MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
May 17, 2011

The Committee on Judiciary was called to order by Vice Chairman James Ohrenschall at 8:08 a.m. on Tuesday, May 17, 2011, in Room 3138 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 James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

Assemblyman William C. Horne, Chairman (excused)
Assemblywoman Marilyn Dondero Loop (excused)
Assemblyman Tick Segerblom (excused)

GUEST LEGISLATORS PRESENT:

Senator Joseph (Joe) P. Hardy, Clark County Senatorial District No. 12
Senator Allison Copening, Clark County Senatorial District No. 6

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Ben Graham, Administrative Office of the Courts; Foreclosure Mediation Program, Nevada Supreme Court
Linda Aguire, Intake Unit Manager, Foreclosure Mediation Program, Nevada Supreme Court
John McCormick, Rural Courts Coordinator, Administrative Office of the Courts
Bill Uffelman, President, Nevada Bankers Association
George Ross, representing Bank of America

Vice Chairman Ohrenschall:
[The roll was called.]

We will open the hearing with Senate Bill 194 (1st Reprint).

Senate Bill 194 (1st Reprint): Urges the Nevada Supreme Court to amend the Nevada Rules of Civil Procedure to require certain disclosures in class action lawsuits. (BDR S-563)

Senator Joseph (Joe) P. Hardy, Clark County Senatorial District No. 12:
Senate Bill 194 (1st Reprint) addresses issues with civil procedure, urging the Nevada Supreme Court to amend the Nevada Rules of Civil Procedure (N.R.C.P. 23) and to provide certain disclosures under class action suits. The bill summary does a fairly good job at describing what the bill is about. Nevada Rules of Civil Procedure in class action suits require us to do three things. The Federal Rules of Civil Procedure (F.R.C.P. 23) require an attorney to make other disclosures, which are not specifically required in N.R.C.P. 23. The other four requirements in F.R.C.P. 23 are listed on the bill. Having said that, it may not be entirely true because I spoke with Randall Jones, the attorney that Bill Bradley referred me to, in order to make sure the bill was accurate. His response was, "We already do that." I suggested that if his firm handles it that way, perhaps we should make sure that everyone else has the opportunity to do the good things that his firm is already doing with regard to class action suits. The concept is to urge the Supreme Court to adopt those rules that are already consistent with F.R.C.P. 23.

While speaking with Randall Jones, I was very appreciative that he was able to assist me with the process. The federal rules will allow the person who is going to be involved with a civil suit some knowledge of the process, such as the nature of the action, the definition of the class, the class claims, issues or defenses, and the time and manner for requesting exclusion from the class. That is the bill. I appreciate the legal community for working with me through this process. If there are any questions, I will be happy to answer them.

Vice Chairman Ohrenschall:
I have a few questions. You have pointed out a discrepancy between our state rules of civil procedure and the federal rules. Are most states identical to F.R.C.P 23? Is Nevada unique because we are not?

Senator Hardy:
I believe that Nevada is not unique, and we will be less unique once we adopt the federal standards. There are other states that have opt-ins and opt-outs in their procedures. A few states such as Mississippi and Virginia do not provide for class actions. The Federal Rules of Civil Procedure are trying to allow us to have some consistency.

Vice Chairman Ohrenschall:
You mentioned your discussion with Mr. Bradley, and you have indicated that his firm already does this. Are there many attorneys in Nevada who are not doing this?

Senator Hardy:
In the initial hearing on the Senate side, Mr. Bradley was very gracious in his opposition. After the hearing, he suggested that I converse with Randall Jones, and Mr. Jones contacted me. He actually handles more class action suits than Mr. Bradley does. It worked out very well, because Mr. Bradley does not do much class action work.

Vice Chairman Ohrenschall:
Are there people in Nevada currently who are becoming a part of a class action suit, who you believe may choose not to, if they were informed of these extra disclosures?

