MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
May 2, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:19 a.m. on Thursday, May 2, 2013, 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 nelis.leg.state.nv.us/77th2013. 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 Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Aaron Ford, Clark County Senatorial District No. 11
Assemblyman James Healey, Clark County Assembly District No. 35

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1
Senator Justin Jones, Clark County Senatorial District No. 9

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Thelma Reindollar, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Bill Uffelman, President and CEO, Nevada Bankers Association
George Ross, representing Bank of America
Cheryl Blomstrom, representing United Trustees Association
Keith Lynam, representing Nevada Association of Realtors
Jonathan Friedrich, Commissioner, Common-Interest Communities and Condominium Hotels
Alex Ortiz, representing Clark County
Keith Tierney, representing Civil Rights for Seniors and Senior Law Program of Northern Nevada
Philip A. Olsen, Private Citizen, Tahoe City, California
Ernest Figueroa, Chief Deputy Attorney General, Consumer Counsel, Bureau of Consumer Protection, Office of the Attorney General
Marlene Lockard, representing Retired Public Employees of Nevada
Barry Gold, representing American Association of Retired Persons
Venicia Considine, representing Legal Aid Center of Southern Nevada
Howard Watts, representing Progressive Leadership Alliance of Nevada
Tom Blanchard, representing Nevada Housing Alliance
Kristin Schuler-Hintz, Partner, McCarthy & Holthus, LLP

Chairman Frierson:
[Roll was called. Committee protocol and rules were explained.] We have a fairly heavy agenda today and with that, we will stay in order. I will now open the hearing on Senate Bill 278 (1st Reprint).

Senate Bill 278 (1st Reprint): Establishes an expedited process for the foreclosure of abandoned residential property. (BDR 9-134)

Senator Aaron Ford, Clark County Senatorial District No. 11:
Good morning, Chairman Frierson and members of the Committee. I am happy to be here today to present Senate Bill 278 (1st Reprint) for your consideration.

Before I get into the details of the bill, let me remind you of the scene. During this time last year, many of us were knocking on doors trying to get elected to a seat in this building. As probably many of you observed, certainly those in Senatorial District 11 such as Chairman Frierson and Assemblywoman Bustamante Adams, doors that you would walk up to you just knew that no one was there. In fact, no one had lived there. The weeds were overgrown; some of the windows may have been broken out; graffiti was all over the place; and there was trash in the yards. Those are the homes that this bill is talking about. According to the U.S. Census Bureau, 14.3 percent of Nevada homes were vacant in 2010. Across the various counties in Nevada, vacant home rates are reaching as high as 44 percent. A recent report by the Lied Institute for Real Estate Studies at the University of Nevada, Las Vegas shows greater Las Vegas alone has an estimated 80,000 vacant homes. Many of those homes are not just vacant, but are abandoned. The mortgages have not been paid; utilities have been shut off; homeowners' associations (HOA) dues have gone ignored; windows are broken or boarded up; doors are smashed and unsecured; fixtures and wirings are gone; yards are overgrown and unkempt; and, in a word, blight.

These crime magnets not only pose a risk to economic recovery, but they place the health, safety, and welfare of our public in imminent danger. Trespass, vandalism, and drugs find their way to abandoned homes with relative ease. Oftentimes, law enforcement is aware of these issues and is usually notified by neighbors who are not only concerned about property values and the esthetics of the neighborhoods, but also for the safety of themselves and their children. In a recent case out of Washoe County, a woman was forced to abandon her home she could no longer afford. The house was upside down. Not long thereafter, at least one individual took up residence in the abandoned home. This individual turned on the power and the water, but did not maintain the yard. The new tenant also entertained questionable individuals at all hours of the night. Needless to say, neighbors saw the writing on the wall, literally, and notified law enforcement. Law enforcement could not forcibly remove the occupant without legal authority from the owner and with utilities on, code enforcement could not find the property uninhabitable. Everyone, including the occupant, knew that they were trespassing, but law enforcement's hands were tied.

