MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-sixth Session
May 9, 2011

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 2 p.m. on Monday, May 9, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael A. Schneider, Chair
Senator Shirley A. Breeden, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator James A. Settelmeyer
Senator Elizabeth Halseth
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus L. Conklin, Assembly District No. 37

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Sheila E. Walther, Supervisory Examiner, Division of Mortgage Lending, Department of Business and Industry
Nancy Corbin, Acting Commissioner, Division of Mortgage Lending, Department of Business and Industry
Warren B. Hardy II, Ex-Senator; Eagle Mortgage Company
Susan Fisher, Housing Authorities Risk Retention Pool

David Morton, Executive Director, Housing Authority of the City of Reno
Brett J. Barratt, Commissioner of Insurance, Division of Insurance, Department of Business and Industry
David Goldwater, Former Assemblyman
Fred Waid, Hutchison & Steffen Attorneys; General Counsel, Oasis Loan Advisors, LLC and Oasis Loan Servicing, LLC
Barry Gold, Director of Government Relations, AARP Nevada

CHAIR SCHNEIDER:
We will open the hearing on Assembly Bill (A.B.) 77.

ASSEMBLY BILL 77 (1st Reprint): Makes various changes relating to mortgage lending and related professionals. (BDR 54-481)

SHEILA E. WALTHER (Supervisory Examiner, Division of Mortgage, Department of Business and Industry):
The Division of Mortgage Lending Division (DML), Department of Business and Industry (DBI), Acting Commissioner Nancy Corbin will read a statement (Exhibit C) on A.B. 77 from Las Vegas.

NANCY CORBIN (Acting Commissioner, Division of Mortgage Lending, Department of Business and Industry):
The DML has worked with Assembly members and industry professionals to redraft A.B. 77. The bill would change *Nevada Revised Statute* (NRS) 645A, the escrow agency chapter; NRS 645B, the mortgage broker and agent chapter; NRS 645E, the mortgage banker chapter; and NRS 645F, the DML general authority and loan-modification chapter.

The proposed changes include items for "housekeeping," to address industry concerns and to allow the DML to regulate industries under its jurisdictions better. The latter includes the ability to require Federal Bureau of Investigation fingerprint cards from all escrow applicants. Most importantly, A.B. 77 enacts federally required changes to bring Nevada law into compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).

The SAFE Act addressed concerns in the mortgage-lending industry and the Mortgage Assistance Relief Services Rule, which the U.S. Congress passed in December 2010 to address concerns in the loan-modification industry.

Since the introduction of A.B. 77, the DML has had many conversations with persons who could be affected by this bill to address concerns about the bill's language. A proposed amendment was introduced in the Assembly to address those issues. The DML feels that amendment balances fair regulation and improves consumer protection.

Sections 1 through 12 of A.B. 77 affect escrow agencies. Sections 2 and 10 allow the DML Commissioner to impose fines of up to $25,000 for unlicensed activities or other NRS violations. That amount is consistent with amounts established in NRS 645B and those assessed by other states.

Section 3.5 includes the performance of escrow services of construction controllers, as defined in the term "escrow." These companies hold vast deposits on behalf of investors for disbursement throughout construction projects. Construction controls are not subject to licensing or regulatory authority. They have placed a nominal bond with the State Contractors' Board, whose Executive Officer, Margi A. Grein, has said she does not object to the provision in A.B. 77. She said the bill would provide welcome oversight to the construction industry.

Sections 13 through 68 affect mortgage brokers and agents. Several sections incorporate provisions of the SAFE Act to bring Nevada into compliance with the Act and help the State participate in the Nationwide Mortgage Licensing System and Registry (NMLSR). The DML went live on NMLSR in October 2010.

Pursuant to the SAFE Act, major changes Nevada must pursue include revising licensing exemptions, changing license-renewal dates, revising license-renewal standards, requiring submission of mortgage-call reports by licensees, changing due dates for financial statements, allowing submission of required items and fees through the NMLSR—instead of directly through the DML—and establishing licensing requirements for loan processors.