Senator Hardy:
I believe it is a twofold issue. Do people know about it? If they do know about it, what do they do? In the world of transparency, it is important that people have as much information as possible before entering into a class action suit. Sometimes if you do not know what is going to happen, it could be a challenge.

If we give people the opportunity to have knowledge beforehand, it will play out better for them.

Assemblyman Hansen:
Why are we urging? Can we make it mandatory? I do not understand the concept of urging. This seems permissive, and they may ignore it.

Senator Hardy:
The Supreme Court thinks of itself as a separate entity. As a legislature, we do not have power over the other branch. We have a constituency that communicates with us. The system of government keeps them separate. They have more control over themselves than we do, although we like to think that we should have control over all. We try urging and encouraging rather than ordering. The Supreme Court has been cooperative and helpful. I have been talking with Ben Graham, and they seem amenable to this measure.

Assemblyman Hansen:
Ultimately, we do control the purse strings on that branch. Do we not?

Senator Hardy:
We think we control a lot of things.

Assemblyman Brooks:
I do not see any edits on this bill. What exactly are we correcting? Is this a brand new law that we are trying to implement?

Senator Hardy:
There are very few new laws. We already have statute in the Nevada Rules of Civil Procedure, which is basically operated by the Supreme Court. The Legislative Counsel's Digest says that the court will exclude a member of the class if the member requests to opt out. The judgment will include all members who do not opt out. Any member of the class who does not opt out may have counsel. What this will do is to encourage the court to add the other items so that the person who will be involved with the class action suit will understand it better. They will understand the nature of the action, the definition of the class, the class claims issues and defenses, and the time and manner of requesting exclusion. All four items which are being encouraged to be added to N.R.C.P 23 would match with the previous three. There are already rules in place. There are good people who are already processing class action suits the way they should, by self-imposing F.R.C.P. 23. There are some that use the class action suit in ways that are not as transparent to the person who is going to be involved.

Assemblyman Brooks:
I understand that, Senator. Thank you for the clarification, but normally I see an amendment somewhere in the bill. I do not see one.

Senator Hardy:
You can pull up the original bill and look at the mock-up of the amendment to S.B. 194 (R1). It will be highlighted in green.

Assemblyman Brooks:
Yes, I will look it up. I have another question. Can you provide me with an example of a person who may suffer a negative consequence as a result of being included in a class action suit without understanding that he or she had the ability to opt out?

Senator Hardy:
Several years ago, in this room, I talked about the days of class action suits for condominium and construction defects. As I explained, one of the challenges was regarding the person who would receive a legal notice in the mail and throw it away. However, somewhere in the small print the notice said that if the form was not returned, the person will be automatically enlisted in the class action suit. Consequently, the person would go to sell his condo unit, or refinance his mortgage, and discover the bank or title company would not allow the transaction because he was involved in a lawsuit. After doing the research, the person would confirm that he was indeed included in the class action suit, and was therefore not eligible to sell or refinance his condo unit. We have seen some history regarding such suits. Back when this was occurring, one of the legislators confirmed that it had also happened to him. This can be a problem. Fortunately, the legal professionals in Nevada have developed a relationship of trust with people. The firms, who do what they do best, have a good reputation and are not the people getting us into more trouble. I believe our whole legal team in Nevada has elevated themselves since those days.

Assemblyman Brooks:
I just found the mock-up, which seems similar, although there are some changes. Are there any ramifications being added to your amendment of this bill that would require the "bad players" to play correctly? I do not see any ramifications in here.

Senator Hardy:
I believe you are correct. Again, it gets back to the "urge." If the attorneys are playing fair, the Supreme Court is happy. If you are an attorney, you do not want the Supreme Court angry with you.

Assemblyman Frierson:
Many times the federal rules are more stringent than state rules. I will assume that is why we did not mirror it from the beginning. So far, it appears to be relatively similar across the board. Can you provide a comparison between the Nevada Rules of Civil Procedure and the Federal Rules of Civil Procedure? The bill simply says that we are adopting some federal rules but does not show us whether there are any other differences.

