MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
March 31, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:09 a.m. on Thursday, March 31, 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 William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus Conklin, Clark County Assembly District No. 37

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jean Bennett, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Ann C. Pongracz, Senior Deputy Attorney General, Office of the Attorney General
Tisha Black, Attorney, Black and LoBello, Las Vegas, Nevada
John P. Kelleher, Chief Deputy Attorney General, Mortgage Fraud Unit, Office of the Attorney General
Russell Dalton, Legislative Chairman, Nevada Land and Title Association; and Vice President, First American Title Insurance Company
Jon Sasser, representing the Washoe County Senior Law Project; and Washoe Legal Services; and the Legal Aid Center of Southern Nevada
Warren B. Hardy, representing Eagle Mortgage Company, Inc.
Karen D. Dennison, representing the American Resort Development Association
George Ross, representing Bank of America; and MERSCORP, Inc.
Bill Uffelman, President and CEO, Nevada Bankers Association
Kristin Schuler-Hintz, Attorney, Las Vegas, Nevada
Michael R. Brooks, representing the United Trustees Association
Kevin Higgins, Justice of the Peace, Department Two, Sparks Justice Court
John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts
John Cahill, Public Administrator, Clark County
Donald L. Cavallo, Public Administrator, Washoe County
Chris Ferrari, representing Kemp & Associates
Daniel J. Mannix, Vice President and COO, Kemp & Associates
Christian Gianni, Attorney, Las Vegas, Nevada
Ty Kehoe, Private Citizen, Las Vegas, Nevada
Tim Kuzanek, Captain, Governmental Affairs, Washoe County Sheriff's Office
David Olshan, representing Nevada Legal Services
Jamie Cogburn, representing the Nevada Justice Association
James Berchtold, representing Civil Law Self-Help Center, Clark County Courts
Gary Rogers, Constable, Goodsprings Township, Jean
Steve Kilgore, Deputy Director, Constable's Office, Henderson Township
Susan Fisher, representing the Coalition of Housing Providers; and Nevada State Apartment Association
Ruth Wheeler, Private Citizen, Reno, Nevada
Gregory F. Peek, Vice President, ERGS Inc.

Earl Mitchell, Constable, Henderson Township
John Bonaventura, Constable, Las Vegas Township
Dan Palazzo, Captain, Constable's Office, Las Vegas Township
Paula Lane, President, Nevada State Apartment Association
Randall Watson, President, RJW Real Estate, Inc.

Chairman Horne:
We have four bills on the agenda today. We will begin today's hearing with Assembly Bill 284.

Assembly Bill 284: Revises provisions relating to real property. (BDR 9-1083)

Assemblyman Marcus Conklin, Clark County Assembly District No. 37:
It is a pleasure to be before this Committee a second time. There are two people at the table from the Office of the Attorney General who have been working diligently with me on Assembly Bill 284 for the past several months. I believe Mr. Kelleher and Ms. Black in Las Vegas are people of interest who will kick off this discussion. I apologize ahead of time. This is a very complicated and technical issue. We are still working with others to make sure the language is just right. Not for substantive purposes in terms of what the bill does, but to make sure the language accurately reflects the process and the people involved in the process. [Assemblyman Conklin's testimony was partially read from prepared testimony (Exhibit C).]

I do not have to remind the Committee members that Nevada is ground zero for the foreclosure crisis. We are caught in a downward spiral of declining property values and waves of foreclosures, affecting not only borrowers and lenders, but literally every Nevadan. We have led the nation in residential foreclosure rates for four years. [Continues to read from prepared testimony.]

You have no doubt heard of the "robo-signing" controversy that has hit our country. The attorneys general of all 50 states, and 12 separate federal agencies, are currently investigating the lenders and servicers involved. [Continues to read from prepared testimony.]

There are four main points to A.B. 284:

- First, it requires the documents used in the foreclosure process to be recorded in the county where the property is located.

- Second, it specifies who can be the trustee on a deed of trust, and specifies their duties in the foreclosure process.

- Third, it strengthens the ability of the Attorney General to enforce the laws.

- Fourth, it gives property owners new rights to enforce their legal rights in foreclosure proceedings.

If I may, I will take you through a short version of the bill. Sections 1 and 2 of A.B. 284 require assignments of mortgages and deeds of trust, and documents that change the priority of a lien, to be recorded in the county where the property is located within 60 days. Section 1 also says an assignment is not effective "unless and until it is recorded."

Section 3 requires a certificate of discharge to be recorded in the county where the property is located. If the lender or the trustee does not record the discharge of a mortgage or a deed of trust within 21 days, sections 4, 7, and 8 increase their civil liability by $500.

Section 5 says that an encumbrance on real property is enforceable only if recorded in the county where the property is located, and the party seeking to enforce the encumbrance is either an original party or the holder of record.

Section 6 specifies who can be a trustee on a deed of trust, provides that the trustee cannot be the beneficiary, and requires the trustee to act impartially and in good faith. It also establishes civil penalties for a trustee who violates section 6 or other applicable laws.

Section 9 amends *Nevada Revised Statutes* (NRS) 107.080, which is one of the main statutes related to foreclosures. It requires a notice of default (NOD) to include a notarized affidavit of the trustee's authority to exercise the power of sale. The affidavit must spell out all the money that is owed, and must include a statement under penalty of perjury that the lender or the trustee is in actual possession of the note. As in section 6, it sets forth civil penalties for violations.

Sections 10 and 11 incorporate the affidavit requirement in other sections that refer to the NOD.

Section 12 makes that particular section of NRS parallel to the new requirements in section 9.

Section 13 adds civil penalties to the penalties that can be imposed for mortgage lending fraud and authorizes the victim of the fraud to bring a civil action to recover damages plus fees and costs.

Section 14 revises the language in Chapter 205 of NRS relating to the crime of false representation of title and increases the penalty from a gross misdemeanor to a category C felony, or if there is a pattern of deceit, a category B felony. It also makes the person who commits such a crime subject to a civil penalty and authorizes the property owner to bring a civil action for damages plus costs.

Section 15 makes the bill effective July 1, 2011. Mr. Chairman, that is the extent of my remarks, and I appreciate the opportunity to be here with you this morning.

Chairman Horne:
Did you have a chance to look at Ms. Dennison's proposed amendment (Exhibit D)? Is this a friendly amendment?

Assemblyman Conklin:
Mr. Chairman, I will give you some history on where we are with that amendment. I have been meeting with the Attorney General, who understands this bill far better than I do, and with several other parties. I believe Ms. Dennison's people also spoke with the Office of the Attorney General this morning. We do not know whether we are in agreement with the proposed amendment, but we are certainly willing to discuss any issue that needs to be addressed. In addition, Mr. Rocky Finseth and a group of people representing trustees and other servicers have been working on the technical language in the bill so the words correspond to the actual titles, et cetera. We are still working through that. I hope to have something for this Committee within the next seven days that everyone can agree with and say that the language is tight and the bill is ready for the Committee. It is my understanding that there are some other people who had concerns. Former Senator Warren Hardy and I addressed some concerns. He supports the direction in which the bill is going. There are people who want to make sure the bill is tight and that it accomplishes what we intended, and we will continue to work with them. It is my hope that if we cannot get the bill exactly right in the next seven days, we can at least move the bill. I have given my agreement to Mr. Rocky Finseth that we will continue to work through the issues. As anyone who has read the entire bill will know, it is a highly technical bill.

Chairman Horne:
Are there any questions of Assemblyman Conklin? [No one responded.]

Ann C. Pongracz, Senior Deputy Attorney General, Office of the Attorney General:
Good morning, Mr. Chairman and Committee members, Ann Pongracz for the Office of the Attorney General. We are in support of A.B. 284. We look forward to continuing to work with other interested parties to finalize amendments so the bill can move forward. Thank you.

Chairman Horne:
Are there any questions for Ms. Pongracz? [No one responded.] Mr. Conklin, do you want me to go to the folks in the south? Are there any parties who have something to add?

Assemblyman Conklin:
Mr. Chairman, I am going to guess that the enormous team from the Office of the Attorney General is here to support this bill and also to answer technical questions. I might suggest that Ms. Black in Las Vegas would have testimony as far as private industry and personal experience that might be helpful to the Committee.

Chairman Horne:
Is Ms. Black down there?

Tisha Black, Attorney, Black and LoBello, Las Vegas, Nevada:
Yes. Mr. Chairman, I am here. My name is Tisha Black and I am a real estate attorney and native Las Vegan, and I have been practicing real property law in Clark County for 13 years. Initially, I started to work with the Office of the Attorney General after delivering to them a myriad of complaints associated with the foreclosure process. To give you a clear understanding of how foreclosure works, there are three parties to a trust deed. Those three parties are the trustee, the trustor, and the beneficiary. It is important that those three parties are kept separate and distinct from one another to ensure the proper process. The documents are taken care of by the trustee and no one can unlawfully, or without reason, foreclose on the trustor, who is the person who carries the mortgage on the house and has borrowed the money.

I have noticed in the past 3 or 4 years that there is no policing of the foreclosure process. There are no checks and balances. With the severe volume of transfers that took place during the securitization process, I am now seeing a mad rush to foreclose on properties, and regardless of where the borrower is, the foreclosure needs to be done properly. Typically, a foreclosure goes from A to B, B to C, and C to D, so the trail of paperwork can be followed. With the creation of various entities on the national level, an opaqueness has been created in what used to be a very transparent process of recording

assignments as they occurred. Doing so leaves the borrower in a position to know who his creditor is and, essentially, who can take the property back if the borrower defaults. That is not the case now.

If we can refer back to the A to B, B to C, and C to D chain, I see A in the borrower's paperwork that he presents to me and a foreclosure being done by a party who is foreign to the transaction, which would be D, with no chain. I am trying to understand where the middle of the chain is, the B and the C. I am seeing confusion, not only from the foreclosing party's side, but also from the borrower's side, and the fear that the real property may be in jeopardy in terms of being able to sell or transfer it later with clear title. I am seeing notices of default (NOD) that are not executed, or notarized, and foreclosures that are taking the process out of step with our NRS statute. When you try to discuss these things with the bank, or the servicers, if they have any idea who the actual investor is or what the defaults are on the property, they will not give you any information. It leaves the borrower, who may be able to cure his property, in a less than favorable situation, because he cannot do anything without that information.

Even in the instance where I am looking at real estate owned (REO) properties, which are properties coming out of foreclosure, I am seeing intervening foreclosures that are improper and which may result in the property not being able to be transferred later because of the inability to obtain the title insurance. I have talked with several people, specifically members of the title association, who have made comments on the bill. I believe we are all working towards the same goal, which is to regenerate the transparency that we once had before the bubble in our property records and to be able to make sure that we can freely transfer title later. The comments that I have discussed with the trustee's people are spot on. I believe in pooling all of the professions in the valley that truly care about real property and the ability to transfer it and our ability to regain financial control of ourselves as a state; we need to all be working together. The bill is very promising. I think the bill will help not only to get people back into houses and businesses operating again, but it will also allow our state to take control of our own foreclosure process and our own real property.

Chairman Horne:
Thank you, Ms. Black. Question from Mr. Frierson?

Assemblyman Frierson:
Ms. Black, for the edification of the Committee members who are not as familiar, and for the members of the public who are listening, can you explain

the difference between a trustee, a beneficiary, and an investor in a typical mortgage transaction?