Sections 18 through 40 of A.B. 77 relate to origination and servicing of loans funded by private investors. The language in the sections was initially discussed in hearings on Legislative Counsel Bureau (LCB) File No. R091-10, a proposed DML regulation drafted by the LCB to address such loans. After hearing testimony at DML hearings, most people believe such matters should be handled at the legislative level, in lieu of regulation. Therefore, R091-10 was not adopted, and the necessary language was added to A.B. 77. Deletions and

additions were made to these sections pursuant to discussions with the mortgage-lending industry.

Sections 69 through 86 affect mortgage bankers and incorporate provisions to bring the State into compliance with the SAFE Act. Sections 84 and 85 pertain to NRS 645E and mortgage bankers. Fines of up to $25,000 would be imposed for unlicensed activities and violations of law. This amount is consistent to those established in NRS 645B and those assessed by other states.

Sections 87 to 104 affect loan-modification activity and enact changes necessary to comply with Federal Trade Commission (FTC) rules passed in December 2010. Section 103 allows the DML Commissioner to assess fines of up to $25,000 for unlicensed activities or law violations, as consistent with NRS 645B and those assessed by other states.

We detected a small error in the bill draft's language and brought it to the attention of Scott Young, Policy Analyst. We intended that the provisions in the bill's section 44, which address NRS 645B, and section 72, which addresses NRS 645E, mirror each other. However, the language was only amended to address section 72. We will work to have that technical change made.

It was brought to our attention on the afternoon of May 6 that mortgage broker and Integrated Financial Associates, Inc. Chief Executive Officer William Dyer may have submitted comments to the Committee suggesting he was opposed to some of the bill's sections. We were able to answer his questions and resolve his concerns, so he will not testify today.

MS. WALTHER:
Chuck Mohler submitted a letter (Exhibit D) to the Nevada Electronic Legislative Information System seeking clarification of a section of A.B. 77 with an amendment. Someone will testify about that letter today.

SENATOR ROBERSON:
I need some more background on why this bill was brought forward. Why is it necessary?

MS. WALTHER:
Much of the bill would bring Nevada into compliance with the SAFE Act and FTC rules. Sections pertaining to private-investor transactions were included

because the DML has received up to 100 complaints from private investors trying to deal with brokers and transactions in this depressed real estate market. We drafted R091-10 to address those concerns.

We had two or three workshops and a hearing to adopt, in which information surfaced that led us to try to balance protection of investors with brokers' financial and paperwork burdens. We agreed to put that language in A.B. 77. We deleted several sections from the original bill because we agreed there was a middle ground to protect both parties. The consensus was what was left in the bill was agreeable to both sides.

Some of the bill's changes would make NRS chapters more consistent as to fines and licensing and business practices. As an example, there was no NRS license-application due date. If we asked for additional background-check information, some license seekers had to wait up to a year, during which time their background investigations became outdated. We address that issue in four separate sections of the bill.

WARREN B. HARDY II (Ex-Senator; Eagle Mortgage Company):
Mr. Mohler asked me to present his concerns, Exhibit D, to the Committee. We wholeheartedly support A.B. 77 for the reasons expressed by the DML. However, we are concerned about how section 71 might impact current lending practices, but the DML assured us that is not its intent.

The definition of "commercial property" is altered in section 71. The bill would change NRS 645E.040 to define it as " ... any real property which is located in this state and which is neither used as a dwelling nor upon which a dwelling is constructed or is intended to be constructed."

Under current practice, when a loan is provided for development of residential parcels or residential-zone property, horizontal development loans are commercial. That system needs to continue. We are concerned this could be interpreted to mean those types of horizontal loans for property intended to be residential would be required to be residential loans. The DML has consented to provide for that.

MS. WALTHER:
Yes, the DML has discussed the issue with Mr. Mohler. We changed the definition of commercial loans to be more consistent with the SAFE Act.

Residential mortgage loans include "dwellings" that are mobile homes or trailers. We do not intend to consider development of raw land as requiring residential loans.

CHAIR SCHNEIDER:
We will close the hearing on A.B. 77 and open the hearing on A.B. 130.

ASSEMBLY BILL 130 (1st Reprint): Revises provisions relating to affordable housing. (BDR 25-874)

SUSAN FISHER (Housing Authorities Risk Retention Pool):
You have a booklet (Exhibit E) describing my organization, Housing Authorities Risk Retention Pool (HARRP). This bill did not meet resistance in the Assembly. It was proposed to expand the risk-retention pool enjoyed by low-income housing authorities, like that of Reno. We purchase insurance through a pool with other states to keep down costs. The bill would allow nongovernmental and private entities, like LLCs, to participate in the pool to facilitate more affordable housing. In these economic times, it is more important than ever to do so.