Senator Hardy:
On the Nevada Electronic Legislative Information System (NELIS), there should be a document which says, "Federal Notice Requirements in Class Actions (Exhibit C)." To answer your question, some of these have been in a state of development. In 2009, we realized the clarification of the definition of federal notice requirements in class action suits. Up until that point, we were not derelict, but there were three things that we were doing in Nevada. Also in that exhibit, you will notice there are marks next to numbers 4, 5, and 7. The numbers which are not marked were only in the federal rules. These are the additions that we are proposing in S.B. 194 (R1). In this bill, we are urging the Supreme Court to adopt these. The first three items listed in the Legislative Counsel's Digest are required in the Nevada Rules of Civil Procedures, but the following four items listed are not yet required. We are encouraging the Supreme Court to adopt these.

Assemblyman Frierson:
It would not be the first time that I am technologically challenged, but I do not see any exhibits in NELIS. I see the digest that compares what you are proposing to change, but there are other sections of F.R.C.P 23 and N.R.C.P. 23 that I would like to compare to ensure that we are not taking something out of context.

Vice Chairman Ohrenschall:
I am trying to find it on NELIS right now.

Senator Hardy:
If it is not yet on NELIS, it will be shortly.

Vice Chairman Ohrenschall:
While I try to pull that up, I have a question. If this passes, what are you hoping will come about? Will there be fewer class action suits and nonmeritorious class action suits? Will people be more vigilant about removing themselves from the suit? What do you hope to come about with the change?

Senator Hardy:
If the Supreme Court changes the rule, they will be doing something that will allow for more transparency for the person who could be involved in a class action suit. My own feeling is that if we allow people to have more knowledge before they get into a courtroom, they will have more options. If they know there is a problem and they are in a class, and there are issues raised, it provides them with some options. I do not think this will change the number of class action suits. If it does, I do not know whether there will be more or less. It is the person that is going to be involved with the class action suit who deserves all of the opportunities that the federal notice requirements allow. I do not see this as stopping class action suits. Hopefully, it will elevate the whole Nevada Bar Association, bringing them up to speed in the federal area.

Vice Chairman Ohrenschall:
Do you have any statistics between federal class action suits as opposed to Nevada class action suits? Are there fewer? Do more people choose to remove themselves from federal suits?

Senator Hardy:
Unfortunately, I do not have those answers.

Assemblyman Sherwood:
Thank you for bringing this forward, Senator. As I read the bill, it appears very straightforward. It does not appear to be anything more than an opportunity to opt out, if a person does not want to be involved in a class action suit. The precedent of being able to opt out is replicated in everything else that we do. We have seen laws this year that include that.

Senator Hardy:
I thank you for your appreciation.

Vice Chairman Ohrenschall:
Our committee manager advises me that she does not have the document that you referenced on NELIS. Perhaps somewhere it did not get through to the right channel.

Senator Hardy:
I will submit it to the secretary and make sure we have it included.

Vice Chairman Ohrenschall:
I would like to clarify something. Currently, people do have a choice to opt out. This will only provide more notice. Is that what you are hoping?

Senator Hardy:
That is correct, sir.

Vice Chairman Ohrenschall:
I do not see any further questions. Do you have anyone here who wishes to testify?

Senator Hardy:
I am sure there are a multitude of people who would like to support it.

Ben Graham, Administrative Office of the Courts; Foreclosure Mediation Program, Nevada Supreme Court:
It is interesting, and it is not unusual that people believe we should follow the federal rules. On one hand, we can do that without passing state legislation. But, that is not how we operate. The justices have asked that I indicate their interest in this legislation. When completed, the Chief Justice would like to be provided with a copy of the minutes and resolution. Once received, it will be added to their agenda. I anticipate that there will be hearings to further ensure that the rules adopted will be appropriate and useful. The court regularly amends rules to meet the needs of the community.

Vice Chairman Ohrenschall:
I show you signed in as neutral. Is this correct?

