the section, mentioned by Assemblyman Frierson, that tries to make it clear that the lenders cannot pass their costs of mediation to the homeowner is demonstrated in the next slide. It shows the actual paperwork of someone who was assessed, by the lender, the lender's fees for participating in the Foreclosure Mediation Program. We set up the program so the lender pays $200 and the homeowner pays $200 and each party is supposed to bear its own costs and fees. But the inappropriate costs are being assessed in some cases, and we do not want that to become widespread. Since the passage of Assembly Bill No. 149 of the 75th Session we have learned how this system works and how to improve it. That is what A.B. 300 seeks to do.

Chair Atkinson:
Would you talk about the meetings that you had leading up to presenting this bill?

Assemblyman Frierson:
It was a tremendous education to meet with the mediators, the lender representatives, and the homeowner representatives. All three meetings were extremely well attended. We contacted individuals who we knew were familiar with the program. We scheduled the meetings separately so everyone felt free to discuss their concerns and thoughts. Everyone came to the table with great input, suggestions, and insightful concerns. Everyone was interested in providing information that would help make the program operate better. There was some frustration about technical aspects of the law and the program, which we heard and tried to incorporate into the bill and the proposed amendment. There were other concerns that were more administrative, and we passed them to the program administrator for him to consider. We tried to take concerns from all three sides to incorporate into making the program better.

Chair Atkinson:
I applaud you for your efforts. In slide 11, which addresses lenders passing the fees to the homeowners, have you heard that the fees are exorbitant and excessive?

Barbara Buckley:
There are a lot issues and a lot of ways fees can come up. I have followed this program wearing my legislative and legal aid hats. Some of my lawyers immediately started to offer free classes to homeowners. Michael Joe from our office designed that program. He teaches a free class every Thursday night and put the material on the website to help homeowners in all parts of the state. One of the biggest complaints I have heard over the last two years is the outrageous amounts people have paid to loan modification companies where they were scammed. They paid $5,000, and sometimes the entity helped them complete an application to their bank under the Home Affordable Modification Program (HAMP), which anyone can do themselves, or they can attend our free class or go to Consumer Credit Counseling of Southern Nevada in all parts of the state. Instead, these people paid outrageous fees to loan modification companies. Assemblyman Conklin's bill regulates them and requires them to be licensed, but the Federal Trade Commission has put them out of business by banning up-front fees. Those complaints should diminish, but it is a huge issue.

Another complaint we hear is that sometimes the banks, instead of reducing the payment to 31 percent of income, as set forth by HAMP, will not offer that, so it became too expensive for the homeowner. Through the mediation process, the trained mediators know these modification programs and are able to find alternatives. Both of those issues are being addressed.

Assemblywoman Bustamante Adams:
On the slide about bad news, you said there was a 25 percent failed participation rate. What happens to those homeowners who do not get recourse from the process?

Barbara Buckley:
The way the program is, there is a sanction which happens automatically. If the lender does not do one of the four required things, it cannot proceed to foreclose. The homeowner wants resolution, and that is what we are hoping the sanctions will provide. We also often find that when a petition for judicial review is filed, the case is resolved on the court date and a modification is made.

Assemblywoman Bustamante Adams:
What is the time frame from when the initial mediation starts until finish?

Barbara Buckley:
In Nevada, we looked at the existing time frame for foreclosure and fit the Foreclosure Mediation Program within the existing guidelines. The lenders then asked for additional time because they were having trouble finding the

documents, so it was extended, but it is done within a statutory scheme on a foreclosure process.

Assemblyman Segerblom:
Have you seen problems that are seen nationwide, with the title people saying they cannot find the title or people not proving they have the title?

Barbara Buckley:
We were ahead of the curve in some ways, because in the bill last session, we required that the original documents be brought—no deeds of trusts or assignments. The mediators are looking at the documents and may say, "Show me that you own this debt." Many of the details of the program have been placed in court rule, and that has been a very good thing that we did. We did not prescribe every detail in the law, and we allowed the Supreme Court to hold hearings to create the rules; there have been some modifications on that, so if there is a lost document they can attest to it. The "robo-signing" scandal of last year did not affect the Foreclosure Mediation Program because we put appropriate provisions in the bill in the first place.

Assemblyman Hardy:
In section 7, subsection 7(c), do you need to have a monetary amount?