We all know the score and we know the challenges our constituents face every day. As responsive lawmakers, we have risen to meet many of the challenges by seeking fair and just legislation. Senate Bill 278 (1st Reprint) is one such measure. Specifically, it is well reasoned and well compromised—and by that, I mean, we had every interested group, with the exception of one or two, at the table for a work session three times to address blight created in our

communities by abandoned properties. Over the last few months, I have had the privilege again of working with representatives from the banks, homeowners' associations, law enforcement, legal aid clinics, municipalities, realtors, and title companies to make S.B. 278 (R1) the most efficient and responsive resolution to the problem we face.

This bill does so by establishing an expedited foreclosure process for abandoned property that not only shortens the time to sell, but exempts the home from the foreclosure mediation process. First, S.B. 278 (R1) defines what abandoned property is and most importantly, what it is not. Under section 2 of the mock-up amendment (Exhibit C), abandoned property is a home for which the bank or the owner has signed an affidavit attesting that all of the following conditions exist: the home is not occupied as a principal residence by the owner or any lawful occupant; the mortgage or loan is in default and the deficiency has not been cured; the gas, electric, and water utility services have been terminated; there are no children enrolled in schools residing from that address; payments such as retirement and survivor benefits, supplemental security income, and disability insurance benefits, unemployment compensation, or payments for public assistance are not being delivered to someone registered at that address. As long as we do not have someone receiving benefits registered from that particular address, then this provision is satisfied. An owner of the home can also not be serving in the Armed Forces or National Guard.

In addition to all of those, the owner or the bank must attest to at least two of the following conditions: construction was discontinued before completion, leaving the home unsuitable for occupancy and no construction has taken place for at least six months; multiple windows on the home are broken or boarded up; doors are smashed or continuously unlocked; the home has been stripped of wiring or interior fixtures; law enforcement officials have received at least one report of trespassing, vandalism, or other illegal acts being committed at the home within the last six months; the home has been declared unfit for occupancy under an order issued by the city, county, or a court; the local police, fire, or code enforcement has requested that the owner or other interested or authorized party secure the home because it is an imminent danger to the health, safety, and welfare of the public; the home is open and in reasonable danger of significant damage from the elements or to vandalism.

That is an extensive definition of abandoned property that must be met before you can even delve into the other components of this bill which would allow for that form of home to be expedited to a foreclosure process such that we can start to clear the blight up. Once someone actually owns the home again, they will have to start paying the homeowners' associations dues, maintain the yard, and comply with all other legal requirements. Importantly, there are exclusions

from the definition of abandoned homes. That is where, for example, construction is proceeding and is in substantial compliance with all regulations and laws. There is occupancy on a seasonal basis like a vacation home, but the home is secure. The home is secure with legitimate rental or sale signs on the property, or the home is listed in the Multiple Listing Services, or the home is secure but also the subject of a legal action.

Moving on, section 3 of the mock-up allows counties and cities to establish registries of abandoned properties, or property that may be in danger of being abandoned. I should point out that abandoned property registries have already been established in Clark County, for example. In unincorporated Clark County, over 1,500 homes are currently listed as abandoned with an estimated 13,000 additional homes that could be listed. [Senator Ford continued to read from (Exhibit C).]

The mock-up also allows a homeowner to surrender their home in writing or by delivery of the keys to the bank as long as they waive mediation. Within 90 days of surrender, the bank may record their notice of default or execute a deed in lieu of foreclosure. In this scenario, a bank may not record a notice of sale sooner than 45 days after recording the notice of default. Finally, S.B. 278 (R1) has an effective date of July 1, 2013, and will sunset on June 13, 2017, just so we can see if this process works and is worthy of continuing. It could not be clearer in my view that in order to remove blight, we need to get these abandoned homes to the market. Our communities need S.B. 278 (R1). Our neighborhoods and constituents are demanding it as well. Thank you, Mr. Chairman and members of the Committee. I am happy to answer any questions.