Ben Graham:
We support the bill.

Vice Chairman Ohrenschall:
Have the justices or any committee of the justices considered changing the rule in the past?

Ben Graham:
I reviewed the recent rule hearing, and this specific issue was not addressed. The matter of class actions and transparency has been addressed. I am sure that it will be addressed once we are concluded.

Vice Chairman Ohrenschall:
I do not see any questions. Thank you. Is there anyone else?

Senator Hardy:
I would like to clarify that I learned something new about NELIS. The attachment to NELIS that I alluded to does not follow the bill. The attachment follows the meeting. It will be listed in the Assembly hearing section of today.

Vice Chairman Ohrenschall:
It sounds like something perhaps the programmers should correct. We will forward that suggestion. Is there anyone neutral to the measure? Is there anyone opposed? I will close the hearing on S.B. 194 (R1) and bring it back to Committee. Senator, we are not going to take any action today because our Chairman is not present. Hopefully, we will look at it later this week, depending on our schedule. Since we are awaiting Senator Copening to present the next bill, we will take a brief recess.

[A recess was called at 8:35 a.m., and the hearing reconvened at 8:41 a.m.]

We will call the Assembly Judiciary Committee back to order. Senator Copening, thank you very much for joining us. I do realize how busy you are in the Senate. Please begin your testimony.

Senate Bill 307 (1st Reprint): Revises provisions relating to the exercise of the power of sale under a deed of trust concerning owner-occupied property. (BDR 9-958)

Senator Allison Copening, Clark County Senatorial District No. 6:
I appreciate your consideration of Senate Bill 307 (1st Reprint) today. For 50 consecutive months, Nevada has led the nation in foreclosures. That remains true today. [Continued reading from prepared testimony (Exhibit D).] I sent an email to the Committee yesterday and stated that I would be offering an amendment (Exhibit E). The amendment changes S.B. 307 (R1) to make the noticing of the state's mediation program stronger. [Continued reading from prepared testimony.]

Ben Graham, Administrative Office of the Courts; Foreclosure Mediation Program, Nevada Supreme Court:
The amendments that have been submitted were prepared after listening to much testimony and concerns. An awful lot of people did not realize that the mediation program could be helpful to them. We urge that other legislation be put on hold in order to allow this mediation program to develop. Many of the problems which were emphasized by others, such as dual tracking problems and documentation problems, are being addressed. There are more than 40 cases pending before the Supreme Court currently for various reasons, which include many banks such as: U.S. Bank, Home Servicing, LLC, HSBC, Regional Trustee Services, First American Loanstar, Wells Fargo, SunTrust, Aurora Bank, Deutsche Bank, et cetera. Hopefully, many issues will be addressed.

Recently, the Supreme Court established an advisory commission to deal with questions and issues regarding foreclosure. We hope this study will be

completed within the next few months. If further legislation is needed, this will help to accomplish that. Here with me today is John McCormick, who helped to redraft some of the language in the bill. Linda Aguire is also present today. She is involved in sending out these notices. This measure is not going to add additional litigation, which is what we hope to avoid. This amendment is not submitted on behalf of the Supreme Court but is offered only as a guideline.

Vice Chairman Ohrenschall:
Mr. McCormick, before you begin your testimony, can one of the witnesses walk us through how the mediation process begins. We have many new people on the Committee, and this explanation will be very informative.

Ben Graham:
We can do that. I will turn it over to Linda Aguire.

Linda Aguire, Intake Unit Manager, Foreclosure Mediation Program, Nevada Supreme Court:
When the homeowner receives the notice of default from the trustee who is working for the lender, he or she has 30 days from the time he or she receives the certified packet to return the election or waiver form. He or she must also return a housing affordability form and financial statement.

Vice Chairman Ohrenschall:
Is that election form included in the packet with the notice of default?

Linda Aguire:
Yes, it is supplied in the certified mailing he or she receives.