Barbara Buckley:
I think that the more discretion we can give the judges, the better. Let them evaluate it. It could be an innocent mistake, or it could be an intentional course of conduct. I would rather the judge be able to send the message and change the behavior so no sanctions will be needed in the future.

Assemblyman Frierson:
I think the more discretion we can give the courts, the more they will have the opportunity to cater each resolution to those particular circumstances.

Assemblyman Ohrenschall:
Are you seeing many cases of a homeowner trying to work out a loan modification with a bank while the foreclosure is progressing, and they think they are going to work out a solution, but the foreclosure goes through?

Barbara Buckley:
That is why we adopted Assembly Bill No. 149 of the 75th Session. Yes, it still happens, but now in order to foreclose, a notice has to be given to the homeowner and he or she has the right to elect mediation. The biggest problem we are having with the Foreclosure Mediation Program is that not enough people know about it, so they are not electing it. We have had cases where,

despite the homeowner getting a letter about mediation, the foreclosure happens the next day. We tell homeowners to be wary, elect mediation, and be able to have some oversight to your negotiation to try to work out alternatives.

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

Charles McGee, Senior Judge, Washoe County District Court:
I am both a senior judge and a senior mediator. I have had dozens of these mediations, and there are two main points I would like to make. The first point is the importance of having the mediator make some detailed findings as it relates to the conduct of the lender or the homeowner. Under the existing law, other judges are not going to spend their entire calendars rewriting these notes. I think they recognize that these are contracts which cannot be substantially impaired under the *Nevada Constitution* and the *U.S. Constitution*. There are two cases pending before our Supreme Court, and I predict the constitutional principle will be upheld. In order to give the judge the full discretion that he or she needs, you need to have these findings so you can gauge the conduct. There is no record of the meetings, so we need findings as to exactly what happened. I agree wholeheartedly with this part of the amended legislation.

I agree with former Speaker Buckley when she said that it is probably better that we make changes by court rules rather than by the Legislature, which meets biennially. This is a very changing business. It has changed dramatically in the last 60 days. I think you will see the HAMP loans go out of favor, and other loans, like the Heaviest Impact Program, which will benefit Nevada, will begin to take their place. The banks are now combining the application. The Treasury Department now asks for a whole host of documents. Regarding the section which contains detailed databases to show the performance, over time, of some of these lenders, we need to be careful in the administration of that provision because banks wear at least three hats. They own real estate, they service investor groups, and they may participate with other banks and investor groups. It would be fairer to list them as owners of real estate, owners of the mortgagors, and servicers.

I think our program needs to do some downstream monitoring of the temporary loan modifications. Everyone is doing three- to four-month trial modifications. We get to see these people only once, and we do not know, in the case of unsophisticated homeowners, whether the bank is going to follow through on the implied promise that they will continue with a permanent home loan modification after the trial period. They are also asking for so much detailed information, like an Internal Revenue Service (IRS) Form 4506-T, which is a "request for transcript of tax return." We do not know if these homeowners

even know how to comply with those rules. It might be good to devote some resources to the back-end follow-up because the best result is a permanent home loan modification. All of these issues can be taken care of. I think the program is remarkable and is in the right place with the courts so we can change with the times. I am speaking in favor of A.B. 300.

Chair Atkinson:
Are there any questions from the Committee?

Assemblyman Ellison:
How many times do you recommend that a mediator try to resolve some of these issues? Do you do that at all?

Judge McGee:
I do. Under the current rules, we are pressed to get the mediations done. I am advocating that we take some of the resources that allow the mediator to follow up at the end of the trial period if they have not closed the permanent loan modification. I think we could shore up the process.

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

Michael Joe, Attorney, Legal Aid Center of Southern Nevada:
I do foreclosure work at the Legal Aid Center of Southern Nevada, so of course I am in favor of A.B. 300. Judge McGee talked about the distinction between servicer and beneficiary, which is an important distinction. Who we normally see in mediation is the servicer and not necessarily the beneficiary. When we track the performance of the different parties, it is important to track what the servicers do or whoever the beneficiary sends to represent them. I think homeowner training is a very important part of this program, because I think we will have better results the better educated homeowners can be. We teach the program here in Las Vegas, and the Senior Law Project teaches it in Reno. Earlier, someone asked about what happens to homeowners who go through this process. In the homeowners class, I talk about it as being in limbo. You go through mediation, you do not get a loan modification, but you get the mediator to check a box that does not allow them to foreclose. These are the people who are addressed specifically by this bill.