Commissioner of Insurance Brett J. Barratt, Division of Insurance (DOI), DBI, submitted a proposed amendment to allow the DOI to perform audits of HARRP, even though it lacks specific authority to do so.

DAVID MORTON (Executive Director, Housing Authority of the City of Reno):
You have a copy of my prepared testimony (Exhibit F) and a booklet (Exhibit G) describing my organization. I have held my position for 22 years, and my agency has been a member of HARRP for 10 years. The organization includes 90 housing authorities in Washington, Oregon, California and Nevada. The states are self-insured as a group, which, by being selective about its membership, has avoided significant problems suffered by other U.S. housing authorities.

We have provided affordable property and liability insurance for our members. When the group formed, housing authorities could not buy property insurance. The image of public housing in many areas of the Country is poor, so many authorities had to be self-insured. By forming a pool, we lowered costs, built cash reserves and provided for long-term costs.

Instead of just insuring housing authority-owned properties, many of our members have set up tax-credit programs funded by private investors. Affordable-housing organizations in the four states have established housing HARRP could not insure. We have established a subsidiary pool to cover that type of property. Reno has a tax-credit property that would qualify for that pool.

Many affordable-housing organizations could participate in the new pool, and we have used some of our reserves to set up that. We have modified enabling legislation in Washington, Oregon and California. Nevada cannot participate in the tax-credit property pool unless A.B. 130 is passed. A similar bill easily passed in California. The issue is nonpartisan; it is a matter of providing lower-cost insurance for affordable-housing properties.

MS. FISHER:
Mr. Morton's authority also encompasses Washoe County and Sparks. His entity is the only HARRP member in the State.

CHAIR SCHNEIDER:
Mr. Morton's booklet handout, Exhibit G, states the Reno housing authority includes Sparks and Washoe County. Is there a problem with the Nevada Rural Housing Authority issuing loans in Sparks and Summerlin? Those cities are not rural.

MR. MORTON:
The Housing Authority of the City of Reno has an interlocal agreement with Washoe County and Sparks, so we are their legal authority. We are 1 of 90 members in the insurance pool. North Las Vegas was a member at one time, but we have denied them access now. Clark County participated in the pool until it merged with the Southern Nevada Rural Housing Authority.

The subsidiary pool we are establishing would not be limited to the 90 authorities. It will be available to any nonprofit affordable-housing organization or a tax-credit development built to serve particular populations. The new pool will not be open to private companies or investors.

Under present law, the Nevada Rural Housing Authority cannot participate in entities that include another housing authority without that authority's approval. Washoe County has convinced Sparks to use its bond authority to provide housing assistance in rural areas; but that has nothing to do with this bill.

BRETT J. BARRATT (Commissioner of Insurance, Division of Insurance, Department of Business and Industry):
I am neutral on A.B. 130. Our questions about what it proposes regarding the regulatory authority of my office have been resolved.

CHAIR SCHNEIDER:
We will close the hearing on A.B. 130 and open the hearing on A.B. 283.

ASSEMBLY BILL 283 (1st Reprint): Revises provisions relating to mortgage loans. (BDR 54-830)

ASSEMBLYMAN MARCUS L. CONKLIN (Assembly District No. 37):
You have my prepared testimony (Exhibit H). Assembly Bill 283 relates to licensing commercial mortgage brokers who do not make residential loans. One section addresses the duties of brokers who receive money from investors for an ownership investment in loans secured by real property.

Starting in 2004, the American Association of Residential Mortgage Regulators and the Conference of State Bank Supervisors have been developing a nationwide registry of mortgage-lending professionals similar to the national registry for securities broker-dealers.

The SAFE Act requires agents and brokers who originate residential mortgages to meet uniform standards for licensing and renewal, to register with the NMLSR and to receive unique identification numbers. In response to the SAFE Act, the 75th Session Legislators enacted A.B. No. 523 of the 75th Session, which revised licensing and disciplinary standards for residential-lending agents and brokers and directed the commissioner of DML to comply with and implement the SAFE Act.