Vice Chairman Ohrenschall:
There is a $200 fee the homeowner has to pay, and the bank pays $200. The money and documentation should all be returned within 30 days, correct?

Linda Aguire:
Correct. The homeowner has 30 days from the day he or she receives the certified mailing. We process the paperwork in the intake unit. We notify the trustee that the homeowner has elected to participate, and that we have received the funds. The trustee then has 10 days to provide their forms along with $200, which completes the packet. We will then assemble it all and assign a mediator. Once it is assigned to a mediator, there are 45 days allotted to complete that mediation.

Vice Chairman Ohrenschall:
What is the total time involved?

Linda Aguire:
There are 135 days allowed to complete the mediation from the date that we receive all documents.

Vice Chairman Ohrenschall:
I have heard that statistics show approximately 10 percent of the people who are being foreclosed on are electing mediation.

Linda Aguire:
It is very difficult to determine that number because the notices of default are not for owner-occupied homes only. We can count only what is actually coming in. I do not have a way of tracking it otherwise.

Vice Chairman Ohrenschall:
Of the people who succeed in mediation and are provided a loan modification, do we know how many of them are able to save their home and stay on their feet?

Linda Aguire:
We do have statistics to show that; however, I do not have them with me. We can provide them upon request.

Vice Chairman Ohrenschall:
Thank you for the background on that. Mr. McCormick, would you like to testify?

John McCormick, Rural Courts Coordinator, Administrative Office of the Courts:
What this amendatory language does is indicated on page 3 of the amendment. When the homeowner receives the notice of default, included is a notice from the lender which explains the homeowner is in danger of losing his or her home. The blue language, on page 3 of the amendment (Exhibit E), is the new language. It informs the homeowner that he or she has a right to participate in the Nevada Foreclosure Mediation Program. Additionally, it provides the contact information for the program. The homeowner may then contact the program for additional information in order to make a more informed decision. Page 8 of the amendment is the notification information that would be required to be supplied to the homeowner, once in receipt of the recorded notice of default. This notice will go into more detail. It will provide information that the foreclosure mediation program does exist and that the homeowner is entitled to participate. We hope to provide homeowners with a greater level of education regarding the existence of the program and its availability. Those are the two fundamental changes that this amendatory language makes.

Vice Chairman Ohrenschall:
Would this be in the same packet with the notice of default?

John McCormick:
The notice on page 3 goes out with the initial filing, when the homeowner is in danger of losing his or her home. It is my understanding that this is the paperwork that goes out once the notice is filed. The information that appears on page 8 of the amendment is supplied to the homeowner once he or she receives the recorded notice of default. He or she will receive one notice followed up with additional information.

Vice Chairman Ohrenschall:
The homeowner will be receiving two different notices in the mail. Is that right?

John McCormick:
Correct.

Vice Chairman Ohrenschall:
Will both notices be in time for him or her to elect the mediation program?

John McCormick:
My understanding is that the election forms will arrive with the recorded notice of default form. The homeowner will be forewarned so that he or she can do research on the program in order to make a more informed decision. Afterward, he or she will be provided with more significant information when he or she receives the recorded notice of default.

Linda Aguire:
This cover sheet is not currently included in the mailing to the homeowner. The only thing the homeowner receives in the packet currently is the notice of default and the packet of information. The homeowner does not realize what he or she can do. This cover sheet will provide him or her with some instruction to proceed.

Ben Graham:
This is a work in progress. It is also a realization that there really are no statutory guidelines for the notice. This is part of the work in progress and will hopefully close some of the holes in the program.

Vice Chairman Ohrenschall:
I do not see any questions. Thank you very much for being here. Is there anyone else who wishes to speak?