The number-one complaint I hear from homeowners who are unhappy with mediation is that it was not what they expected. I used to say that mediation was an opportunity to sit at a table across from your lender to discuss a loan modification, but in reality it is different from that. The beneficiary sends an attorney who represents the servicer. The attorney calls the servicer on the

phone. The person at the servicer sits in front of a computer, inputs numbers, and the computer tells them what to do. Homeowners find this process unsatisfying. Homeowners think this is an opportunity to negotiate and work out their loan, but it does not turn out to be that. The sanctions are one way to address this and to make the process more akin to what homeowners expect it to be. If you really want homeowners to get resolutions to their process, you need the beneficiary to be represented and to sit down to discuss solutions to a foreclosure.

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

Laila Orellana, Private Citizen, North Las Vegas, Nevada:
I am in support of this bill. On July 15, 2010, I attended a mediation meeting where there was an attorney present who was on the phone with an agent from the Bank of America. I had already been approved for a trial modification through the Making Home Affordable program and had successfully submitted my financial paperwork to the bank for review. I made three trial payments as required and was told at the mediation by the representative, who was supposed to have authority from the bank, that I had been approved for my trial modification to become permanent. They told me the documents were in the mail and I would receive them within two weeks. They told the mediator that federal funds would be used for my modification, my interest rate would be reduced, and the length of my loan would be extended. The mediation statement recorded it, so I walked out of the meeting feeling confident that I had successfully saved my home. I made four more payments until I attempted to make my eighth payment and Bank of America notified me that they would no longer accept my payments because they were foreclosing on my home. I received a notice in October 2010 that I had been denied and was again facing foreclosure.

I think this bill will help the banks be accountable. It will allow the homeowner to have some kind of recourse to force the banks to comply with the agreements they make. It will also force them to send people who are actually trained and have the authority to make the negotiations valid. I am going further underwater because fees are still being assessed for late fees and attorney's fees. I have no way to stop it because I cannot make a payment and I am stuck in limbo. I am a contributing member of my community. I have always participated and initiated communication with my lender. I want to keep my home, and I think this bill will somehow benefit, if not me, other people who are still trying to save their homes. I hope you will vote in favor of this bill, particularly in the sanctions part of the bill, because unless the banks have something to lose, they will continue to send untrained people to mediations in

order to meet the requirement that they have someone attending the mediations, but they have no good faith to come to an agreeable outcome.

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

Mary Scott, Private Citizen, Las Vegas, Nevada:
I am here on behalf of my 76-year-old mother. Due to financial problems and health issues, she became delinquent on her mortgage. She tried to come to an agreement with her lender to pay arrears on her mortgage. They told her she had too much debt, and one of the solutions was to file bankruptcy to remove her debt so she would be more attractive for a loan modification. She filed bankruptcy and submitted loan modifications and was still denied and continued to receive notices of default. In May 2010, a foreclosure notice was taped on our front door with no explanation. We worked with Legal Aid and paid $200 for mediation. We had our mediation meeting in August 2010 on her 76th birthday. We went there in good faith and assumed that our lender would do the same. When we got there, there was an attorney for the servicer and someone on the phone who could not approve anything. They did nothing. They made no offer and simply wanted to foreclose. We got our results from the mediation, with the box checked that did not allow them to foreclose, in September 2010. Since then, we have heard nothing from our lender or anyone else. We are waiting and they do nothing.

Chair Atkinson:
Is your mother still in the home?

Mary Scott:
Yes.

Chair Atkinson:
How long has it been?

Mary Scott:
The foreclosure was May 2010. The mediation meeting was August 2010, and we heard from the mediator in September that he would not allow the lender to foreclose. We have heard nothing since then.

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

James M. Baker, Attorney, Castro and Baker LLP, and Foreclosure Mediator, Las Vegas, Nevada:
I was one of the first mediators trained here to conduct foreclosure mediations, and I have done between 160 and 200 mediations. I am here to testify in favor of A.B. 300. I would like to comment about the rebuttable presumption that is created that sanctions will issue if the lender fails to comply with the requirements for mediation. I would like to suggest that, in those sections of the bill dealing with the issue of the requirements for the lender to bring documents to the mediation, it be made clear that the documents brought to the mediation must be properly authenticated and comply with the rules in the administrative rules. Often the lender will bring documents that are not properly authenticated, which means they are not accompanied by a statement under oath stating that they are true and correct copies of the originals in the possession of the person who signed the document. I sometimes get resistance from attorneys who represent lenders when I check the box saying they did not comply with the requirement to bring the documents. They want me to note that the documents were not properly authenticated. If the box is checked, in all likelihood the foreclosure program office is not going to issue the certificate that will allow them to foreclose. I would like to suggest, in those sections of the bill about bringing documents to the mediation, that it be made clear that they must be properly authenticated documents, or they will not meet the requirements for the legislation.