Tisha Black:
I am very visual and each time I go through this explanation, I find it helps if everyone can draw circles and squares on a page. A trust deed has three parties: the trustor, who is the person who hands over the deed to his property as security; the beneficiary, who is the party that receives the money; and the trustee who acts in between those two parties. The trustee provides the checks and balances. The trustee holds the deed that the trustor gave the trustee in favor of the beneficiary. We will call number 1, the trustor; number 2, the trustee; and number 3, the beneficiary. The trustor gives his deed to the trustee. If the trustor gave the deed to the beneficiary, the beneficiary could foreclose on the property whenever he wanted, and that does not give the trustor any security.

Assemblyman Frierson:
When you say trustor, holder, or original, the entity that gives the title, will that be the homeowner?

Tisha Black:
Yes. That is correct.

Assemblyman Frierson:
That is what I mean. Which is the homeowner? Which is the bank?

Tisha Black:
That is the point of confusion these days. What we do know is that the trustor is the homeowner. The trustor is the person who has borrowed the money and owes the debt. In the past, the beneficiary was the fellow down at the local savings and loan that loaned you the money. The trustee is the person who is in between those two, who acts as an intermediary between the trustor and the beneficiary by holding the deed. So, the trustor is the homeowner, the trustee is an independent third party, and the beneficiary is the lender. The beneficiary will receive either the house back, or the money back from the loan.

It is very important that those three parties act as checks and balances with one another. Because, if the borrower kept his own deed to the house, he could sell his house and the beneficiary would have no collateral or no security to secure the loan. If the beneficiary kept the deed, then the beneficiary could obviously wrong the homeowner by selling the deed to someone else. The trustee acts as an intermediary between those two. If the trustee discovers that the homeowner has not paid the mortgage, the trustee has instruction from the

beneficiary to foreclose on the property. That is historically how the process is meant to work.

Nevada has been a trust deed state since the 1940s—before there were computers and electronics and before deeds were flying across the United States by computers—when you physically could see a person eye to eye, and you knew that the trustee had the deed in his physical vault. For instance, I believe Nevada Title still holds many of its deeds in its vault as a trustee.

For many very complicated reasons, securitization became the vogue on how to move mortgages and trust deeds onto the secondary market, and sell them. When that happened, the large-scale banking industry, being mostly the national banking industries such as Bank of America, which also has Countrywide Financial Corporation, JPMorgan Chase & Co., et cetera, decided they would create their own way of transferring the deeds and the security instruments so they could be sold much faster. The confusion began when we moved from a handshake-eyeball process that was customary before the advent of computers, to when we volumized the process of selling loans and allowed for them to be transferred back and forth at rapid rates across the country to different people buying and selling those security interests; the right to foreclose. When that happened in such a rapid fashion, it became very convoluted and not transparent. I suppose that is how the minutiae of real estate law became overlooked; because somebody thought that someone else in the chain of title was the responsible party. What we have now are businesses that control the transparency and property records, which historically was the business of the state or the county where the property was situated.

Chairman Horne:
We are going to move to another witness at this time. Who is sitting at the table in Las Vegas wishing to testify?

John P. Kelleher, Chief Deputy Attorney General, Mortgage Fraud Unit, Office of the Attorney General:
I would like to add to Ms. Black's testimony. Ms. Black spoke of multiple transfers, the foreclosure process, and the homeowner not knowing who actually holds the note, or who has the right to foreclose. It is in that transfer process where we see, in the criminal context, the fraud that Assemblyman Conklin mentioned. Those crimes include forgery, falsely notarized signatures where a person signs in California and the notary stamp is from Nevada, and dates that do not match up. We see "robo-signing" issues, with the same signature appearing on hundreds of different transfers, with the same person listed as working for several different banks at the same time. Some of the forgery issues we see are sophisticated and some are just poorly

done; they are so blatantly obvious it is sad. These are not isolated incidents, which is one of the reasons why this bill is so important. The foreclosure process right now needs to be transparent and the purpose of this bill is to make sure all the parties are playing by the rules. It is not the intent of this bill to stop the rightful party, who has the right to foreclose, from foreclosing. The intent is just to make sure that when a foreclosure is done, it is done properly and within the context of the law.

Chairman Horne:
Are there any questions for Mr. Kelleher? I see none. Is there anyone else at the table who wishes to testify?

Assemblyman Frierson:
Can you give an example of forged documents in this area that you have come across in order for the Committee to have a practical idea about this area of real estate transactions?

John Kelleher:
Yes. You can pick any document that would be typical in a foreclosure process or a transfer process. We have seen forgeries on all of them: the notes, deeds of trusts, notices of default. It varies from lender to lender, and servicer to servicer. The consistent thing is that there are forgeries and that there are robo-signing issues. There is a system in place where, if the subject that is trying to foreclose does not have the documents, they are creating whatever documents that need to be created in order to get the foreclosure done.

Chairman Horne:
I see no other questions. Is there someone sitting to your right?

Russell Dalton, Legislative Chairman, Nevada Land and Title Association; and Vice President, First American Title Insurance Company:
The Nevada Land and Title Association (NLTA) supports the concept and intent of A.B. 284, and we applaud the Majority Leader and the Office of the Attorney General for bringing this measure forward. However, there are a number of technical issues which are of concern to the NLTA members. We have been working directly with the Majority Leader as well the Attorney General over the course of the last week to address those issues. I would like to take a moment to outline a few of those concerns.

Chairman Horne:
One second, Mr. Dalton, before you proceed. Are you in favor, opposed, in favor with proposed amendments, or neutral?

Russell Dalton:
We are in favor with proposed amendments.

Chairman Horne:
Okay. Proceed.

Russell Dalton:
We have concerns regarding the requirement of the recording of the assignment within 60 days, as indicated in section 1, and the loan subordination in section 2. We acknowledge and agree that they should be recorded. We suggest, however, that rather than requiring recording within a specific time frame, that it be worded that no act to enforce be recognized until recorded.

Chairman Horne:
If I may interrupt you, that begs the question, what is the difficulty in recording something within 60 days?

Russell Dalton:
There may not be a difficulty with recording. However, we are concerned about the possibility of there being a claim that the document is void if not recorded within those 60 days. The document could be in someone's file and not make it to the recorder's office within that period of time, but yet it is effective and enforceable between the parties: the seller of the note and the buyer of the note.

Chairman Horne:
I believe that issue can be worked out and still leave a time frame in the bill. Please proceed, Mr. Dalton.

Russell Dalton:
The same concept is contained in section 5 of the bill, regarding the instrument or amendment securing future advances. We believe a similar provision regarding recording of a substitution of trustee would be appropriate in section 6 of the bill. A second item we would suggest is that the information required to be included in a notarized affidavit and statement referred to in section 9 be included as part of the notice of breach, rather than as two independent, additional documents that would also require recording and payment for recording. Another item is that currently it is common for a beneficiary to prepare and execute a substitution of trustee and deed of reconveyance, and that an allowance be given to a beneficiary to appoint himself as trustee to accomplish the reconveyance of the deed of trust. Section 6, as currently written, does not appear to allow that act. Finally, we are concerned with section 6, paragraph 6, and section 9, paragraph 7, wherein

the verbiage indicates that the court must award damages for an act whether by an unintentional error while providing a service, or an intentional act. We feel that the bill should be modified so as to only award damages for intentional or willful actions, and that there be flexibility for the punishment by changing the term "must" to "may" award damages.

Chairman Horne:
Mr. Dalton, can you put those proposals in writing and send them up to the Committee so they can be made part of a work session document?

Russell Dalton:
Yes.

Chairman Horne:
Thank you. Mr. Conklin?

Assemblyman Conklin:
Mr. Chairman, we have been working with Mr. Dalton and his group and with Mr. Finseth. If you will allow us the opportunity, we would like to try to come up with a compromise amendment that incorporates as much as possible that Mr. Dalton has put on the record. We think much of what he has put on the record has some validity, some a bit more than others. We are working in a cooperative manner with the parties to make sure the language is just right, but that it does not interfere with the process. You have heard all the bills on mortgage lending fraud on this Committee over the past ten years. The processes in the mortgage lending area are not simple, and while there is agreement that there is a problem, drafting a law in such way that gives everyone the opportunity to move forward with what they are trying to do, it is sometimes difficult to draft or get just right. However, that is what we are working on.

Assemblyman Hansen:
In section 14 of the bill, the part that is struck out, you already have a penalty of a gross misdemeanor. Has anyone been prosecuted under that? Under section 14, paragraph (b), would this section dealing with liens also apply to ordinary mechanics' liens? Are there already laws on our books that punish forgery for falsifying documents? Can anyone address those issues?

John Kelleher:
With respect to the first question whether anyone has been prosecuted for this, we currently have several active, ongoing, open investigations. Again, in the context of criminal prosecution, we started our investigation of the prosecutions with loan origination fraud, it then moved to the foreclosure rescue fraud, and

now we are seeing the foreclosure fraud. We are investigating them. We have not prosecuted anyone at this time, but from the size, scope, pattern, and practice we have seen, we think that a gross misdemeanor is not a sufficient penalty for pattern-and-practice-type fraud, or large-scale fraud. That was the reason we requested felony treatment.

Assemblyman Hansen:
The answer is no. No one has been currently prosecuted for it. What about forgery? Are there existing laws that punish forgery?

John Kelleher:
There are. Forgery is currently a D felony. When you look at this in the context of a fraud case though, forgery is just one element of it. There is also other misrepresentation. Some of this could rise to the level of theft, and we are looking for a criminal penalty to be inserted on mortgage lending fraud that would allow us to charge this under the mortgage-lending context, rather than an isolated D felony for each individual forgery. In other words, instead of charging a defendant with 14 forgery counts, we could charge him with one count of the mortgage lending fraud under the foreclosure provisions.

Assemblyman Hansen:
Does anyone want to address the mechanics' liens aspect?

Tisha Black:
The mechanics' liens statute, *Nevada Revised Statutes* (NRS) Chapter 108, should not be affected by this. This is meant to contemplate only beneficiaries foreclosing under a security instrument, such as a deed of trust. Mechanics foreclose under a super and specialized priority statute, which allows them to advance in front sometimes depending upon when the work started. The short answer is no, it does not affect the mechanic's lien process. However, that is a good remark. We should definitely go back through the language and make certain we have carved out Chapter 108, in particular.

Chairman Horne:
Are there any further questions? I do not see anyone in Las Vegas wishing to testify in favor of A.B. 284. We have Mr. Sasser here in Carson City wishing to testify in favor and former Senator Warren Hardy.

Jon Sasser, representing the Washoe County Senior Law Project; and Washoe Legal Services; and the Legal Aid Center of Southern Nevada:
I am happy to testify today in support of A.B. 284. Both the Washoe County Senior Law Project and the Legal Aid Center of Southern Nevada have projects in which we assist people who are being foreclosed upon and who are

attempting to negotiate a modification of their loan. We also assist homeowners in the mediation process. We encounter these issues most of the time. This bill requires that the note must be in the possession of the party who is attempting to foreclose. That party must disclose the owner of the note and the beneficiary of the deed of trust. If the deed of trust is sold, the transaction must be recorded with the county recorder. We like the bill because it protects homeowners from improper foreclosure. The bill imposes a duty upon lenders to prove that they have a right to foreclose before they do foreclose. We also are in favor of the bill because it includes an effective enforcement mechanism in the form of a $5,000 civil penalty, and the private right of action on behalf of a homeowner who has been wrongfully foreclosed upon. At present, homeowners lose their homes and it is not clear whether the bank that foreclosed upon and sold the home had the right to do that. It seems to be a great deprivation of property and, at a minimum, the homeowner should know who owns the note and who has the right to foreclose.