Chairman Frierson:
Thank you, Senator, and thank you, my Senator, for bringing this measure forward. We have talked about this issue for months, and there were several of us interested in proposing measures on this matter and I could not have done as capable of a job myself so it was my pleasure to let my Senator do what he does and work with folks to come together with some consensus language. I may be biased because my name is on it, but I appreciate the hard work that you have done to bring this matter to our attention. Are there any questions for Senator Ford?

Assemblyman Wheeler:
Senator, thank you for bringing this forward. I see the intent of this bill and I think it is a good intent. In the example you gave of the lady in Washoe County who lost her house and someone moved in, on page 3, lines 8

and 9, if the gas, electric, and water utility services are not terminated, would that not preclude the bank from coming back in that particular example?

Senator Ford:
Part of the issue is we will need to demonstrate that the person who is living there is not living there lawfully. Additional things can be done as a precursor to being able to utilize this in circumstances that I have described. I just wanted to give an actual documented case that was in the newspaper to demonstrate the type of home we are ultimately trying to get at.

Assemblyman Wheeler:
On page 4, line 32, where a house may be in danger of becoming abandoned, how do we know a house may be in danger? Who decides that?

Senator Ford:
That is a fair question. The inclusion of that language was specifically placed in there by request of one of the two municipalities in southern Nevada, either Clark County or the City of Las Vegas. They already have a registry of homes in danger of being abandoned. I am not certain how their determinations are made, but they specifically requested that we include this language because we do not want to preclude them from being able to continue with normal operations.

That reminds me, if I may, there is one amendment forthcoming that expressly states that nothing in this bill prohibits a county, city, or municipality from using other approaches to address this issue. It does not preempt or trump other ordinances that deal with abandoned homes. I consider that a friendly amendment. That is the rationale because some counties have already attempted to start addressing this, and they have registries that would classify as homes that are about to be abandoned, if you will, and I wanted to protect those.

Assemblyman Wheeler:
I understand that. I really like this bill and I think that we do need to get this done. I am wondering who decides when a house may be in danger of being abandoned? Can that create some problems because someone decided a house may be abandoned so let us go ahead and start the foreclosure on this, but someone is still living in it?

Senator Ford:
Is your question, who determines, under this bill, if a home is abandoned?

Assemblyman Wheeler:
No, who determines if a home is in danger of being abandoned?

Senator Ford:
This bill would not purport to make that determination. What this bill does do is allow the city, municipality, or county to endeavor to make that determination and to do that however they have defined it in their own ordinances.

Chairman Frierson:
Thank you. Are there any other questions from the Committee?

Assemblywoman Fiore:
Thank you, Mr. Chairman. Thank you, Senator Ford, for bringing this forward. My question is on section 2, line 10, defining the home within a subdivision. If the home is not in a subdivision, is it not subject to this bill? How would we look at homes that are not in subdivisions?

Senator Ford:
As I read the definition of abandoned, the home may not consist of more than four family dwelling units, or a single-family residential unit, including without limitation. What follows are not limited to that.

Assemblywoman Cohen:
Senator, there is a reference to occupied residence in the mock-up on page 3. We have all heard stories about people who go into foreclosure of a home that they have tenants in and the tenants do not know that there is a foreclosure going on and they continue to pay rent. Do they fall into that category of a lawful resident?

Senator Ford:
Let me restate your question so I make sure what you are asking me. Someone who has signed a rental contract who believes they are living in a home that is under a mortgage and the mortgage is being paid, are they considered a lawful resident? Is that what you are asking me?

Assemblywoman Cohen:
Right, although I do not know that they are always necessarily signing a rental contract, but they are paying rent to the owner and they believe they are doing what they need to do. I just want to make sure they are taken care of. Sometimes the owners may not be paying the HOA dues, or not taking care of the outside or even the inside of the home. For all intents and purposes, they may be abandoning the property even though they are taking the rent.

Senator Ford:
Frankly, that is a great question, a fair question, I think. In my view, we may have to delineate that as an exception. An inquiry would have to be made as to whether that person is a lawful occupant. I would consider a person who has, in good faith, agreed to pay rent to someone to live in a home, a lawful occupant. It could very well be that a bank, or a person interested in using this process, would have to make an inquiry and, first off, let that person know this house is underwater rendering him an unlawful occupant, and thereafter being able to utilize this statute.