In section 10, which deals with short sales, including a release of deficiency is commendable. If a modification cannot be worked out, homeowners do not know what to do about going through a short sale, because they face the dilemma that the lender will not commit at the mediation about releasing the deficiency if there is a short sale. A short sale benefits the lender as well as the homeowner. The lender will get more money from a short sale than a foreclosure. It benefits the homeowner because any deficiency that results from a short sale will likely be much less than a foreclosure. The homeowner does not know if he wants to short sale because he does not know if there will be a large deficiency judgment. This legislation will provide more predictability and certainty that would help the parties move forward.

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

Malcolm Doctors, Mediator, Henderson, Nevada:
This bill will help the citizens of Nevada without any negative fiscal impact on the state. I have been a practicing mediator since 1999 and was appointed as a foreclosure mediator in December 2009 and have conducted approximately 150 mediations. Assembly Bill No. 149 of the 75th Session was the work of

Barbara Buckley, whom we all have to thank for this. This program has developed from a mandate into what we have today. We need A.B. 300 now because we need more definition for our roles as mediators. There has been ambiguity, and this bill will take away a lot of that. It gives us more direction. We need to bring additional pressure to all the parties in the mediation to be more open to solutions. We need a mechanism that will result in a more transparent process. Having the information on a website will do that and will make people act more amicably. Strengthening penalties for those who wish to flaunt what we are trying to do is appropriate. It will be more meaningful and help the people of the State of Nevada who are facing these terrible situations. I am in favor of A.B. 300 because it contains most of these components. To answer your earlier question, Mr. Chair, there is no structure for the mediator to go beyond the mediation session to follow up.

Chair Atkinson:
Thank you for the clarification. Are there any questions from the Committee? I see none.

David M. Crosby, Attorney, Las Vegas, Nevada:
I have been involved in the program since its inception. I wholeheartedly support the program and think it benefits many people who have serious need. I have been impressed with Barbara Buckley and the leadership, inspiration, and energy that she brought to the program. I would like to point out a fourth category in which Nevada was the leader, the percentage of loss of value in residential real estate, at 70 percent.

I have been concerned about the role of the servicers. My opinions are based on experience. The Congressional Oversight Panel issued "A Review of Treasury's Foreclosure Prevention Programs" in December. The report addressed the problems facing the HAMP program, which are the exact same problems we face in the homeowner Foreclosure Mediation Program. We are concerned about good faith and authority of the lenders. They all say they have authority, and very few really do. They represent servicers who have different concepts. Let me read from the report:

> . . . despite the apparent strength of HAMP's economic logic, the program has failed to help the vast majority of homeowners facing foreclosure.

We know that, and this program may be on its way, and maybe because the servicers have killed it. I will continue to read:

> A major reason is that mortgages are, in practice, far more complicated than a one-to-one relationship between borrower and lender. In particular, banks typically hire loan servicers to handle the day-to-day management of a mortgage loan, and the servicer's interest may at times sharply conflict with those of lenders and borrowers. For example, although lenders suffer significant losses in foreclosures, servicers can turn a substantial profit from foreclosure-related fees. As such, it may be in the servicer's interest to move a delinquent loan to foreclosure as soon as possible. HAMP attempted to correct this market distortion by offering incentive payments to loan servicers, but the effort appears to have fallen short, in part because servicers were not required to participate.

We have the same problem. I like section 7, subsection 2(a) and 2(b), where it says that the Mediation Administrator will not issue a certificate to foreclose if certain things are not done. I think that codifies what actual practice is; it needs to be in the bill and should not be stricken. Those may be stronger than any sanctions you can put in here. I have read the sanctions and do not totally understand them. They appear to be designed to pressure the judge into issuing more sanctions. The judge has authority to sanction, but the judge in Las Vegas does not do that much. As a private practitioner representing homeowners, I believe one of the strongest tools we have is the mediator not issuing a certificate. The servicers are going as fast as they can to foreclose. If you can interrupt that process and tell them they either have to come to the table or start again, many times they come to the table. Those are valuable tools to have codified. The part about no interest on the loan being assessed will be a real sanction. We just want to solve the problem for the homeowner. These sanctions will do that.