We do have a number of suggestions on technical language which I have forwarded to the sponsor of the bill. A number of those changes are now being looked at.

Warren B. Hardy, representing Eagle Mortgage Company, Inc.:
Mr. Moeller was out of town and could not change his flight, and he asked me to be here on his behalf. I do appreciate the comments of the Majority Leader. This is a very complex issue. I sat as vice chairman for eight years on the Senate committee that dealt with many of these issues, and it is absolutely astonishing how much I did not learn or retain from that. The fundamental problem today is that these deeds of trust are not being recorded correctly. That creates a myriad of problems. We acknowledge that and this is a good faith effort to address that issue.

We have comments I have addressed with the Majority Leader, and with Ms. Pongracz from the Office of the Attorney General, and I am satisfied with the direction we are taking in addressing those issues. I would provide them for the record, however.

Section 6 of the bill accomplishes what I would describe as a seismic shift in the way that things are done with regard to who can act as a trustee. We think there is some validity and importance in that to be able to specify who they can be, what they can do, and how they will conduct their business. Those things are not in the current law. We believe that long-term, coupled with the increased penalties, that is going to be enough to ensure that the deeds are recorded correctly.

Section 9 takes an additional step which could be argued as an important step in the process of making sure that the steps in section 6 are actually successful. The only question and concern we have with section 9 is that there appears be a couple of areas that are redundant. I have spoken to Ms. Pongracz about this and she has indicated to me that she is working on language to distill this down to a single filing.

As section 9 currently reads, it requires a notarized affidavit. It then goes on to require a statement based on personal knowledge and under penalty of perjury. I am not an attorney as you know, Mr. Chairman, but I understood that to be the definition of an affidavit. Ms. Pongracz recognized that that is an issue, and she has committed to work with us to consolidate or distill this down to a single filing. We look forward to working with her on that issue.

The other question I have on this bill is the need to establish all of the prior beneficiaries on the deed. I now understand the concerns about this issue, and those concerns have a great deal of validity. If these were not done correctly, we would need to establish that the person at the end of the chain is the appropriate person. We would hope that there are enough teeth in the law, or enough clarification, that these deeds are recorded correctly the first time so there is no question on the other end. Currently, that question does exist, which is why it is in the bill. We very much look forward to working with the Majority Leader and the Office of the Attorney General to address these minor concerns.

Chairman Horne:
Thank you, Mr. Hardy. Are there any questions for Mr. Hardy? [No one responded.] I am assuming that someone has signed Russ Dalton in, here in Carson City. Is a Russ Dalton here? Is there anyone else in Carson City wishing to testify in favor of A.B. 284?

Karen D. Dennison, representing the American Resort Development Association:
The American Resort Development Association is the national trade association for the timeshare industry. I have been working with the Office of the Attorney General, and I hope to work with the sponsors on an amendment to A.B. 284 (Exhibit D), which recognizes the distinction between financing a residential home and the financing of a timeshare. I am here today to explain to the Committee how timeshare financing works and why it is different from residential home financing, yet timeshare financing can be done by means of a deed of trust.

A timeshare purchaser cannot go to his local bank to finance his timeshare, using the timeshare as collateral. The developer is the seller of the timeshare,

and the developer is also the financer. Usually the developer will obtain about a 10 percent down payment and the other 90 percent will be financed by a note and deed of trust if the timeshare is real estate. Timeshare interests can be real estate, fee interests, undivided fee interests, and leasehold interests. When the timeshare interest security is real estate, then the promissory note that the developer takes back is secured by real estate. In the timeshare industry, the marketing costs are very high. The developer receives a 10 percent cash down payment, yet his marketing and sales costs can run anywhere from 50 percent to 60 percent of the gross sales price for that single timeshare. In order to make up this gap, the developer must have a financing source, which is done primarily through securitization of these loans through bonds on Wall Street. In the case of the larger timeshare developers, such as Marriott Vacation Club International, WorldMark by Wyndham and Hilton Grand Vacations Company, LLC, they will securitize at one time tens of millions of dollars worth of timeshare receivables in a pool. These are collateral for the loan to the developer. Therefore, the timeshare developer is still in the picture.

The developer takes all of these notes and deeds of trust that they receive from the timeshare purchasers, they bundle them up, and the bundle is then presented to Wall Street in the form of a pool, which is then rated A, B, and C. There are multiple investors, sometimes as many as 50 or 60, which would buy these receivables. In the chain of assignments, there will first be an assignment from Marriott to a special purpose entity that is wholly owned by Marriott, then you would have an assignment to the bond trustee, and then you would have assignments to 50 or 60 noteholders.

As I indicated, these are recourse loans to the developer. When a note goes into default, it is kicked out of the pool. The developer is required to either replace the defaulted note with a performing note and deed of trust, or to pay down the loan so that the loan-to-value ratio is maintained. Typically, a loan on a timeshare receivable will be anywhere from 80 to 85 percent of the face principal value of the pool. To the extent that the loan-to-value ratio comes out of balance, then the nonperforming loan is kicked back to the developer. Ultimately, it is the developer who is still in the picture and is still the person the consumer can go to in order to work out things. Typically, timeshare foreclosures are discretionary investments. In hard times, people choose not to pay on their timeshare any longer. If that happens, the developer would be the party the consumer can work with if they want to work something out. Certainly, we are willing to work on our proposed amendment and massage it.

The proposed amendment to section 1, subsection 2, basically excludes the timeshare paper from the requirement of recordation. In other words, it would not be necessary to record all of the assignments of a deed of trust that

encumber a timeshare. Florida law requires recordation prior to enforcement. We could look into that with the Office of the Attorney General. In fact, we have discussed Florida law with them. We can also discuss a requirement that the developer, who is the original lender, remain in the picture in terms of holding that note.

The reason we proposed the amendment to section 9, which is the affidavit you have heard about, was because of the requirements to record the assignments. However, we are certainly willing to work with a statement and affidavit the lender must sign prior to foreclosure.

Chairman Horne:
Thank you, Ms. Dennison. I still have some concerns because I believe a timeshare owner should still be entitled to a clear title. Even though it is a discretionary purchase, I believe that any person is entitled to have clean title on each property he owns, whether it is a single-family home, or a multitude of homes.

Assemblyman Sherwood:
The process you described for bundling and reselling on Wall Street does not sound much different than what we are talking about with mortgages, correct? I have some concern because your testimony did not sound to me like an "in favor" statement. I have real problems with carving out timeshares the way you described it. You are saying it is a discretionary purchase. I would feel more comfortable if it were treated like a discretionary purchase. There would not be a title. You would not have the same recourse that a person with a mortgage would have, and go after people's credit, et cetera. You cannot have it both ways, is what I am saying, Ms. Dennison. If it is a discretionary purchase, it could be treated like anything else that can be put on a Visa credit card. Many people do put timeshares on their Visa credit cards, correct? Then the developer gets all of the benefits of this being a mortgage and all of the protections that go with a mortgage. I really do not feel comfortable with that. If you want to be treated like a property with a mortgage then you should play by the same rules. If you do not, then we should come up with another bill and let you become a different class of purchasers. That is food for thought.

Karen Dennison:
I agree with you that it does sound a lot like a residential purchase. However, there is a big difference. In the residential purchase, the original lender is not in the picture. Instead, there are a chain of assignments, if you will, down to someone you have never heard of. Whereas, with the typical timeshare financing that I have described, the lender takes these receivables and the lender is the developer. The developer borrows against those receivables,

so the developer is still on the hook. It is not as if he sold his entire interest away to a third party. He has retained 10 percent to 15 percent residual interest in the promissory note, and if that note should default, then he is required by the terms of his loan to take that note back because he is using the notes as collateral. Only the performing collateral in a timeshare development will support the loan. So the developer is required to replace the bad receivable with a good receivable. Other than that, the foreclosure process is the same as it would be with a residence. I am hoping I have answered your question. You can equate it to a boomerang versus a long chain. The boomerang means it comes back to the developer and you, as the consumer, are still dealing with the person you originally dealt with, which was your timeshare seller.

Chairman Horne:
Thank you, Ms. Dennison. We are now going to move to the opposition. Signed in here in Carson City, in opposition to A.B. 284, are Bill Uffelman and George Ross. Those who have signed in as opposed in Las Vegas can make your way to the witness table there so you will be ready when I call upon you.

George Ross, representing Bank of America; and MERSCORP, INC.:
I am testifying on behalf of MERSCORP, INC. and Bank of America. MERSCORP is the computerized database of the transaction of over half of the real estate loans in the United States. As those loans change hands over time, those changes are also recorded in that database. As the system in which mortgages were packaged together into securities and then traded developed, and expanded, the number of trades and the size of the trades would have overwhelmed a paper-based system. MERSCORP is a nationwide, financial system. Both Bank of America and MERSCORP oppose A.B. 284 for a number of reasons. First of all, I want to make it clear that neither of my clients in any way condones fraud or forgery, and any fraud or forgery should certainly be prosecuted to the fullest extent of the law. Please do not take anything that I say in the next few minutes as in any way defending that.

What becomes clear when listening to a deputy attorney general talk about the investigation of fraud and forgery is that there are currently laws regarding those two crimes. Secondly, there seems to be a sense that if the borrower knew for sure who owned his or her loan, there might be a better chance of dealing with that entity or working with them to get a loan modification. If that is the purpose here, let us make it clear. The owners of these loans are not guys down the street. They are hedge funds, who have people whose job it is to figure out which collateralized debt obligation has a chance of appreciating and buying those obligations. The hedge funds are not in the business of modifying loans. They are insurance companies, endowments, and pension

funds. In short, they are institutional investors and traders. Their business is not fixing loans.

It is nostalgic to go back to the good old days of 30, 40, or 50 years ago, when every one of those trades was recorded dutifully by hand at the county offices. The reason MERSCORP was created was that there were so many trades there had to be a computer to keep up with them. County recorders would be absolutely inundated and overwhelmed. As you know, we have the lowest number of county employees per capita of any state in the United States. The majority of those employees would have to shift to their county recorder's office, or the counties would be here again complaining that there is still another mandate given to them without the funds to pay for it.

Nevada cannot build a fence around the state and return to the days when these securities were each recorded in the state. The money that drives this state comes in from outside through the banking system. The reason loans can be made is because they can be collateralized, and when those collateralized loans are sold, more money is created which can be loaned again. Essentially, from a banking point of view, to the extent the bill provides additional administrative burden, additional costs, and potential loopholes to trip up loan servicers when they try to foreclose will add a tremendous cost to the consumer in terms of inability to obtain loans in the future and paying a higher interest rate for those loans. Today, we see very low interest rates and that is not a problem for consumers.

Someday we all hope that the housing market will turn around. Part of the responsibility that goes with your job is to figure out, as you go through the myriad of laws being proposed this session, what you can do as a legislator to turn the economy around as far as you can. What can you do to clean out the housing market so that it bottoms out, turns around, and goes back up. One of the essentials of that is to clear out the foreclosed properties, return the foreclosed properties into the market, sell them, and get them out of the market.