Bill Uffelman, President, Nevada Bankers Association:
I want to thank Senator Copening for her work on this bill and her understanding of the system. I also want to thank Mr. Graham and the Supreme Court for its active participation in this process. The Nevada Bankers Association supports the amendment. This morning, I pointed out to Mr. Graham that the Division of Financial Institutions is responsible for state charter banks. The Division of Mortgage Lending is not mentioned in the bill at all, and the Division is responsible for the nonbank lenders. Therefore, adding the Division of Mortgage Lending to the list of inclusions on page 3 will be beneficial. I have a question regarding section 4 on the top of page 4 of the amendment (Exhibit E). It talks about a document required under paragraph (b) of subsection 3. I do not believe that document is included in subsection 3 at all; therefore, section 4 can be deleted, if I am reading it correctly. This would cause renumbering of sections 5 and 6. The document on page 8 is a good one. It is certainly a document which can be reproduced and included every time a lender sends the federally required notice of default.

We talked about providing additional information, and certainly some lenders may find it beneficial to add this process to the system. It might help some homeowners understand the gravity of the situation, and further encourage them to make contact with people rather than ignore what is happening. When we look at the public outreach side of this, we may begin including something. At this point, I do not want to confirm how the banks will utilize this because I have not actually spoken to anyone about it; however, from my perspective, it is good government. I will be happy to answer any questions.

Assemblyman Sherwood:
Are you neutral, or are you in favor of the bill?

Bill Uffelman:
We are in favor of this amendment. It is our understanding that this amendment will replace the bill.

Assemblyman Sherwood:
Everything besides page 8 seems to be redundant. I am all for providing notice, and people should know their options. Is everything else in the new bill already taken into account? It seems like the crux of the issue is the fact that we have the best foreclosure program in the nation, which is a model for numerous other states. We want the program to incubate and grow. It seems the issue is that the consumer needs to be informed so that he or she may or may not act on it. Why would we gum up a good process with anything more than page 8?

Bill Uffelman:
The amendment is an amendment to existing law in *Nevada Revised Statutes* (NRS) 107.085. This amendment will update that law. As time has progressed, we found the statutory notice is necessary. It does not harm anything, and the law will dictate what documents are required to be in the package. It is an improvement of the law, and we support making the program the best it can be. It is only a piece of paper and ink, and it will get people's attention. Remember that this will be sent by certified mail and will be more noticeable. It is an attempt to get people's attention.

Assemblyman Sherwood:
Are you okay with the process?

Bill Uffelman:
This does not set anything back. It is only an additional inclusion in the packet. I do not know any other way to get people's attention.

Vice Chairman Ohrenschall:
I do not know whether you have the statistics, but I imagine some of your member banks must operate in Maryland. Have they had greater success in Maryland with their program than we have had with ours?

Bill Uffelman:
The Maryland program is a different program. I see anecdotal information, and I can certainly make contact with the state's executive. We hold annual meetings of state executives, and we have monthly phone calls. The Maryland program is working for Maryland. As I recall, the notice requirement consisted of a mortgage being due on the first of the month, with the grace period extending to the fifteenth of the month. Consequently, the homeowners may be removed from the home on the sixteenth of the month if payment is not received. That is the process that was extended in Maryland. It is a different process and different situation. Has it been successful? I do not see many news stories in the banking publications that I read daily, which would indicate whether Maryland is more successful than anywhere else. It is just another way to operate. Beyond that, I cannot comment.

Vice Chairman Ohrenschall:
When someone gets to the point where the notice of default is filed, is there an average as to how many months behind most people are?

Bill Uffelman:
People have always defaulted on mortgages for a variety of reasons. Some years back, typically after three months of missed payments, the process would

begin. I am hearing that currently, from the day a person misses a payment to the day the home is vacated, it is taking as long as 22 months. This is due in part to so many properties in default, especially in Las Vegas. How did we get there? There were mortgages from 2004 and 2005 which consisted of many unusual aspects. Those mortgages began failing in 2007 and 2008. Today in Las Vegas and Reno, the mortgages failing are due to people being out of work. There is no income, or the family's income is dramatically reduced. It is a different situation than what we had two years ago, when the mediation program was designed. That is why the mediation focuses on primarily owner-occupied dwellings, rather than investment dwellings or "flippers." In many cases, people bought the house when a new development was newly announced. People invested and by the time the houses were built there were several price increases. The home flipper would turn it around and get rid of the property before he or she ever had to make the first mortgage payment. Those days are gone. When those people received the notice of default, they did not even respond. They could have cared less. The only thing they paid was the initial deposit, and they were gone. That was a different situation than we are in today.