In section 7, subsection 3, where it says the mediator should "include details concerning the conduct that would be sufficient to enable a judge considering the issue," that is vague. There are a lot of mediators, and some are timid. They think, as mediators, that they do not want to check a box that favors one side or the other, because that would not be neutral. They are reluctant to do anything other than try to make things happen. If they do not happen, they are not too quick to fault anyone. The mediators need some help. The sanctions are addressed in section 7, subsections 4 and 5, and the wording "rebuttable presumption that the court will impose sanctions" looks like they are trying to pressure the judge. My response to subsection 7(a) is, absolutely not. You need to remove that. I think it is unconstitutional. We do not need the judge to restructure the loan. Let the bank restructure their loan.

Section 8 addresses recommendations of the mediator. The mediator makes findings, so does a mediator recommend sanctions? In subsection 2, about evidentiary hearings, a hearing should be requested at the order to show cause hearing, and in appropriate circumstances there should be one, but it should not say the court "shall" hold an evidentiary hearing.

In section 9 it says when a Mediation Administrator has issued a foreclosure certificate, it must take place not more than 90 days after the date indicated in the agreement. Why would we tell the lender that they have to foreclose earlier than they might otherwise foreclose? We have an opportunity to solve these problems at any point in the process.

In section 10, subsection 2, it says if a short sale is not completed within the period allowed by the agreement, the beneficiary of the deed of trust may submit a request to the Mediation Administrator to issue a certificate to foreclose. The mediators check all the boxes that apply, and sometimes when they enter into a short sale, there are boxes that would disallow a certificate to foreclose. I think that section needs more work.

Assemblyman Conklin:
Although your points may be valid, the sponsor of this bill and former Speaker Buckley have worked hard to find a combination of things that brings everybody together to move this bill forward.

Chair Atkinson:
Is there anyone else wishing to testify in favor of this bill?

Barry Gold, Director of Government Affairs, AARP Nevada:
According to AARP research, about 684,000 homeowners age 50 and over were delinquent on their mortgage, were in foreclosure, or had lost their homes during the last half of 2007.

[Read from prepared testimony (Exhibit G).]

Chair Atkinson:
Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor of the bill? Is there anyone to testify in opposition?

Bill Uffelman, President and CEO, Nevada Bankers Association:
The Federal Deposit Insurance Corporation (FDIC) insured institutions, of which some are servicers, some are lenders who hold mortgages, and some are not in the mortgage market. I have submitted a foreclosure analysis (Exhibit H) and a commentary on A.B. 300 (Exhibit I). We found most troubling the notion that

the mediator is the judge and jury of the behavior of the parties, and it becomes a factor in determining the future of the outcome of the mediation. Assemblyman Frierson referenced page 3, lines 19 and 20, as where he suggested to make a change in section 7. I believe he agrees that the change should be on page 4, lines 15 and 16. In my comments, I suggested that section was a problem.

In section 6 about the statistics, as others have commented, that because the representatives are there in different capacities, the statistics should be grouped into banks representing a loan they had made or a bank as a servicer of a loan. It would make those statistics more meaningful.

Ms. Buckley discussed the outcomes of the mediations, and I believe that they have been fairly good. The 25 percent that did not reach a resolution, I would say shame on them. There have also been problems with the borrowers coming to the mediation too. This bill, as written, imposes sanctions only on the lender who is represented at the table.

In section 7, the first proposed amendment resolves my comment about what may be unconstitutional. The whole process revolves around whether the lender is behaving appropriately in the mediation. The real issue is that it has been a learning process for all parties concerned. If there are lenders, servicers, or someone who is not going through the process correctly, there should be sanctions.

Chair Atkinson:
Have you tried to work with Assemblyman Frierson to work out those differences?

Bill Uffelman:
I have been part of a team that has been working on this bill. I have not worked with him in the past five days, but we had a meeting prior to the introduction of the bill and had some discussions then.

Chair Atkinson:
Assemblyman Frierson, can you work that into your amendment?

Assemblyman Frierson:
That removal was part of the result of meeting with lender representatives and was a compromise because of their concerns. I believe the remaining provisions in the amendment address the concerns of all three sides and allow it to be effective.