Much of what is in this bill will make it more difficult to foreclose. Anything you do to make it more difficult and slower to foreclose, and when additional barriers are added to the process, you delay the return of growth in the real estate market.

In summary, we know there is good intent here. We are not opposing every aspect of this bill. We do want to make sure, however, that there is every opportunity to proceed with those foreclosures that need to be made. The unstated elephant behind all of this is that the people who are being

foreclosed upon are well behind in their payments. They have not been making payments. They have defaulted. The average person in this state who has defaulted on his loan has not paid a mortgage payment for 18 to 24 months. It is important to remember the balance here; remember why the foreclosure is taking place.

Assemblyman Daly:
I want to make sure I understand your testimony. This is what I got from your testimony. If I am wrong, you can tell me. The status quo is working for the people you represent and that should be kept going. You said there are already fraud laws on the books and you think they are actually working. I think we have evidence they are not working. It is all okay as long as the people you represent are still making money, and that is the goal. Can you answer those questions for me?

George Ross:
Obviously, a private enterprise is in business to make money. If we did not have banks in business to make money, we would not have banks making loans and you would not be able to buy your house. Is it working smoothly? No. What we do not want is for a law to pass that will make it even harder to do what needs to be done, including making a loan the next time you want to buy a house. In terms of fraud, I am not involved in that side of the world, but I understand from the Deputy Attorney General's testimony that there are a number of ongoing investigations. Beyond that, I could not answer the question, and I have forgotten the first one.

Assemblywoman Diaz:
Mr. Ross, I feel like my constituents and other residents of Las Vegas that are suffering the foreclosure crisis, in a manner of speaking, are being forced into not making payments because, as you stated in your testimony, your bank is not modifying loans.

George Ross:
My bank is modifying loans.

Assemblywoman Diaz:
I believe I heard you state that loans were not being modified. If the loan modification were more successful, then we would be avoiding these foreclosures. I do not know why the modification process is so hard to go through with homeowners, because what I am seeing is that banks are foreclosing on properties, while the people living in those homes would be more than happy to modify their loans in order to stay in those homes. In addition,

once the homes are foreclosed upon, they are being sold for ridiculous prices. You might want to enlighten me on that.

George Ross:
First, Bank of America has modified several hundred thousand loans in the state of Nevada. We work very hard to find an opportunity to modify those loans. We actually testified in favor of Barbara Buckley's mortgage mediation bill last year, primarily as a way to get people to come out of the woodwork. I was talking about investors not necessarily being interested in modifying loans. I was not talking about Bank of America, which in this case inherited the loans when they acquired Countrywide Financial Corporation, which made a different kind of loan than Bank of America used to make.

We have modified hundreds of thousands of loans through several different programs. One more statistic I can give you is this: of the people who are missing payments, 85 percent have never come forward to go through the mortgage mediation process. They can still come through us to try to get their loans modified, and many do. Nevertheless, the vast majority of those people who are in default basically put their heads in the sand, or more likely, they have decided they are going to have to accept the foreclosure, or they are going to walk away.

A few years ago, the main problem was people who had got into these screwy loans with adjustable rates made no payment for two or three years; then all of a sudden they were hit with a large balloon payment. They were gambling that the market would continue to go up. Many of those loans are now cleared out of the system. What we have now are many people with conventional mortgages. Mortgages that were not subprime at all, but were prime mortgages when they were made. However, when you look at the unemployment rate, and the people who have lost all of their income, or one spouse is out of work and the income has gone down by half, they simply cannot afford to make the payments. As a result of that, many of those people cannot be modified because they no longer have the wherewithal to continue to make payments. Nationally, about half of the people whose loans are modified begin missing payments again within about six months. They cannot make their payments. Unfortunately, among the mortgage mediation process in our state the percentage is higher than that. It is not that banks do not want to try to modify loans; the problem is that the folks cannot make the payments at the level that will make it even remotely viable to modify the loans.

Bank of America has opened up walk-in centers, both in the north and in the south of the state. I will admit that for the first year and a half it was not the smoothest process. However, they have changed completely the internal

organization of how they are doing this. They have moved loan specialists into the mortgage modification process, and the process should move more smoothly. However, there are many people who say they cannot get their loan modified who simply cannot make their payments. The best example I can give of this is a discussion between then-Assemblywoman Leslie and Assemblywoman Buckley last year when Ms. Buckley was presenting her bill and she was saying the borrower would need to pay $200 and the servicer would pay $200. Ms. Leslie said, "Well, isn't that bad? How can you make the borrower pay $200." Ms. Buckley replied that if the borrower cannot afford to pay the $200, he sure could not afford to make the mortgage payments. That is a long answer. However, I wanted to get some things on the record because I think there are two sides to this story.

Chairman Horne:
We have been on this bill for almost an hour and twenty minutes. The board is lit up, so we will go to Mr. Hansen for a quick question and then to Mr. Sherwood, Ms. Dondero Loop, and then Mr. Brooks, each for real quick questions and answers.

Assemblyman Hansen:
The one thing I have been unable to figure out in this hearing is who the victim is, and what damages are being inflicted. If you have a computer signing these forms instead of a physical human being, are those computers falsely foreclosing on these houses, and are people actually being removed from their homes? How are the people victimized by the allegations of fraud?

George Ross:
I think you would need to ask the proponents of the bill that question.

Assemblyman Sherwood:
Mr. Ross, let me play devil's advocate with a quick question. When you say "the investors," they are investors and they took a risk. You stated that you could not divorce Nevada from the rest of the nation. With 14 percent unemployment and one in seven houses somewhere in the foreclosure process, we are already there, Mr. Ross. Therefore, it is kind of disingenuous to hear "woe is me." Too big to fail. Bank of America gets its interest at 4.5 percent and everyone else is paying 6 percent. There is no question Bank of America will be able to make loans for a very long time, as long as they are "too big to fail." Unfortunately, our constituents are not too big to fail. Loan modification does not mean loan modification, right? Therefore, when properties in my district with $500,000 loans that cannot get their loans modified to the $200,000 that they are worth, and when Bank of America forecloses, Bank of America turns around and sells the house to someone else for $200,000, that is

not really considered a loan modification. Therefore, it is a real hard sell for your client to come in here and get his violin out.

Assemblywoman Dondero Loop:
I could not stay quiet any longer because this happened within my family. My family members were told to quit paying their payment or they could not do a loan modification. When they applied for a modification, they were told the lender was going to tack $12,000 on top of the principal, when the loan was already upside down. That just does not make sense to me.

Assemblyman Brooks:
Mr. Ross, when you say the banks are working with people and that they are doing hundreds of thousands of modifications, it forces me to have to speak up. I have to disagree with you on that. The banks, and in particular Bank of America, are opposed to the foreclosure mediation program, and they acted in bad faith in certain cases. I have cases where people in my district have been hit very hard, yet they have complied with the modification program. They have three months to pay a particular payment, and then, on the fourth month, the bank asks for financial information. When they receive the information, they tell the homeowner they are making $2 more than they indicated they were making three months earlier, and then they kick the mortgage back up to what it used to be. I am sorry, I just cannot agree with you that the banks are working in good faith to help homeowners. The people in the state of Nevada are being hurt more than anyone. I am appalled. After all the things we have seen here about banks foreclosing on people without proper documentation, across the world, to hear some of the things that have been said here in regard to working hard to modify loans, I am just not buying it. With no disrespect to you, or to your client, that perturbs me. Your client is not doing all that it can do. I believe more laws need to be put in place to hold them accountable, sir.

Chairman Horne:
Mr. Uffelman, are you going to say, "me too," and then walk away?

Bill Uffelman, President and CEO, Nevada Bankers Association:
I do want to comment that this bill is about the foreclosure process, about who has the right to foreclose, and the paperwork involved. This is not a bill about the mediation process. It is important to keep in mind what the deed of trust is, and what the note is, and what they represent. MERSCORP, Mr. Ross's client, and potentially others, the beneficiary of the deed of trust is appointed by the borrower in the document. It is either the originating lender or a nominee of the lender in the case of MERSCORP, and that is an agency relationship. The promissory note was created and is secured by the deed of trust, is a negotiable instrument, and, like many other negotiable instruments, it can be

freely traded. Therefore, we need to be careful when talking about registering documents, or going down to the courthouse, that we do not "screw up," if you will, the negotiable instrument process that, in fact, can be traded electronically, just as stocks are today. The recordkeeping involved creates an electronic record that is traceable. You can figure out who has the negotiable instrument. It is not the person, or the entity, that comes in and does the foreclosure. It goes back to the original holder named in the deed of trust. The transfers of the beneficial interest are represented by it. The transferred property is recorded, not the note. We have to be careful as we go through this that we do not just throw all of it into the mixer and push spin and make it go. There are many things in this bill that we support. I represent banks big and small. Very few of the smaller banks do mortgage loans now because they were pushed out of that marketplace by the nonfinancial institutions and others. However, some of the banks now make mortgage loans, or they make mortgage loans in connection with the commercial customer. It is the ability to sell that loan upstream, to bring the money back in so the money can be loaned again. That is where the leveraging comes from in a bank. They get 10-to-1 leveraging; therefore, they can loan more money than they have in the bank. That is what makes the world work. Did the world get turned upside down? It did. However, in so many cases, it was turned upside down by lenders who were going straight to the marketplace. They were not FDIC insured institutions. They were not banks. At the same time, the banks bought those notes for their portfolio. If you want to throw rating agencies into the mix, they gave bad ratings. If you want to throw in the appraisers, they gave bad appraisals. The entire system blew up like a balloon. Now, each time we punch at the edges, we have to remember this is not the doughboy. What we really need to do is deflate the balloon, not just push it out in other directions.

Chairman Horne:
Thank you, Mr. Uffelman. I see no lights at this time. In Las Vegas there is one person signed in in opposition wishing to speak on A.B. 284, Kristin Schuler-Hintz.

Kristin Schuler-Hintz, Attorney, Las Vegas, Nevada:
I am an attorney at law licensed to practice in the states of Nevada and California. I have been working in this industry since I became licensed, in about 1999. I think it is very easy to throw around terms like foreclosure fraud, because when you throw those terms out and address them to corporations, banks, servicers, you are forgetting that beneath all that are human beings who do make mistakes. When you look at these bills, you need to keep in mind that underneath all the layers of paperwork is a human being working very hard, trying to do the best he can. I have always been very careful and am very proud of my work. When I hear these massive industry-wide foreclosure fraud

terms being thrown around, I am disturbed that no one has taken into consideration my efforts and the efforts of others in this state to ensure that our foreclosures are accurate and when a mistake is found, it is corrected quickly.

The prior discussion really pointed out a substantial problem, which is that the real issue is not the foreclosure but why we are foreclosing. That is, the homeowners' inability to make the mortgage payments, and often their lack of willingness to make the mortgage payments. There is a mythos that if we clarify the chain of title this will somehow resolve the foreclosure crisis. The clarification of the chain of title is not going to address the underlying problem, which is the fact that we have a high unemployment rate in Nevada. We have depressed property values in Nevada. We have people who cannot, or do not want, to make changes in their lifestyle to make their mortgage payments. I think we need to bear in mind how fast this discussion went to modification, that perhaps this is trying to address an issue that does not really exist. Recording of assignments is not really an issue.