In 2010, the commissioner of DML adopted regulations to implement A.B. No. 523 of the 75th Session. When those regulations came out, I realized they included companies that specialize exclusively in commercial lenders and do not make residential loans. There are very few of those companies in the State, including fewer than ten in southern Nevada. The new regulations are causing problems.

The regulations require commercial lenders to enter the NMLSR, take continuing education courses and pass written examinations geared entirely toward

residential lenders. Some commercial brokers failed those exams because they are unfamiliar with residential forms and processes. At least one commercial lender quit his job and left the State in part due to these requirements.

Although A.B. No. 523 of the 75th Session and the SAFE Act do not require lenders and agents who do not originate residential loans to be licensed through the NMLSR, the regulations apply to all lenders and brokers who apply for Nevada licenses. This was not Legislators' intent when they adopted A.B. No. 523 of the 75th Session.

The main point of A.B. 283 is in section 6, which states brokers and agents are not required to register and renew with the NMLSR if they do not handle residential mortgage loans—unless they do so voluntarily. Commercial brokers and agents are still required to be licensed, but not through the NMLSR.

Sections 1, 2 and 4 of the bill adjust the continuing education requirements for brokers and agents who do not process residential loans. Section 5 adjusts language relating to the associations between agents and brokers. It clarifies that brokers who do not enter their sponsorship of agents into the NMLSR must still notify the DML of that sponsorship.

Section 3 adds one new sentence to NRS provisions on mortgage brokers who receive money from investors for an ownership interest in a real estate loan, so-called "hard-money lenders." The new provision in section 3, subsection 12 states:

> Any duty, responsibility or obligation of a mortgage broker pursuant to this chapter is not delegable or transferable to an investor, and, if an investor only provides money to acquire ownership of or a beneficial interest in a loan secured by a lien on real property, no criminal or civil liability may be imposed on the investor for any act or omission of a mortgage broker.

This section addresses the problem of when brokers arrange loans for developers who have then run into financial problems and been sued by creditors. The provision's intent is to make it clear an investor who only provided capital to a developer is not liable "for any act or omission of a mortgage broker" that a creditor alleges contributed to the problem.

SENATOR COPENING:
Is the hard-money lender situation directly related to the issue with CM Capital Services?

ASSEMBLYMAN CONKLIN:
May I hold that question for another testifier to answer?

DAVID GOLDWATER (Former Assemblyman):
I am representing myself, as a former mortgage broker, and Fred Waid, who will speak next. The aforementioned provision is not in response to problems with CM Capital Services, which has a separate set of issues. However, the bill could ultimately affect CM Capital Services' investors. If the company ceased to exist—I believe its license has been revoked or suspended—those investors could potentially be held liable for its negligent acts. Section 6 of the bill addresses protection for investors from suffering liability inflicted upon them by companies like CM Capital Services. Technically, those investors are lenders under the strictest definitions.

SENATOR COPENING:
I need to put it on the record that I must refrain from voting on this bill because my father was a hard-money lender investor who could have benefitted from this legislation. This bill could help protect those lenders.

MR. GOLDWATER:
As a former Legislator, I spent many years crafting protections for hard-money lenders and mortgage brokers.

FRED WAID (Hutchison & Steffen Attorneys; General Counsel, Oasis Loan Advisors, LLC and Oasis Loan Servicing, LLC):
Trust-deed investors have been sued in State and federal court for actions or omissions by former hard-money lenders. Generally, those hard-money lenders or licensed brokers have either surrendered their licenses or had them revoked. When borrowers have actionable claims against hard-money lenders who are no longer available, are insolvent or have other similar circumstances, the borrowers and their loan counselors will try to offset or seek some other remedy against the trust deed holders.

Assembly Bill 283 would allow counsels to clarify to the parties in these matters that their role was limited simply to providing capital for trust deeds. They

would be told they were not involved in underwriting, appraisals or communications between the borrower and the license holder. They simply engaged in licensable activity, and we want to protect them with this bill.

MR. GOLDWATER:
There was an issue as to whether section 6 prohibits hard-money loan investors from recovering fees and costs associated with these loans, but not necessarily related to liabilities. We do not want to do anything to prohibit investors from recovering what they are due. We simply do not want to pass liability from brokers to investors. In cases in which brokers are due fees of some kind, but they are no longer in a position to collect them, investors need the right to collect those fees and costs. I do not think the section 6 language does that. I want your legal staff to make sure it does so and to clarify that is the Committee's intent.