Assemblyman Brooks:
I want to thank you all for supporting this measure. I appreciate your fortitude to work with homeowners to ensure they can stay in their homes and rectify the problem. For clarification, I believe my colleague asked how far someone was in default by the time he or she received his or her notice of default. Is there a simple answer to that question?

Bill Uffelman:
Every lender has a different way of handling things. As I understand it, in a typical situation, a person misses at least three payments before the lender files the notice of default, which in effect triggers the NRS process. For example, you miss your January payment, which is due the first of the month. Typically, you have a 15-day grace period. If you have not made the payment by January 16, typically the lender will call and send a letter about debt collection, as required by federal law. You will get one of those letters on January 16. Presuming you did not do anything to rectify the situation, and did not make a February payment, you will get another one on February 16, and you will get one on March 16. Having missed three payments and being 90 days late, there are federal banking regulations and laws which discuss the quality asset or loan for the bank. When you are 90 days late, you effectively are classified as a non-performing asset. The bank will have to do other things to protect itself in the eyes of the regulatory agency. That process triggers the notion that the lender will file the notice of default, which triggers the new package from Nevada, which provides the notice along with details of the homeowners'

options. Presuming the amendment passes, it will now include the document shown on page 8. A person will have missed making payments for 90 days before getting to this point.

George Ross, representing Bank of America:
I would like to express Bank of America's appreciation to the sponsor of this bill in working with the Supreme Court and understanding the issues we all had. In response to Assemblyman Sherwood's question, we were concerned with the initial bill. We thought it would delay the process even more. We do appreciate the new bill as amended, and feel it could very well solve a problem. It may not solve it completely, but it will certainly help.

Two years ago, we testified in favor of the mortgage modification bill. If you review my testimony, you will see that what I mainly said was that we hoped the bill will get people's heads out of the sand. We hoped that people would respond to the opportunity for mortgage modification, which was already occurring prior to the bill's passage. People just were not coming forward. We hoped the bill would have helped to bring them forward. Unfortunately, the statistic is that only 10 percent of those who receive the notifications will take advantage of the opportunity. The assumption we have is that the other 90 percent either know they are in deep trouble financially, and are willing to allow for foreclosure, or they are in the 23 percent who desire to strategically default. It is a very high number, and it is pretty amazing that it is that high. If this bill, with the new notification, helps these people to realize they have an opportunity, we feel it is an improvement. We hope that it works. I have no reason to believe that Bank of America's time period is substantially different than the rest of the industry.

Vice Chairman Ohrenschall:
I believe you said that 23 percent were strategically defaulting.

George Ross:
Statistically, about 23 percent of foreclosures today are strategic defaults.

Vice Chairman Ohrenschall:
Is that here in Nevada or nationwide?

George Ross:
That is nationwide. I do not think that Nevada is much different. Of the people who receive the letters of default, with the notification that they are eligible for modification, 90 percent never answer.

Vice Chairman Ohrenschall:
Can you explain a strategic default further?

George Ross:
Basically, it is a person who has decided not to continue making payments on an asset that is worth less than half of what is still owed to the bank. They make a financial decision to stop making payments. They take the credit hit but use the extra money to pay off their credit cards and pay for everything else they need. Many of these people have not lost their jobs. Nationally, the average person who strategically defaults has a credit score which makes him eligible to receive a loan. These people typically get their credit cards paid off, and they are usually fairly financially astute. They are making a financial decision for themselves. I know someone personally who would admit that he has never been in better shape financially. Two years of what would have been mortgage payments was used for other financial debts.