I do have some specific issues regarding this bill. Section 6, subsection 1, paragraph (c), states that foreclosure trustees must be corporations who are in the business of being trustees. There is no provision for how that determination will be made, if there will be a body reviewing that, or what that is. I believe that may be a concern in the future. As a private citizen in the state of Nevada, I have huge concerns about recording any statement with as much information as is required. I have a distinctive last name, and when you pull that name up you can find out exactly where I live, and now you are going to put on the record for anyone to discover where my loan has been and exactly how much is in default. I believe that invites the potential for identity theft and other potential fraudulent conduct. I am also concerned with the language that a court "must" award damages. Again, the fact that there are human beings working at the offices of trustees, lenders, and servicers, and no matter how hard we try to be perfect, people will make mistakes. Therefore, when you say that a court "must" award damages and the underlying problem is a very human and excusable error, it is a frightening idea.

I also have a concern with the effective date of this bill. The proposed effective date is July 1, 2011. You are making some pretty broad changes here. I know that when the foreclosure mediation program was implemented, there was a period of chaos preparing for that change. Because that change was rushed into effect, there were problems that were not accounted for that maybe if it had been effective a little bit later, we would have had more effective progress from the start in that program.

Chairman Horne:
Are there any questions for Ms. Schuler-Hintz? [No one responded.] Thank you for your testimony. Is there anyone having a neutral position? We have someone in Las Vegas.

Michael R. Brooks, representing the United Trustees Association:
The United Trustees Association has worked with the Office of the Attorney General and we understand the intent of the law. We take a neutral position as we continue to work with the staff of the Attorney General and with Assemblyman Conklin on appropriate revisions. Our only concern in this is identifying properly who the victim is in this instance. We are in support of some aspects of this bill and continue to work with the issues that are of a technical nature.

Chairman Horne:
Are there any questions for Mr. Brooks? [No one responded.]

Assemblyman Conklin:
We are happy to work with many of the folks here. I believe we may have gotten a little sidetracked. There is a lot of frustration including my own, and at the consumer and constituent levels. I recognize that frustration on behalf of many of the members. This is not about foreclosure in and of itself. This is about clean title. It is about the bank, or whoever is making the foreclosure in a state where the documents are not inspected by a court, having a clean chain of custody so they know that the person who is foreclosing has a right to foreclose. That is really the crux of this bill. I will continue to work with all parties and keep you informed as often as you would like to be informed, and we would like to have something as clean as it can be in terms of a bill and a mock-up for you within the next seven days.

Chairman Horne:
I am going to close the hearing on Assembly Bill 284. We will take a five-minute recess.

[Meeting recessed at 9:37 a.m. and reconvened at 9:46 a.m.]

Chairman Horne:
We will open the hearing on Assembly Bill 9.

Assembly Bill 9: Provides for the collection of additional fees in justice courts. (BDR 1-322)

Kevin Higgins, Justice of the Peace, Department Two, Sparks Justice Court:
I am here today representing the Nevada Judges of Limited Jurisdiction, which is the association of justices of the peace and municipal court judges statewide. The hope to increase the filing fees in the justice courts has been percolating with the judges for a few years, and it is our usual process to pick the absolutely worst session we possibly can to bring the bill forward.

Most of the fees have not been looked at for over 20 years. Our research indicates that the last one to be changed was about 17 years ago, so these fees have remained stagnant. During the last session, the district court was able to get a similar bill passed. We are hoping to basically cover our costs and have some money coming in to pay for the services we render. I think it is important to note as we talk about these increases that we have a huge portion, at least in my court, of people who pay no fees. People apply for *in forma pauperis* status and fees are routinely waived for a great number of people; so this is not going to affect everybody the same way. We have submitted our own amendment to the bill (Exhibit E). The original bill was so complicated that my accounting people told me they would never be able to figure out where the fees went. Therefore, we greatly simplified the bill and I understand the amendment is in the Nevada Electronic Legislative Information System (NELIS).

I will briefly go through the bill. Section 1, paragraph (a), amends the fees for regular civil court. We have jurisdiction for civil cases up to $10,000 in justice court. We have simplified the brackets for where the fees are paid. For a claim that does not exceed $2,500, a $50 filing fee will be paid. For a claim up to but not exceeding $5,000, a filing fee of $100 will be paid. If the claim exceeds $5,000, but does not exceed $10,000, a filing fee of $175 will be paid. That is a raise of approximately $25 in each of those categories. However, we have consolidated the categories.

A new filing fee of $225 would be paid for an action for unlawful detainer. Some cases that are filed have no dollar value. Those claims are asking for civil relief but we cannot fit it into a bracket because they are not asking for any actual money. An unlawful detainer action is a formal eviction process rather than a summary eviction. Any other civil action would be $50. Paragraph (b) indicates that the increase in small claims filing fees goes up $20, while the brackets remain the same. Based on a bill that was heard earlier in the week, when the judges worked with Mr. Hansen on a bill to increase the jurisdiction in small claims court, the bracket would increase from $5,000 to $7,500, and there will be a new filing fee of $125. Similarly, fees to file answers will be increased; third party claims will be increased. We have been charging $6 to file a garnishment for over 20 years now. I cannot imagine a clerk taking 20 minutes to fill out a garnishment that we can even come close to recovering

the cost at $6. That will increase to $25. There is no current fee to issue a writ of restitution. Briefly, if your house is foreclosed upon, the district court does not have jurisdiction to ask you to leave the premises. If the former homeowner does not want to leave, the foreclosing party has to come to small claims court and file a writ of restitution, which is basically an eviction. We do not currently have a set statutory filing fee for that. We have added a filing fee of $75 for that. Similarly, some of the other minor costs for bonds and writs are increased from $12 to $25. Some basic paperwork fees are increased just a few dollars.

The second major part of the bill is that rather than going to the county, part of the increase will be allocated to the courts to pay for our costs. As our courts have expanded, particularly in the larger jurisdictions, and additional judges have been added, there is no money to pay for additional staff. There is no money to pay for a new bailiff or a new secretary, and 25 percent of the fee increase will go into a separate account, similar to how the Administrative Assessment (AA) fees are held now, Mr. Chairman. They are held for a specific purpose. These fees will be held for the purpose of offsetting costs in judicial departments, additional staff, acquiring land, or constructing new court facilities. The Sparks Justice Court has been collecting $10 per fee for 25 to 30 years to build a new courthouse and we are no closer to getting that courthouse than we were then. We are still in the strip mall where we have been for a long time. Perhaps this will be another drop in the bucket in an attempt to raise enough money to do that.

Mr. McCormick from the Administrative Office of the Courts is here today and he has prepared a chart (Exhibit F) that compares fees. This chart (Exhibit F) shows that, for the most part, Nevada has the lowest filing fees out of any of the western states. There are a few that are close to Nevada. We are trying to be caught up as the crunch comes and many counties are considering eliminating courts and consolidating courts. I have had fellow judges indicate that counties are considering dipping into the AA fees and using them to pay for county expenses. It becomes clear the courts are going to have to do what they can to help cover their own needs. We are never going to turn a profit. I think the Wadsworth Justice Court brings in more money than it costs to operate that court. It is in a one-room courthouse, and it processes all the claims for tickets that were issued on Interstate 80. Other than that, I do not think any other court in the state of Nevada turns a profit and, if we do a cost-benefit analysis on determining whether justice happens, it is a little difficult.

Mr. McCormick has run some very rough numbers of fees in justice courts. The average filing fees are based on the number of claims. There were 70,396 civil

actions filed in justice courts statewide last year, bringing in approximately $7,600,000 in civil filing fees. This amendment (Exhibit E) would increase that by approximately $500,000 total statewide. There were 13,400 small claims court filings, bringing in approximately $1,400,000 in filing fees statewide, and the increase would be approximately $640,000. While these are not huge increases, it might allow the Dayton Justice Court to buy a hand wand so that they could screen the people coming in the front door. At the Sparks Justice Court, we have no security where the Sheriff drops off the inmates at the back door at the strip mall. The Sheriff had to get his shotgun out of the van yesterday and run off an entire family that wanted to intervene and have a discussion with their relative that we were moving from the back door to the van. Security in the rural justice courts is nonexistent. If this small amount of money would help us pay for security, we would certainly appreciate the opportunity to do that. Mr. McCormick is the technical guru to answer any questions on the statistics. I am, of course, happy to answer any questions the Committee might have.

Chairman Horne:
Thank you, Judge Higgins. I appreciate the fact that the fees have not been raised in 20 years. I mentioned a bill that I brought in which fees had not been raised since 1958. Thus far, that bill is still sitting in the Assembly Committee on Transportation. In addition, I am looking at civil actions for unlawful detainer. The fee is $225, which is very close to a filing fee in district court.

Kevin Higgins:
Unlawful detainer actions are formal evictions and 95 percent of all evictions are done with summary evictions. This fee would not apply to those evictions. Formal evictions are nonpayment of rent, waste of the premises, and 30-day no cause. There is a recent Supreme Court case which states that if a defendant has any defense to a formal eviction, it has to be filed in formal court. These would be evictions in which attorneys have to file the complaints and appear in court on behalf of the owner. This fee was suggested by the Las Vegas Justice Court where there has been a huge surge in formal evictions of this type, and they are hoping to use some of that money to pay for clerks to process the cases. In the Sparks Justice Court, it is a very small percentage, perhaps 1 out of 100 evictions are filed as formal unlawful detainers. Almost everything else is a summary eviction, which is quickly processed. I agree it is a large fee but we are hoping to cover costs that are experienced in the Las Vegas area and this area.

Chairman Horne:
You also stated there is no money to pay for the additional judges and their staff. I remember the request being made for the additional fees.

Kevin Higgins:
I do not want to bring out all of the judicial laundry. There are courts, Mr. Chairman, where they have added judges but have been told there is no money for clerks or secretaries. North Las Vegas Justice of the Peace Steven J. Dahl has given up his secretary so that another judge can have a secretary. That judge has been on the court for two years. Clark County is similar to Washoe County in that there is no money for extra staff. Clark County added to the Judge's staff and then Clark County told the Judge there was no money to pay for the added staff. I know that the criminal calendar in North Las Vegas has had to be changed because there was not enough money to hire both a public defender and a district attorney to cover the third judge's caseload. There are statutory processes where judges are added to our courts, but that process does not include new staff for those judges.

Assemblyman Hansen:
Have you cleared with the County that right now all of these funds go to the County General Fund, and that in the future you will be keeping 50 percent of that to go to the justice courts? Perhaps there is someone here from one of the counties who can address that. I just want to make sure before we sign on.

Kevin Higgins:
We have run this bill by Washoe County. If you are looking at the original draft, the proposed amendment to A.B. 9 drops that to 25 percent. To my knowledge, Clark County is in support of this. I am not sure whether Washoe County is neutral. I do not think they are against it but I am not certain what their position is.

Chairman Horne:
Mr. McCormick, did you have any testimony for the Committee?

John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts:
Thank you, Mr. Chairman. I am here to answer any questions that may need clarification.

Assemblyman Hammond:
When you stated there has been a justice sitting on the court for the past two years, it begs the question, "What has he been doing?"

Kevin Higgins:
He is working hard. They had to rearrange the calendars and spread two criminal calendars among three justices. The justice we are talking about has

taken an increased civil calendar. The plan was to relieve the load on the other two judges, which has not happened because there are not enough prosecutors and defense attorneys to appear in front of them.