Bill Uffelman:
The time limits in sections 9 and 10 may work to the disadvantage of the borrower as opposed to having the option to continue. Limiting it to 90 days is not the best way to make it happen. Similarly, on the short sale, the deadline will not be good for any of the parties involved.

Chair Atkinson:
Do you think there should not be a timeline?

Bill Uffelman:
In our discussions prior to session, there was a conversation about having the mediator retain some jurisdiction over the process. Part of the process of the short sale is obtaining a broker's price opinion or appraisal of the property to come to an agreed market price. A short sale is the same as any other sale, except at a lower asking price. It may entail time. If the short sale process kept the mediator involved, it would provide a process to engage in a meaningful attempt to "short sale" the property. I do not want to see the 30-day deadline as opposed to having someone monitor it. When you do a short sale, the borrower needs to remember to make an effort to sell the property. It involves all of the parties to participate.

Chair Atkinson:
Do you think it should be 90 days?

Bill Uffelman:
If you want a time frame, I would say 180 days, but I would also suggest that the mediator retain jurisdiction over the short sale effort.

Chair Atkinson:
Are there any questions from the Committee? I see none. Is there anyone else to speak in opposition? Is there anyone to speak from a neutral position?

Assemblyman Frierson:
I believe this bill with the amendments is a broadly fair effort to improve the program. I am willing to discuss with the lenders the 90-day period. That section does not deal with short sales. Section 10 deals with short sales. Section 9 deals with other aspects when the parties agree. It tries to ensure that the house does not sit for an extended period of time and get vandalized. We are willing to meet with all parties to see where we agree.

Barbara Buckley:
People in Nevada are in trouble. Preventing situations like those you heard from the homeowners makes sense. People have to have faith in the process. If in

25 percent of the cases the lenders fail to participate and not have a penalty, there is no incentive to do it correctly. That is what A.B. 300 does. It provides the incentive to treat Nevada homeowners the way they deserve.

Chair Atkinson:
Are there any questions from the Committee? I see none. We will close the hearing on A.B. 300 and open the hearing on Assembly Bill 308.

Assembly Bill 308: Revises provisions governing the regulation of mortgage lending. (BDR 54-183)

Assemblyman Marcus Conklin, Clark County Assembly District No. 37:
I am the sponsor of A.B. 308. I introduced legislation intended to rein in mortgage lending fraud in the State of Nevada during the past two legislative sessions. Assembly Bill No. 440 of the 74th Session established a crime of mortgage lending fraud because there was none. Assembly Bill No. 152 of the 75th Session expanded the regulation to include foreclosure consultants and loan modification consultants. This bill is intended to strengthen the laws in this area. Although there are many public and nonprofit programs designed to help owners in financial distress, many consumers seek assistance from for-profit foreclosure and loan modification consultants who act as intermediaries between them and their lenders. Unfortunately, as Barbara Buckley stated, this is not often a wise move. According to the Federal Trade Commission (FTC), unfair and deceptive practices are widespread and cause substantial consumer harm. Federal and state authorities have investigated over 450 companies in the country and initiated hundreds of lawsuits and enforcement actions.

After we passed Assembly Bill No. 152 of the 75th Session, in October 2009 the Deputy Attorney General said the Office of the Attorney General had received complaints against 126 foreclosure prevention businesses, and about 12 of them resulted in criminal charges. At the same time, the Attorney General indicted two people on multiple felony counts for allegedly operating a foreclosure rescue scam and obtaining money by misrepresentation, theft, and misrepresentation and theft against a person 60 years of age or older. In December 2009, the Board of Examiners exempted 32 employees of the Bureau of Consumer Protection in the Office of the Attorney General from mandatory furloughs because they were needed to combat the foreclosure scams currently plaguing our state. In January 2010, the Attorney General indicted three more people operating a loan modification business for misleading consumers, making false claims, not performing services, and causing customers to sign false documents to give them liens on customers' homes. In February 2010, the Attorney General indicted the operator of a foreclosure rescue business for felony theft and forgery for obtaining advanced payments,

not performing services, failing to give promised refunds, and submitting forged documents to the Mortgage Lending Division. The Attorney General extradited that person from the Philippines, where he had fled. He faced trial, pled guilty, and was sentenced to two and a half years in prison.