Vice Chairman Ohrenschall:
Of the 90 percent in Nevada who are not participating in mediation, how many do you project may participate with the additional notice provisions?

George Ross:
I honestly do not know. The bank has knowledge of people's performance, and what they have been paying. The assumption has been that these people have realized that they are going to get foreclosed on because their financial situation is so dire. This situation reminds me of a question that was asked last session in the Ways and Means Committee hearing when the modification bill was being presented. I was asked by a legislator whether we were going to charge homeowners $200 for the modification, with the implication that this was an imposition. The answer from the bill's sponsor was that if the person cannot afford $200, the person certainly cannot afford to make payments after modification. In a roundabout way, it is saying that most of these people will have a very tough time getting their loans modified or making payments once the loans were modified.

Vice Chairman Ohrenschall:
Of your homeowners who have gone through the mediation program, do you know how many succeeded and were able to keep their homes?

George Ross:
I know that over half start to miss payments within six months.

Vice Chairman Ohrenschall:
I realize that I am getting away from the amendment, but do you have any information regarding the Maryland program?

George Ross:
Mr. Chairman, I have no idea.

Vice Chairman Ohrenschall:
Okay, thank you. There are no more questions.

Bill Uffelman:
Regarding your question on redefault, I can say that those people who have gone through a consumer credit counseling service or a comparable budgeting workshop have a higher success rate than those who have not. If we can encourage people to get involved with a consumer credit counseling service, it will make this program more beneficial.

Vice Chairman Ohrenschall:
What you are saying is the people who have gone through a credit counseling program have a lower rate of redefault. Yet, doing so is not currently mandatory? Is that correct?

Bill Uffelman:
That is correct. It is because consumer credit programs force people to budget. It demonstrates to them that just because there are checks left in the checkbook does not mean that there is money left to spend. The program helps them to build a budget and to understand that credit payments must come first. A budget really helps.

Assemblyman Brooks:
I understand that you said that most people who do better are the ones using consumer credit counseling. I know of a situation where the homeowners went through the mediation process, and set up a payment plan with the bank. They have received a notification in the mail that their home was being foreclosed on. When the family contacted the bank and questioned it, they were told that they made the payment too early. Does that make any sense?

Bill Uffelman:
I have no idea.

Assemblyman Brooks:
That is what is happening in our mediation program. I just want to make sure that you know that.

Bill Uffelman:
I cannot comment, as it is the first such story I have heard like that.

Vice Chairman Ohrenschall:
Are there any further questions? Is there anyone else wishing to testify?

Ben Graham:
We are talking about blurred lines. We have the Executive Branch, the Legislative Branch, and the Judicial Branch. The amendment was developed because of the concern of notification by the Foreclosure Mediation Program, although it is closely aligned with what was done last year with the support of the Supreme Court. It is not a Supreme Court amendment. The Supreme Court stays out of the policy issues, and we want to make sure that is understood. This amendment came out of the foreclosure program and not the Supreme Court.

Vice Chairman Ohrenschall:
Thank you for clarifying that this amendment is from the Foreclosure Mediation Program and not from the Supreme Court. Are there any further questions? Thank you very much, Mr. Graham. We will bring this bill back to Committee. We will not take any action on the bills today because our Chairman is absent. Hopefully, later this week, we will.

I appreciate Senator Copening and Senator Hardy for being here today. We are adjourned [at 9:21 a.m.].

RESPECTFULLY SUBMITTED:

_____
Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Vice Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 17, 2011 **Time of Meeting: 8:08 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 194 (R1)	C	Senator Joseph (Joe) P. Hardy, Clark County Senatorial District No. 12	Federal Notice Requirements in Class Actions
S.B. 307 (R1)	D	Senator Allison Copening, Clark County Senatorial District No. 6	Prepared Testimony
S.B. 307 (R1)	E	John McCormick, Rural Courts Coordinator, Administrative Office of the Courts	Proposed change to NRS 107.085 and NRS 107.086