Chairman Horne:
I see no other questions. Is there any one else signed in, in support of A.B. 9? [No one responded.] Is there anyone signed in, in opposition or in neutral position to A.B. 9 in Las Vegas or here in Carson City? [No one responded.] I am going to close the hearing on A.B. 9 and bring it back to the Committee.

We will open the hearing on Assembly Bill 291, which is my bill, however, Mr. John Cahill will be presenting the bill from Las Vegas. For the Committee's information, Mr. Cahill asked me only yesterday to introduce this bill dealing with heir finders. Mr. Ferrari and his client will be testifying on that issue.

Assembly Bill 291: Makes certain agreements between heir finders and apparent heirs relating to the recovery of property in an estate void and unenforceable under certain circumstances. (BDR 12-306)

John Cahill, Public Administrator, Clark County:
I am hoping that the Washoe County Public Administrator may also be in Carson City to provide testimony on this issue. I want to thank the Chairman and the entire Committee and all of the legislators who signed on to this bill. I see that it has bipartisan support, and that is very rewarding.

Primarily, I am going to talk about one case. There are more cases. However, this case is such a vivid example of what I think is a problem, or something that needs to be corrected, that I am going to concentrate my testimony on that one case. The case is a public record, including the names of the parties which will be mentioned. I am going to start with a letter (Exhibit G) from attorney Charles W. Deaner, of Deaner, Deaner, Scann, Malan & Larsen in Las Vegas. Mr. Deaner has been practicing law in Las Vegas since 1954. Mr. Deaner was President of the Clark County Bar Association, President of the State Bar of Nevada, President of the Clark County Legal Aid Center, President of the Nevada Law Foundation, and he was appointed to the Nevada Commission on Judicial Discipline. He was also Western States Bar Conference President, and he is not just a native lawyer. Mr. Deaner served in Europe from 1941 to 1945 as a member of the 9th Army Air Force.

Mr. Deaner wrote to me in 2008 and has given me permission to read this letter into the record. The letter was addressed to Robert Morris, a member of the Probate and Trust Section, State Bar of Nevada. [Read letter (Exhibit G).]

That is the crux of the issue that this bill deals with. I want an opportunity as the administrator of the estate to do my job and to have time to complete my due diligence to find the heirs. I do not want anyone to cut in front of me and take away a third, or 30 percent, or 25 percent, or any percent, before I have an opportunity to locate those heirs. All I am looking for is the opportunity to do my job. That is what this legislation is intended to do. I will tell you that in the particular case I spoke of, we ended up with a distribution on that case of $2.2 million, which was the amount paid to 11 heirs. All 11 heirs had signed a contract with heir finders; 10 with one heir finder, and 1 with a different heir finder. One of the difficulties is regarding the heir finders' fees. Heir finders are successfully able to hide the contract information with the heirs, and those contracts are beyond the reach of the court. The court cannot get involved in this contract between the individual heirs and the attorneys who represent the heir finders. The attorneys for the heir finders become a party to the probate and they must be noticed on all hearings. Preparing that single document, and calling me constantly to ask what is taking as long, is pretty much all that the heir finders' attorney has to do.

Mr. Deaner understood the contract called for a 30 percent fee from talking with the attorneys. The $2.2 million estate was paid to the attorney. The attorney deducted his 5 percent fee from the 30 percent heir finders' fee and then paid the 25 percent heir finder balance to the heir finder companies. After those fees have been deducted from the estate, the attorney pays the balance directly to the heirs. Based on my numbers, one attorney for the heir finders received $30,506. The probate web page has a 5-page checklist of duties the attorney for the public administrator must perform. The attorney who works with the public administrator was paid $35,000 for working very hard throughout the estate process, while the attorneys for the heir finders received $33,506 for doing very little work. The Public Administrator's office received $51,000 for services and responsibilities in administering the estate, which is controlled by statute. The statute limits by percentage what the public administrator can collect and the statute assigns by percentage what public administrator's attorneys can collect. The statute states that the written contract for an hourly rate can be put in place between the personal representative and the attorneys, and if that is done, a detailed accounting of the costs must be presented to the court. The court has the authority to review that and reduce it if they find that the fees are not justified. All of that comes under the authority of the court. The contractual relationship between the heir finders and the attorney who represents both the heir finders and the heirs is not open for the courts to review nor does it allow for any kind of adjustment. In the case of the personal representative, even if the personal representative makes a contract for a larger amount than is offered by the statute, and even if I were to go out as a private fiduciary and convince someone I was so

valuable that I want to collect more than the percentage allowed by the statute for a personal representative, the statute specifically says that contract is void. The Legislature has been willing to put limitations into the statutes in several areas regarding what compensation should be allowed in these matters. I am seeking only a change that would allow me time to do my job.

I would like to point out to the Committee that *Nevada Revised Statutes* (NRS) Chapter 120, which controls the involvement of heir finders in locating owners of unclaimed property, specifies that once property has been turned over to the treasury of the state of Nevada, heir finders cannot get involved for 24 months and are limited to 10 percent of the value of the unclaimed property once the rightful owner has been located. The money for this property is paid directly to those persons who are the rightful owners of that property. The state of Nevada feels that whatever relationship the owner has with an heir finder is not the business of the state of Nevada. Many states have these same regulations regarding unclaimed property. What I find interesting is that there is a limitation on the amount of money that a finder can claim, which is true in most states. However, there is no limitation on time, or on what can be charged by an attorney or heir finder who jumps in front of me, the public administrator, to sign these heirs to a contract. In the case Mr. Deaner referred to, we filed on a Friday and on Monday, one workday later, Mr. Deaner was contacted and told, "We have your heirs." I will allow that they worked two days, because it occurred over a weekend. The attorney and heir finder company received $637,594 from the estate. If there is a legal way for any business to earn $637,594 over a weekend, I expect them to be up here fighting to say, "Can we just leave this alone?" and to justify why it should be left alone.

However, a look at other limitations put into place by our Legislature in many other matters leads me to believe that action is appropriate in these probate matters. The 12-month period I am asking for starts with the date of death and extends to 12 months beyond the filing of the petition before outside firms or individuals could be involved. That is the only limit. I have not asked for any change in percentages or fees. I did not want to muddy this up. I only wanted one thing, the time to do my job. Twelve months sounds like a long time. However, I hesitate to contract for the services of a forensic genealogist, which is what I use when looking for heirs, until I actually have the money on hand to pay for the services. There have been many cases where our office checks a bank account that may show a balance of $100,000. However, when I take all the legally filed paperwork to the bank to close that account, I am told by the bank that there is a pay-on-death beneficiary on the account, or it will be a joint account and another person's name is on the account. Therefore, I cannot collect those funds. The bank did not give us this information up front, so we

wasted time and effort only to find those funds would not be coming to our office. In some cases, such an account may be the only asset in the estate. If I had engaged the services of a forensic genealogist to work on this estate prior to having control of the money in the bank account, that person would be at risk and might never be paid for all the services they provided.

In regards to the ability and willingness of personal representatives to locate family, I have a spreadsheet of 22 cases since 2007, my first year in office (Exhibit H), where forensic genealogists were used. Only two of those cases ended up going to the state of Nevada, the remaining cases we located family members. One of these was a case where the value of the estate to be distributed was $775,000. We found a daughter using the services of a forensic genealogy research firm that searched for 43 hours, and which cost the estate $6,500. In another estate valued at $574,000, we identified the heirs using a forensic genealogist and spent $3,600.

Chairman Horne:
Mr. Cahill, can you get a copy of that to us.

John Cahill:
Yes, I will submit all of this. I regret I did not have my testimony prepared ahead of time. I can show that we do the job, we find the heirs, and we are interested in finding the heirs. This system limits everybody's involvement except for heir hunters, and it allows heir hunters to walk off with over $600,000 for two days work. There is an imbalance here. I think this bill has the potential to fix that imbalance. I also have read proposed legislation from Texas where that state is trying to control this same issue. I just want time to do my job, and this bill will provide for that. So I ask for passage of the bill.

Chairman Horne:
Thank you, Mr. Cahill. I see no questions. I want to move to Mr. Cavallo here in Carson City.

Donald L. Cavallo, Public Administrator, Washoe County:
Good morning, Mr. Chairman and members of the Committee. If that was a brief presentation, I will make this a nanosecond and get to the point. Of course, all bills are simple bills. This one has two paragraphs. Let me deal with paragraph one. This paragraph talks about family members entering into a contract with an heir finder. The wording of that paragraph speaks to barring that action for a 12-month period. It also extends the time for filing the Petition for Letters of Administration. I think this time period should be extended to all personal representatives, not just to the public administrators. We are a unique entity in that we do not know the deceased, our client, at all. We have to do a

lot of discovery which includes going through their residence, their safety deposit boxes, et cetera. I have one specific case in which there was a will that named certain beneficiaries, but because of the family dynamics, each family member did not want the other family members to know where they lived. Therefore, they hid from each other. We were appointed in that estate because the executor renounced. We had to go through the process of finding all of these individuals and after we found them, we had to go to the extent of protecting their privacy by filing a petition with the court in the name of the individual, with address withheld, as requested by the beneficiary. Therefore, I think this bill should be extended to all personal representatives, not just public administrators. The 12-month period may be a little bit unreasonable. I like consistency in our statutes. If you refer to *Nevada Revised Statutes* (NRS) 143.035 and 143.037, it gives all personal representatives a timeline of when an estate should be closed within a reasonable process. The first timeline for a simple estate is a 6-month window. The second is a 15-month window if the estate requires an IRS 706 filing. The last is an 18-month window, if that estate has additional complications over the 706 form, such as litigation or similar things. Therefore, I think the 12-month window may be a little long and I think there is room for negotiations on that.

Paragraph two speaks about the heir finders entering into a fee contract directly with the beneficiaries outside of the estate. I believe there should be some commission or fee schedule set for those contracts. As Mr. Cahill testified, the administrator or personal representative of any estate is limited to what he can charge for performing that service. That is also set out by NRS 150.020. On an estate that is valued at $100,000, for example, an administrator fee is first based on a 4 percent value of the estate up to $15,000, or $600. The fee for the following $85,000 is 3 percent, or $2,550. Therefore, for a $100,000 estate the personal representative's fee is $3,150. Comparing apples to apples, if you even took a 10 percent commission, an heir finder would be able to enter into a contract for $100,000 where they are receiving $30,000. I believe that disparity should be looked at. As a personal representative, I take on the liability of the entire estate. I have to marshal the assets, inventory the assets, and sometimes sell the assets. I manage real property, the home, and the personal property. I also have to file tax returns, and sign those returns as fiduciary for that estate, and, in addition, the IRS can hold me personally liable for those tax returns if they are not done correctly. Therefore, I am taking on a massive liability for handling estates. I have always understood that and am willing to do so. However, there is that disparity again, that my fee in relationship to an heir finder's fee just does not factor out to what I think is reasonable.