In February 2010, the Attorney General entered into a settlement agreement with an unlicensed loan modification company that agreed to pay $5,000 in fines and refund fees to homeowners. In August 2010, the Attorney General indicted three people who were operating a foreclosure rescue business for misleading customers, making false claims, defrauding customers, and causing customers to sign false deeds of trust. In November 2010, the Mortgage Lending Division closed four foreclosure consulting businesses, imposed fines from $15,000 to $50,000, ordered refunds to customers, and took other related actions. All of these items and others were covered under the previous legislations we passed. I wish we had done more last session because there are still scams and people getting away with significant crimes and injustices against Nevada consumers.

As a result of similar problems around the country, the FTC conducted a rulemaking procedure and adopted a final rule on foreclosure consultants and similar providers in 2010. The FTC rule that is in effect prohibits providers from making false and misleading claims, requires providers to make extensive disclosures about their services, prohibits the collection of fees in advance, prohibits people from providing assistance or support to someone they know or should know is violating the rule, and imposes compliance and record keeping requirements.

Assembly Bill 308 will change the *Nevada Revised Statutes* (NRS) to conform to the FTC rule. Section 2 of the bill prohibits foreclosure consultants from claiming or receiving any compensation before a homeowner has executed a written agreement with his lender or servicer incorporating the offer of mortgage assistance. You only pay for service after it has been provided like most other services are conducted. Under the FTC rule, if the homeowner rejects the agreement, he or she is not required to pay the foreclosure consultant. Section 3 of the bill requires foreclosure consultants to keep records on each of their clients, to conduct rigorous oversight of their employees, to investigate complaints, and perform other duties. Section 4 covers disclosure. The foreclosure consultants must make disclosures in general commercial communications, communications specific to a homeowner, and specifically in situations where they express or imply that clients should discontinue making their mortgage payments. Those decisions can have a profound effect on the process and a long-term effect on the clients' credit.

Section 5 covers additional disclosures that consultants must make when they provide a homeowner with a written offer from the lender or servicer incorporating an offer of mortgage assistance. One disclosure says that you may accept or reject the offer. If you reject it, you do not have to pay. Section 6 prohibits people from providing assistance or support to someone they know or should know is violating this act. Section 9 expands the list of unlawful practices in accordance with the FTC's final rule. Sections 7, 8, 10, 11, and 12 are all technical language adjusting cross-references. Every time we make a substantive change to a law, if it affects another law, we have to make the technical adjustments to those sections. Section 13 repeals NRS 645F.394, the section we enacted last session, which allowed a foreclosure consultant to take payment in advance provided they are placed in a separate insured checking account. The FTC rejected this practice and prohibits advanced payments.

[The Chair turned the gavel over to Assemblywoman Kirkpatrick.]

Acting Chair Kirkpatrick:
Are there any questions from the Committee?

Assemblyman Ellison:
Was there a section in which you said they could not be held liable for payment? If they tried to transfer mortgages from one company to another, would that be covered in this bill?

Assemblyman Conklin:
Section 2 of the bill prohibits foreclosure consultants from claiming or receiving any compensation before a homeowner has executed a written agreement with their lender or servicer incorporating the offer of mortgage assistance. If you go to a foreclosure consultant, loan modification specialist, or other organization that is helping you deal with your in-distress loan, they cannot charge you money until they complete the service to your satisfaction. That is federal law and this complies. This bill does not deal with lenders selling notes, and there are statutes to cover that issue.

Assemblywoman Bustamante Adams:
Is there a reason this will not be effective until July 2011, or could it be effective upon passage?

Assemblyman Conklin:
It could be considered in an amendment because we do not think this calls for new regulations. The largest portion of the bill is a prohibition of acts, and those acts are specifically addressed in the legislation.

[Chair Atkinson reassumed the Chair.]

Chair Atkinson:
Are there any questions from the Committee?

Assemblywoman Kirkpatrick:
I would like to respond to Assemblywoman Bustamante Adams. That is standard language because it may take time to implement. I am comfortable with the July date. To Assemblyman Ellison, there are many different mortgage bills because they will help us comply with federal law.

Assemblyman Conklin:
That is correct. The Mortgage Lending Division is already enforcing this.

Chair Atkinson:
Are there any questions from the Committee? I see none. Is there anyone else to testify in favor of this bill?

Sheila Walther, Supervisory Examiner, Mortgage Lending Division, Department of Business and Industry:
This Division supports this legislation. It is a federal mandate of the FTC and puts that language into our bill. We disseminated the FTC rules about a month and a half ago and put our licensees on notice that these are the rules now and preempt any of our current laws.