CHAIR SCHNEIDER:
We will have Matt Nichols, Counsel, look at the section and then give us an opinion.

MATT NICHOLS (Counsel):
"I don't think it could be read to ... I think that's a tortured reading at best. So, the Assemblyman's intent, I think, is well expressed in this language."

CHAIR SCHNEIDER:
Overinflated appraisal are part of the problem with hard-money loans. Appraisers could then run back, get more money and refinance the properties. That just kept going on. Would you agree with that assessment?

MR. GOLDWATER:
Yes, but it was not that values were pumped up; the comparables and every other measure for appraisals supported the logic and high values. However, prices for properties listed at market value or "as is" were pumped up.

SENATOR HARDY:
I support this bill.

CHAIR SCHNEIDER:
We will close the hearing on A.B. 283 and open the hearing on A.B. 308.

ASSEMBLY BILL 308 (1st Reprint): Revises provisions governing the regulation of mortgage lending. (BDR 54-183)

ASSEMBLYMAN CONKLIN:
The second half of this two-bill effort deals with different and more explosive issues. In the 75th Session and 74th Session, I introduced legislation to rein in mortgage-lending fraud. This Session, I introduced A.B. 284 to that end.

ASSEMBLY BILL 284 (1st Reprint): Revises provisions relating to real property. (BDR 9-1083)

Assembly Bill No. 440 of the 74th Session established a crime of mortgage-lending fraud, and A.B. No. 152 of the 75th Session expanded the regulation of foreclosure and loan-modification consultants. Although there are many public and nonprofit programs designed to help homeowners in financial distress, many consumers seek assistance from for-profit foreclosure and loan-modification consultants to act as intermediaries between them and lenders. This is often not a wise move.

According to the FTC, unfair and deceptive practices are "widespread and causing substantial consumer harm." Federal and state authorities have investigated more than 450 for-profit foreclosure and loan-modification consultancies and initiated hundreds of lawsuits and enforcement actions against them.

In October 2009, after the enactment of A.B. No. 152 of the 75th Session, a Nevada deputy attorney general said Attorney General Catherine Cortez Masto had received complaints against 126 foreclosure-prevention businesses, and 12 of the complaints resulted in criminal charges.

In October 2009, Attorney General Cortez Masto indicted two people on multiple felony counts for operating a foreclosure-rescue scam in which they obtained money by misrepresentation, theft, and misrepresentation and theft against a person 60 years of age or older. In December 2009, the State Board of Examiners exempted 32 employees of the Bureau of Consumer Protection, Office of the Attorney General, from mandatory furloughs because they were needed to combat proliferating foreclosure–rescue scams.

In January 2010, Attorney General Cortez Masto indicted three people operating a loan-modification business for misleading consumers, making false claims, not performing services and causing consumers to sign false documents giving them liens on consumers' homes. In February 2010, Attorney General Cortez Masto indicted the operator of a foreclosure-rescue business for felony theft and forgery for obtaining advance payments, not performing services, failing to give promised refunds and submitting forged documents to the DML. The perpetrator was extradited from the Philippines, pleaded guilty at his trial and was sentenced to two-and-a-half years in prison.

In February 2010, Attorney General Cortez Masto entered into a settlement agreement with an unlicensed loan-modification company in which it had to pay a $5,000 fine and refund fees to homeowners. In August 2010, Attorney General Cortez Masto indicted three operators of a foreclosure–rescue business for misleading consumers, making false claims, defrauding customers and forcing them to sign false deeds of trust. In November 2010, the DML closed four foreclosure-consulting businesses and imposed fines of $15,000 to $50,000 in ordered refunds to customers.

As a result of incidents like these across the Country, the FTC adopted a rule on foreclosure consultants and similar providers in late 2010. The FTC rule prohibits loan providers from making false and misleading claims, requires providers to make extensive disclosures about their services, prohibits collection of advance fees, prohibits people from providing assistance or support to someone they know or should know is violating the rules and imposes compliance and recordkeeping requirements.