Internally, our office has its own policies and procedures. One that I deal with is the location of the next of kin. Thanks to the Internet, we are linked to the Department of Motor Vehicles, the Nevada Criminal Justice Information System through the state of Nevada, and many other areas where we can search for next of kin. I would like a reasonable time to be able to do that. When I find that reasonable time has exceeded itself, I will then file a petition with the court for approval to hire an investigator or an heir finder at an hourly rate. The hourly rate will depend on the value of the estate. Once the court approves that expenditure, I will move forward, hire this individual, and give him a window of time in which to look for the next of kin. If that is unsuccessful, I file a report with the court which essentially gives a green light for any heir finder to search for those people. I am in support of A.B. 291, and I believe there could be some tweaking to make it palatable to everyone involved.

Chairman Horne:
Thank you, Mr. Cavallo. I see no questions. There is no one signed in here to speak in favor of A.B. 291. Is there anyone in Las Vegas who would like to speak in favor of or neutral to A.B. 291? We will move to the opposition to the bill. Dan Mannix and Chris Ferrari are signed in to speak in opposition.

Chris Ferrari, representing Kemp & Associates:
Kemp & Associates is a forensic genealogy company, founded in 1966, by Mr. Mannix who is sitting to my left. In addition, Mr. Mannix has been in the business individually for more than 25 years. For the record and for the Committee's benefit, we did find out about the bill and tried to provide some communication. We had great dialogue with both Mr. Cavallo and Mr. Cahill yesterday. I think there are many commonalities that both the private and public sectors are trying to accomplish. We have provided a proposed amendment (Exhibit I) to the Committee. While I do not have approval from either administrator, I know that they have looked at the proposed amendment, and we will be discussing the amendment moving forward. We also want to state that the public administrators are performing a very valuable function as elected officials. We in no way want to imply that we want to get in the way of their duties. In the analogy Mr. Cahill provided about an heir finder that filed documents on a Friday and found an heir on a Monday, that is absolutely not the way this company works, nor has it ever worked in that fashion, which is how it has managed to stay in business since 1966. In addition, we do not deal with unclaimed property in any fashion.

We believe that our proposed amendment (Exhibit I) strikes a good balance between enabling the public administrators to continue to provide their critical role and also provide companies such as Kemp & Associates the ability to represent their clients. I have learned in a very short time of dealing with this

genealogical process that it can be extremely extensive, as Mr. Mannix will testify. It is very difficult to find heirs. To identify them is one thing, and to confirm their relationship to that inheritance is a different thing. Often, work is done across the country as well as internationally.

Our amendment, section 1, line 5, proposes to limit the scope of the bill to estates in which the public administrator is the petitioning party. Mr. Cavallo represented that he did not support that level of the amendment but I did have a text from somebody in southern Nevada that indicated that Mr. Cahill might be amenable to such an amendment, but I certainly do not want to speak on his behalf. Secondly, on page 2, section 3 of the amendment, rather than the 12 months, we are requesting a 60-day limit. The reason for that is that there is only one state in the country that has any kind of timeline related to this type of matter, and that timeline is 60 days. Therefore, this 12-month timeline would be unprecedented and very candidly, it would put Mr. Mannix, his company, and his employees out of business. We do appreciate the dialogue with you, Mr. Chairman, and with the members of the Committee, and we do plan to work with the administrators going forward.

Chairman Horne:
Thank you. There are no questions. Did you have additional comments, Mr. Mannix?

Daniel J. Mannix, Vice President and COO, Kemp & Associates:
Kemp & Associates conducts forensic genealogy. We work on estates with missing and unknown heirs. A hypothetical example would be a person who passes away in Las Vegas in a home that has been in the family for 60 years, a person who has no known relatives, no close relatives. The only way to find out if the person has relatives is through genealogical research. If the person is an 85-year-old woman, we go back and look at a 1930 census to find the woman in the census as a child that would also give us her parents' genealogical information. Hypothetically, we could look at the father, who would be 35 years old and born in Pennsylvania. We would look at a 1900s census in Pennsylvania to try to locate his family. All of these census records are handwritten and professional guidance is needed to find these individuals. At that point, we look at the family to see whether there are siblings of the parents, who would be future uncles of the person in Las Vegas who passed away. We would move through to the present and attempt to locate the uncles, perhaps one would have passed away in Phoenix. Our firm would send someone to the library in Phoenix to look through obituaries and to the courts to look at probate records, wills, et cetera, to attempt to locate heirs. If we do find cousins, for example, those would be heirs to the estate;

we would contact them, and then move forward and agree to work with them so the rightful heirs would receive the estate.

I have several concerns about the bill. Specifically, if you are an unknown heir to an estate and the only way for you to be found would be through a service such as ours, you would have to wait over a year to have any involvement whatsoever with regard to the personal effects of the estate such as family photos, letters, or real estate belonging to the estate. There are potential memorabilia in the estate. There are also stocks that may be owned by the estate. These things might be sold or discarded if no heirs are found. Some of these items have a value when found that will change in a 12-month period. If you are an heir, you would want to have the right to decide what to do with these items at the time the estate was opened, as opposed to 12 months later. The way this bill is presently written, it would not allow that to happen.

An attorney in Nevada, Ken Boyer, asked us to work on an estate of Marian Keith, Probate Case No. P067888. Mr. Boyer hired us for our expertise. In this instance, a mobile home park manager had written a will for the decedent and conveniently named herself as the beneficiary to the estate. We were later questioned about the situation by the park manager. Because she did not have much control, she asked us to do some research. As a result of the research, we located two nieces of the deceased, and the rightful heirs inherited the money. If this 12-month period had been in place the case might have closed before the 12-month period had expired. There is a very good chance that the wrong person would have received the estate.

I handled a case where the attorney hired an heir finder to try to locate the heirs, spent several thousand dollars, and was unable to find an heir. We worked on the case and the research took us to France, where we contracted with our French correspondent. Ultimately, the rightful heir was found to be in Thailand. We had to travel to Thailand to find the heir. I could provide this Committee many similar examples.

I believe we provide checks and balances for Nevadans concerning these estates. There are many estates where people come forward and tell us that they and five other individuals are the heirs to the estate. They may believe that, or they may not. Generally, that will flow through the system and they will receive the money. I have had cases in which I have found 13 heirs who were just as entitled to the estate as the people who came forward. In addition, there are people who honestly do not believe they are entitled to the estate. We reviewed about 2400 files in Clark County during the last ten months. We narrowed those 2400 files down to 26 files to look at and try to find heirs. We made agreements with heirs and went into court on 3 of those 26 cases.

Chairman Horne:
I am going to have to wrap this up. I have one more bill and I have the speaker sending me messages. I see no questions. Is there anyone else here or down south to testify in opposition to A.B. 291? In Las Vegas, we have a couple of speakers. Please make it really quick, gentlemen.

Christian Gianni, Attorney, Las Vegas, Nevada:
I have been practicing trust, estate, and probate law in Las Vegas since 1998. I would like to oppose the current version of the bill. My concern is the 12-month period. I have been involved in six cases with Mr. Mannix's company over the past several years, and in each case there were people representing themselves to be the nearest relatives when, in fact, they were not. In a number of those cases, we believe those people knew of relatives that were closer to the decedent than the ones Mr. Mannix's company identified. It is my experience dealing with these cases and the probate court in general that many individual administrators filing petitions with the court are not doing any due diligence in ascertaining whether the people claiming to be are, in fact, the nearest relative.

Ty Kehoe, Private Citizen, Las Vegas, Nevada:
I am a private attorney and have been practicing law since 1996. I have represented heirs for Kemp & Associates for about four years. I am concerned about this bill because of the timing as well as the extent of nonpublic administrator cases. The letter from Mr. Deaner that was read by Mr. Cahill mentions a 30-day standard. I think that standard is appropriate. We have suggested an amendment to 60 days from the date of death. Mr. Deaner's letter mentions doing research before the filing of the petition. I believe that standard is appropriate and, in fact, NRS 253.0415 mentions that the public administrator is required to investigate prior to filing a petition with the court to determine if heirs exist. Mr. Cavallo mentioned a statute that requires attempting to close a case within six months. If a case is going to be closed and money distributed within six months, there needs to be a sooner time period to permit the checks and balances that a company like Kemp & Associates can provide.

The public administrators provide a valuable service and they do good work. They are a neutral third party whose intent is to locate the correct people. As Mr. Gianni testified, that is not the case with individuals who are tempted to keep money for themselves. That is why we think it is important to limit this bill to public administrator cases. Mr. Cahill mentioned one case in five years. That sounds like an egregious case, but we have case after case after case where the administrator was representing the incorrect heirs and Kemp & Associates were able to provide a valuable service in the process.

The Nevada statutes permit a set-aside in less than 30 days for any estate over $100,000. Therefore, we have multiple cases where money was distributed in less than 30 days. Finally, Kemp & Associates is not out there cherry-picking easy cases like the case that Mr. Cahill mentioned. Personally, I have represented heirs in one case for 2 1/2 years without receiving one penny of payment. We have an appeal in the Nevada Supreme Court right now on behalf of those heirs without any payment. We may never receive a payment.

We provide a valuable service to heirs not provided by others. I respectfully object to the bill as presented, and support the proposed amendment. I request that we let the private sector add value in this situation as it has been doing.

Chairman Horne:
Thank you, Mr. Kehoe. Are there any questions? [No one responded] Are there any other speakers in opposition to A.B. 291 or in a neutral position? [No one responded.] We will close the hearing on A.B. 291 and bring it back to the Committee. I hope that all parties will continue to work together and attempt to reach a compromise there. It seems like there is room for compromise. We will now open the hearing on Assembly Bill 226. I have a feeling we are going to have people come out of the water against your bill as well.

Assembly Bill 226: Revises various provisions governing landlords and tenants. (BDR 3-669)

Assemblyman Jason Frierson, Clark County Assembly District No. 8:
I am pretty well aware of where some of the concerns are going to be coming from with this bill. I will try to present my introductory testimony in a micro-nanosecond, and if the Chair will also allow Jon Sasser to give some practical perspectives on this matter.

Today I am introducing Assembly Bill 226. I was asked to introduce this bill by former Speaker Barbara Buckley to address recurrent problems seen by her staff at the new Family Law Self-Help Center in the Las Vegas Justice Court. Since I introduced the bill draft request (BDR), there have been extensive negotiations with landlords, realtors, and constables, in particular, during the last couple of weeks. As a result of those discussions, we are offering an amendment which significantly pares down the bill to its essence. The amendment should also be on NELIS (Exhibit J). We have eliminated a number of items that many stakeholders found problematic and tried to change the language to minimize the impact on good actors while still providing relief to those who may not have been treated fairly. Briefly, in 2009, the issue raised in section 1 of this bill extended the time in which the sheriff or constable can execute a summary

eviction order beyond the current period of within 24 hours. I provided a spreadsheet in NELIS (Exhibit K) that shows what other states are doing, and how fast we are compared to other states, and how we can put a tenant out. I believe that if you take into consideration the entire period, we are the fastest by far. If a tenant falls behind in rent for one day, a landlord can give a 5-day notice to pay or quit. If the rent is not paid by noon on the fifth day, a landlord can apply for an order from the court evicting the tenant within 24 hours.