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

Jon Sasser, representing Legal Aid Center of Southern Nevada, Washoe Legal Services, and Washoe County Senior Law Project:
We support this bill and request that you pass it.

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

Barry Gold, Director of Government Affairs, AARP Nevada:
I testified earlier about older adults being more vulnerable to subprime loans and house price declines.

[Read from prepared testimony (Exhibit J).]

On behalf of our 304,000 members across the state, AARP Nevada supports A.B. 308 and urges the Committee to pass it.

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

Bill Uffelman, President and CEO, Nevada Bankers Association:
We worked with Assemblyman Conklin on this in prior sessions and support it this time. We have conducted foreclosure workshops to help people. There can be a guy outside on the street with a van, saying stop here, write me a check, I will take care of you, and you do not need to see the professionals. This whole process will put an end to that.

Chair Atkinson:
Are there any questions from the Committee? I see none. Is there anyone else to testify in favor?

Lou Filippo, Owner, Accelerated Training Systems, Las Vegas, Nevada:
I am an educator in the State of Nevada. I provide pre-licensing and continuing education for the mortgage industry, and I am in favor of A.B. 308. There is a potential problem on page 7, in section 8, where it talks about the exceptions. According to state law, if you are going to provide a service representing a client with modifications, you must be licensed under Chapter 645F of NRS. There is an exception for an attorney. The attorneys are under the impression that this is for the entire law firm and not the attorney himself. If the attorney is not actually providing the negotiations with the lender, but one of his staff is, that person needs to be licensed under Chapter 645F of NRS. It creates more problems and the law firm has to be licensed. They seem to believe they fall under the jurisdiction of the State Bar and not the Mortgage Lending Division. The FTC ruling says the modification companies cannot collect fees up front unless they have a bona fide offer from the lender that is approved by the consumer. The exception to that is the attorney, but it is clear in the FTC ruling that there are rules the attorney must follow to collect fees up front. They were very clear about this and mentioned that many attorneys were in conflict with the FTC rulings, because they were not providing legal counseling or representation for their client, but were merely using their name and having the services subcontracted. There may need to be some clarification. The Mortgage Lending Division has done an outstanding job of trying to correct this situation.

Chair Atkinson:
Are there any questions from the Committee?

Assemblyman Conklin:
We dealt with this issue last session. The legal industry operates under a different set of rules generally than all other commerce. They are governed largely by the Bar. Often it is very convoluted to try to match what we expect of all else without interfering with the Bar's jurisdictional standards. There could be an issue. This is the first time I have heard it. We may need clarification from Legal. We will be happy to receive any information Mr. Filippo wants to forward to us. There is a pattern of uncertainty with how the legal community needs to comply with a commercial law.

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

Lou Filippo:
I will be available to be of any assistance I can. I see the problem moving forward. There is a lot of confusion.

Chair Atkinson:
Are there any other questions or comments? Is there anyone to speak in opposition? I see none. Is there anyone in a neutral position? I see none.

Assemblyman Conklin:
I am aware that there may be some conflict between what we are trying to do here and what has been passed by this Committee in Assembly Bill 77. I would like the opportunity to speak with the Mortgage Lending Division and other parties to make sure we do not have two bills that are in conflict.

Chair Atkinson:
Are there any other questions or comments? I will close the hearing on A.B. 308. We have a bill draft request to introduce.

BDR R-171—Requests Congress and the Federal Highway Administration designate U.S. Route 93 as an interstate highway. (Later introduced as Assembly Joint Resolution 6.)

ASSEMBLYMAN CONKLIN MOVED FOR COMMITTEE INTRODUCTION OF BDR R-171.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HORNE AND OCEGUERA WERE ABSENT FOR THE VOTE.)

Is there any public comment? [There was none.]

The meeting is adjourned [at 4:40 p.m.].

RESPECTFULLY SUBMITTED:

_____
Earlene Miller
Committee Secretary

APPROVED BY:

_____
Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 23, 2011 Time of Meeting: 1:42 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 273	C	Marcus Conklin	Conceptual Amendment
A.B. 273	D	Marcus Conklin	Conceptual Amendment
A.B. 300	E	Jason Frierson	Proposed Amendment
A.B. 300	F	Barbara Buckley	PowerPoint
A.B. 300	G	Barry Gold	Prepared Testimony
A.B. 300	H	Bill Uffelman	Analysis
A.B. 300	I	Bill Uffelman	Commentary
A.B. 308	J	Barry Gold	Prepared Testimony