Assembly Bill 308 conforms NRS to the FTC rule. Section 2 prohibits foreclosure consultants from claiming or receiving compensation before homeowners have executed a written agreement with their lender or loan servicer incorporating the offer of mortgage assistance they have obtained. Section 3 requires foreclosure consultants to keep records on every client, conduct rigorous oversight of employees and investigate complaints, among other duties.

Section 4 stipulates foreclosure consultants must make general commercial communications specific to homeowners, especially in situations in which consultants express or imply clients should discontinue making mortgage payments. Section 5 covers additional disclosures that consultants must make

when they provide written offers from lenders or servicers incorporating an offer of mortgage assistance. One disclosure must state, " ... You may accept or reject the offer. If you reject the offer, you do not have to pay us." Section 6 prohibits people from providing assistance or support to someone they know or should know is violating the act.

I have a proposed amendment (Exhibit I) for section 8. The Assembly amended the language about exemption of attorneys from the bill by extending that exemption to their employees. This was to bring A.B. 308 into conformance with A.B. 77, which amends the same NRS section.

ASSEMBLY BILL 77 (1st Reprint): Makes various changes relating to mortgage lending and related professionals. (BDR 54-481)

But upon further reflection, I think that is inappropriate. My proposed amendment would not extend the attorney exemption to their employees—otherwise, this section could create a loophole that may swallow the entire bill.

Section 9 expands the list of unlawful practices in accordance with the FTC final rule. Sections 7, 10, 11 and 12 contain technical language that adjusts cross-references. Section 13 repeals NRS 645F.394, the section ultimately enacted in the 75th Session to allow foreclosure consultants to take advance payments provided they are placed in a separate, insured checking account. The FTC considered and rejected this practice, so the final rule prohibits it.

CHAIR SCHNEIDER:
Could you explain further your proposed amendment to section 8, subsection 1 of A.B. 308?

ASSEMBLYMAN CONKLIN:
The proposed amendment conforms this language to other provisions in NRS 645. The proposed language states that while attorneys are exempted from statute because they have their own governing board within the State Bar of Nevada, attorneys' employees are not exempt.

SENATOR COPENING:
What is the main difference between a foreclosure consultant and a loan-modification consultant?

ASSEMBLYMAN CONKLIN:
They are the same, for the most part. There was talk of foreclosure consultants during discussion of A.B. No. 440 of the 74th Session. When we amended NRS 645 in the 75th Session, we added the term "loan-modification consultant" because people said that is what they did for troubled homeowners. By calling them something else, A.B. No. 152 of the 75th Session exempted them. The latest bill contains the two job titles with differing definitions.

SENATOR COPENING:
This Committee has discussed things having to do with section 8 of A.B. 308. The proposed amendment does not cover my concern. When we looked at A.B. No. 152 of the 75th Session, which put restrictions on loan-modification companies, including a prohibition on collecting advance fees, we exempted attorneys.

We have learned subsequently that some law firms have taken clients' money but not delivered services, stringing them along for more than a year without mortgage relief. Clients would approach law firms advertised on television. A man with whom I am working, who worked with a law firm, said he was never approached by an attorney. Law firms form partnerships with loan-modification companies which allow them to work around the provision prohibiting advance collection of fees, because attorneys are allowed to do so.

Attorneys should be subject to the same law prohibiting up-front fees as anyone doing any kind of loan modification. The aforementioned man was working with a well-known law firm for more than year and getting nowhere until we referred him to a consumer-credit counseling center. Within a week, his loan was modified; but he was out thousands of dollars he had paid for services never rendered.

ASSEMBLYMAN CONKLIN:
I am unsure if my proposed amendment completely covers Senator Copening's request. *Nevada Revised Statute* 645F.300 to 645F.450 covers foreclosure and loan-modification consultants. The proposed amendment would apply to both jobs.

My reading of A.B. 308 is a person who works in the loan-modification field will have to be licensed. This does not necessarily mean attorneys must follow the rules. The Committee counsel may consider adding clarification language

stating, "An attorney rendering these services does not have to be licensed, but he or she must conform to the law, "which is implied. Attorneys are not exempted from the law; they are exempted from licensure because they are already licensed with the Nevada State Bar. The counsel can make certain that is clear.