In 2009, Assembly Bill No. 189 of the 75th Session passed the Assembly and eventually died on the Senate floor. Sections 2 through 5 of this bill would be deleted by the amendment that I am proposing, which is a reflection of extensive conversations with the stakeholders and taking their concerns into consideration. Sections 6 and 7 deal with a situation where the landlord attempts to retake possession without following the law; for example, without going through the normal eviction process. It is clear that attempting to remove a tenant by changing the locks or shutting off the utilities is unlawful today. However, unscrupulous landlords have found new ways to evade the law by doing things such as disabling locks so the tenant is not locked out but neither can they lock the doors. Therefore, the tenants cannot secure themselves or their property. I have seen cases where neighbors thought the tenants had been evicted and went in to the house and stole all of the property because the tenants were not able to lock the doors, and the tenants were not at home. Sections 6 and 7 would provide a remedy in those situations. I will pass this along to Mr. Sasser, who will give a practical perspective.

Jon Sasser, representing the Washoe County Senior Law Project; and Washoe Legal Services; and the Legal Aid Center of Southern Nevada:

I have provided written testimony to the Committee (Exhibit L) that I am not going to read. There are three things that remain of the bill. Section 1 deals with a problem post-entry of an eviction order, which the law now says can be done within 24 hours. Situations that come up at Washoe Legal Services offices and the Legal Aid Center include a tenant who believes they have made a payment plan deal with the landlord after getting a 5-day notice, and the landlord proceeds with the lockout anyway. The tenant now wants to go to court and file a motion to either vacate that order or stay it. There are also the tenants who need more than 24 hours to move their family out of the residence. They might have kids in school, it might be the middle of the work week, et cetera, and 24 hours is by far the fastest eviction time in the west. Tenants are allowed at least two days in every other state in the west. Our problem is, on behalf of the tenants, we need at least 24 hours from the time we learn about the eviction order to when the sheriff or constable can lock the tenant out. The proposed amendment addresses that problem to the satisfaction of some of the parties. We still have a bit of a concern in Washoe County. It is

the only county that I am aware of where there are not two visits: one visit by the sheriff or constable, who then returns. I think we are very close in our discussions with both the landlord and the sheriffs and constables about resolving that issue.

The last two sections deal with the lack of a functioning lock and allowing a tenant to get an expedited court process when the landlord tries to use a creative method of evading the current statutes. Therefore, I believe with a little further work we can come back as one big happy family. Thank you, Mr. Chairman.

Chairman Horne:
Thank you, Mr. Sasser. I see no questions. Is there anyone else here in Carson City wishing to testify in favor of A.B. 226? For the record, Bill Uffelman, Jan Gilbert, Gail Anderson, Jon Sasser, Terry Graves, and Susan Fisher have signed in, in favor. In addition, Tim Kuzanek and Frank Adams have signed in for the bill, and opposed to the amendment. Can you make your testimony quick?

Tim Kuzanek, Captain, Governmental Affairs, Washoe County Sheriff's Office:
Initially when I signed in, we did not have any problems with the original verbiage in the bill. However, the amendment does create some issues for us. We are willing to work with the proponents of the bill to try to work them out. I can also speak on behalf of the Nevada Sheriffs' and Chiefs' Association for the same reasons.

Chairman Horne:
There are three people signed in to speak in Las Vegas: Jim Berchtold, David Olshan, and Jamie Cogburn. Do the three of you have the same thing to say?

David Olshan, representing Nevada Legal Services:
Generally, yes. We support A.B. 226. The biggest problem we see is *Nevada Revised Statutes* (NRS) 40.253 has an ambiguity. The ambiguity is that the sheriff or constable can lock the tenant out within 24 hours. A.B. 226 seeks to resolve that by saying not less than 24 hours. We are greatly in favor of that language. We feel that the problem is the wording, "within 24 hours." That is not very helpful. The wording of "not less than 24 hours" does provide more clarity, so we are in favor of A.B. 226.

Chairman Horne:
Is that a "me, too" from the other two gentlemen?

Jamie Cogburn, representing the Nevada Justice Association:
That is a "me, too."

James Berchtold, representing Clark County Civil Law Self-Help Center, Clark County Courts:
I am in favor of the bill.

Chairman Horne:
Is there anyone else to speak in favor of the bill. [No one responded.] We are going to move to opposition to the bill. We have two constables.

Gary Rogers, Constable, Goodsprings Township, Jean, Nevada:
I am opposed to one aspect of the amendment, which is the part that states, "and post the order on the premises, not more than 24 hours after entry of the order." I represent the eight outlying constables in my area. We all have real jobs besides constable, and that is much too quickly for us to be able to respond without having to lose work, and that is my only problem with the amendment.

Steve Kilgore, Deputy Director, Constable's Office, Henderson Township:
As constables, we do not like this bill for a couple of different reasons. Jon Sasser is correct that we are close, but there is still more work to do. I testified on an earlier occasion that constables try to protect the due process of the system. One of the things we have yet to clarify about this particular bill is the ending time. The original language of the bill said the notice had to be served within 48 hours. We did not like this because it didn't give us the latitude to buy a little time for the tenants, which we will occasionally do. It is still nebulous how we will end up on that particular issue. We have reworded it a couple of times and are in productive communication with everyone involved.

Chairman Horne:
Are there any questions? [No one responded.] Is there anyone else here in opposition to this bill?

Susan Fisher, representing the Coalition of Housing Providers; and Nevada State Apartment Association:
It is difficult to know how to sign in on a bill because of the new rules this year. We do support a good portion of the bill and we appreciate Assemblyman Frierson working with us on the bill. We support that a landlord should not be able to make locks that do not work. Tenants should have a functioning lock. However, we do have concerns with the timeline.

Ruth Wheeler, Private Citizen, Reno, Nevada:
I own 139 units in 6 different buildings in downtown Reno. I acquired these properties one at a time, over the last 30 years. The eviction process is something I use regularly, not to exclude tenants, but to give everyone a time frame in which to pay their rent. The process works very well when it is followed, and I am against any lengthening of the time frame. It would present a hardship that I cannot afford. Times are difficult already, and I realize these times are awful for tenants as well. However, I am almost in the same boat as my tenants. While listening to the first bill today, I was thinking how that is my life down the road regarding the foreclosures. We want to be careful not to add so many layers that landlords have to get lawyers, which becomes very expensive. If landlords are forced to obtain attorneys to work through this process, the expense is multiplied and becomes untenable for landlords who are just trying to keep their heads above water as it is. That cost will also be passed along to the tenants. We do not have laws that punish those of us who are following the letter of the law and are not circumventing the process because of a few, which I understand is primarily happening in Las Vegas. [Example Notice of Eviction provided but not discussed (Exhibit M).]

Gregory F. Peek, Vice President, ERGS Inc.:
We are a developer, builder, and owner of apartments in the Reno area. I just want to make sure there is a distinction and that the members of the Committee understand we are talking about nonpay, which is different than breach, and different than nuisance. All of those have different procedures. We have heard a lot of talk about due process. There is no question that Washoe County is unique and different than Clark County. The law in Washoe County is very clear. Once the application has been made and the judicial days are exhausted, that period is about 15 days. The notice has been made and the resident knows he is late on his payment. The judge may then issue the order of eviction and the sheriff comes out to make the eviction. That is different than Clark County which also imposes an additional step that is the notice of eviction. We do not necessarily have that for nonpays in Washoe County. I would suggest that all of the parties get together and understand where some of these rules originate. Perhaps the NRS is not the place to address some of these concerns. Clark County has addressed the notice of eviction locally. If there is a problem with that in Washoe County, perhaps it needs to be fixed locally and not at the state level. We are in active negotiations and we do support the rest of the amendment with regard to locks.

Chairman Horne:
Thank you. I see constables sitting at the table in Las Vegas. Do you have different testimony than the other constables? Because we have been called to the floor and we are late.

Earl Mitchell, Constable, Henderson Township:
We are against the changes proposed under section 1, paragraph 5, subparagraph (a), but we are more than willing to work with those that support those changes in order to come up with an equitable and fair process. In addition, regarding Mr. Sasser's testimony that the posting takes place within 24 hours, I can speak only about Henderson. We often talk with landlords who want to give their tenants more time. My understanding is that the proposed amendment states that the lockout "must" take place in 48 hours; I believe that will backfire on those that propose it. I would encourage that the proponents of the amendment get together with those of us who oppose it and try to reach an equitable and fair process.

Chairman Horne:
I have a woodshed in my office that is primed and ready for those discussions, Mr. Frierson. I see two more people at the table in Las Vegas, do you have similar concerns? If so, you can say "me, too."

John Bonaventura, Constable, Las Vegas Township:
Me, too.

Dan Palazzo, Captain, Constable's Office, Las Vegas Township:
I would also agree with Constable Mitchell regarding discussions to make a more equitable language in section 1 of the bill.

Paula Lane, President, Nevada State Apartment Association:
The Nevada State Apartment Association is opposed to A.B. 226. At times, our industry can be misguided by perception. We pride ourselves in being good property managers, we work with our residents who are having problems by setting up payment plans, and we really want the tenants to stay. Ninety-nine percent of the property managers in this business are good people. We follow the rules, and we do the right thing. We are asking that the bill be as it was originally written. We do not want an extension of the time period. When we have to evict a tenant, we want to be able to get our property back in the regular time period. The extension of time in the amendment will hurt the good landlords who are doing the right thing. The other one percent will not follow the rules anyway. Why should we be penalized because of the actions of a few?

Randall Watson, President, RJW Real Estate, Inc.:
My wife and I own RJW Real Estate, which consists of a rental property in Henderson and seven properties in other parts of Clark County. We try to take good care of our tenants. We just completed our first eviction in 30 years. To give a tenant more time just invites problems with the tenant. Our tenant was

selling our property on c*raigslist* and not paying the rent. This gave him more time to damage our property, which we now have to repair at our expense. The tenant knew he had plenty of time, because we were trying to work with him to resolve this issue. As it turned out, we were just giving the tenant more time to steal our property and damage our home while not paying rent. We are struggling to get by and we barely break even. After repairing the property and replacing stolen and damaged items, it will take a long time to break even on that property. We are just asking to be able to survive.

Chairman Horne:
Thank you. I see no questions. Are there any further speakers in opposition? [No one responded.] Are there any people wishing to speak in neutral? [No one responded.] The hearing on A.B. 226 is now closed. We are adjourned [at 11:04 a.m.].

RESPECTFULLY SUBMITTED:

_____
Jean Bennett
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 31, 2011 Time of Meeting: 8:09 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Record
A.B. 284	C	Assemblyman Conklin	Prepared Testimony
A.B. 284	D	Karen D. Dennison, representing the American Resort Development Association	Proposed Amendment
A.B. 9	E	Kevin Higgins, Justice of the Peace, Department Two, Sparks Justice Court	Proposed Amendment
A.B. 9	F	Kevin Higgins, Justice of the Peace, Department Two, Sparks Justice Court	Chart Comparing Filing Fees
A.B. 291	G	John Cahill, Clark County Public Administrator	Letter from Charles W. Deaner, of Deaner, Scann, Malan & Larson in Las Vegas
A.B. 291	H	John Cahill, Clark County Public Administrator	Spreadsheet
A.B. 291	I	Chris Ferrari, representing Kemp & Associates	Proposed Amendment
A.B. 226	J	Assemblyman Frierson	Proposed Amendment
A.B. 226	K	Assemblyman Frierson	Spreadsheet Comparing Nevada to Other States
A.B. 226	L	John Sasser, representing the Washoe County Senior Law Project and Washoe Legal Services and the Legal Aid Center of Southern Nevada	Written Testimony
A.B. 226	M	Ruth Wheeler	Example Notice of Eviction