SENATOR COPENING:
That will help. Maybe my recollection from the 75th Session is we had exempted attorneys from provisions prohibiting collection of up-front money because attorneys are held to a higher standard and probably would not take advantage of people. We have learned differently. Would you be open to adding something to ensure attorneys could not take up-front money unless they truly deliver the same product as loan-modification consultants?

ASSEMBLYMAN CONKLIN:
I would support such an amendment as long as it was driven by consumer-protection interests.

SENATOR SCHNEIDER:
What is good for the goose is good for the gander.

BARRY GOLD (Director of Government Relations, AARP Nevada):
States should prohibit mortgage lenders, brokers, loan servicers and all other mortgage-related professionals from engaging in unfair, deceptive or unconscionable practices. The foreclosure process is very stressful to homeowners, who often try desperate measures to stay in their homes. Scam artists calling themselves foreclosure and loan-modification consultants have convinced homeowners to increase their difficulties or leave them worse off than before. Nevada should expand consumer protections, regulations and enforcement procedures to prohibit these professionals from engaging in those practices.

Assembly Bill 308 would provide clear and precise procedures regarding activities of foreclosure and loan-modification consultants and their employees. The bill also provides penalties for lawbreakers. The bill would help struggling Nevadans receive fair, honest and competent services. People must be able to trust those to whom they turn to try to keep their homes and that "professionals" claiming to help them actually will do so. On behalf of our 3,500 AARP Nevada members, we urge the Committee to pass A.B. 308.

MS. WALTHER:
A *Nevada Administrative Code* regulation specifies anyone who is doing foreclosure or loan-modification work who is not an attorney or is working for one must be licensed. The FTC is aware our licensees sometimes abandon their licenses because they cannot take advance fees and then go to work for attorneys as independent contractors. Those workers negotiate foreclosure proceedings with homeowners or lenders. Contacts at the U.S. Department of Housing and Urban Development tell me it is going to crack down on that situation. In independent-contractor situations, individuals doing those negotiations cannot receive any money until a lender receives an offer, and it is in writing that the homeowner has accepted it.

Attorneys' employees are included in FTC's advance-payment prohibition. Some attorneys do it correctly. They may have a paralegal and one clerical staff member to process the loan modifications. Other attorneys hire dozens—many former licensees—to do the loan renegotiations and pay them as contractors or hourly wage workers.

CHAIR SCHNEIDER:
I cannot believe attorneys would do the latter. In the 75th Session, two women asked the Committee if they could collect up-front fees. They were arrested shortly afterward by the Las Vegas Metropolitan Police Department for collecting the fees then not upholding their ends of deals.

ASSEMBLYMAN CONKLIN:
We made our best attempt in the 75th Session to safeguard up-front fees. From a business perspective, we were sympathetic that businesses need capital with which to operate. Senator Copening and I negotiated in good faith, but the reality is there are far more loan-renegotiation abuses than is perceived, not just in the State but nationwide. We just happen to have the largest market for them so we attract the largest number of lawbreakers. We are making a good law better.

SENATOR PARKS:
A media outlet made it look as though the individuals of whom we are speaking were the authors of this statute. That is a false perception. The individuals were here throughout the 75th Session, and despite all of the things they tried to get into statute, but the Committee kept its head about itself and put forward a good piece of legislation.

ASSEMBLYMAN CONKLIN:
Senator Parks is correct. You can tell from the 75th Session testimony and the Attorney General's actions since then, we have done some good things in the foreclosure-abuse area. However, just because we did it right, it was not perfect, because the art of compromise forces us to find common ground.

CHAIR SCHNEIDER:
We will close the hearing on A.B. 308. Seeing no further business before the Senate Committee on Commerce, Labor and Energy, I adjourn this meeting at 3:03 p.m.

RESPECTFULLY SUBMITTED:

Patricia Devereux,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance roster
A.B. 77	C	Nancy Corbin	Prepared testimony
A.B. 77	D	Ex-Senator Warren B Hardy II	Prepared testimony in lieu of Chuck Mohler
A.B. 130	E	Susan Fisher	Booklet "HARRP: New Opportunities"
A.B. 130	F	David Morton	Prepared testimony
A.B. 130	G	David Morton	Booklet: "Report to the Community"
A.B. 308	H	Assemblyman Marcus L. Conklin	Prepared testimony
A.B. 308	I	Assemblyman Marcus L. Conklin	Proposed amendment