Chairman Frierson:
The foundation of this bill started with some language from a couple of other states, including Illinois, where the lawful occupant was essentially considered to be somebody who is not trespassing or otherwise breaking the law. There is precedent in other jurisdictions for the terminology.

Assemblyman Ohrenschall:
Thank you, Mr. Chairman and Senator Ford. I want to commend you and Assemblywoman Spiegel and the Chairman for all your hard work on this issue. I do have a concern and wondered if you could address this scenario. I live alone. I have no kids in school. I have been laid off from my job here in Las Vegas and I have fallen behind on my mortgage payments. So I leave for three months to go work a seasonal job in Colorado. I put a hold on my mail. There have been a lot of foreclosures on my street. I do not know many of the neighbors. It turns out that one of the neighbor kids busted in the back door and has partied in the house a few times with his friends, but I do not know about that because I am off working in Colorado. I just wonder, under S.B. 278 (R1) with the amendments and it passes into statute, do you think the person in that scenario would be protected, this person who is trying to do the right thing but, because of circumstances, is not there and does not know what is happening, but is trying to work and to save the American dream?

Senator Ford:
There is an opportunity for that individual you just described to have a home that would otherwise be declared abandoned declared as not abandoned. If he is gone three months, there is an opportunity to come back and file an affidavit with the recorder to indicate his home is not abandoned. That individual you just described may very well be the subject of an expedited foreclosure process. What you have highlighted is a very good hypothetical of a very minute number of situations. Clearly, our statutes cannot always protect everyone. We are not trying to affect negatively the person you just described. At some juncture, we would hope that this individual is going to be able to reach out and let someone know that he is not abandoning this home.

Chairman Frierson:
Are there any other questions from the Committee?

Assemblyman Martin:
Good morning, Senator. Excellent bill. It is very well thought out. I do have a question that you can clarify. Is it possible that a homeowner who is trying to resolve issues with the bank can be forced by the bank into foreclosure or a listing as an abandoned property under this bill, or is there some kind of protection to the homeowner?

Senator Ford:
To answer your question, the short answer is no. I do not think a bank can force anyone into the abandoned expedited process for foreclosure because, as indicated, the very first requirement is that it is, in fact, abandoned. It is not the lawful residence of someone who is living there. To the extent the individual who is living there does not self-abandon and tender the keys, the initial prong for declaring the home abandoned will not be met.

Assemblywoman Dondero Loop:
Would you address how this affects homeowners' associations? Many times what has happened when I have knocked on doors, I have found abandoned homes and, when I questioned it, the HOA has told me they cannot do anything about it.

Senator Ford:
I am not certain this bill would affect HOAs beyond the HOA becoming a beneficiary of a home being subject to the expedited foreclosure process. Homeowners' association dues that are not being paid will ultimately end up being paid after the foreclosure has taken place because the new owner will be subject to the covenants, conditions and restrictions (CC&Rs) that the HOA has in place. If your question is whether, for example, the HOA can invoke this bill, I do not foresee that as being allowed under the bill. Only those who are beneficiaries under the deed of trust, whether it is the bank or a real estate investor, is able to utilize these functions outside of the actual occupant of the home being able to use it.

Assemblywoman Dondero Loop:
I have had HOAs say to me that they would like to water the grass, would like to make sure the home was kept up, or would like to follow through on some legal matter, but they are not able to do that.

Senator Ford:
I do not think this bill would address that. It shields a beneficiary of the deed of trust, the bank, from trespass and liability when they try to confirm abandonment. A friendly amendment that comes to mind shields the city, county, or municipality from liability and trespass when it goes in to confirm abandonment, but it shields no one else. If the HOA wants to come in and do work, this bill would not protect them from that. I do not know if there is other legislation that seeks to address that.

Assemblyman Carrillo:
Thank you, Senator, for bringing this bill forward. If somebody has a reverse mortgage where the property has not been lived in for some time because, for example, the owner is terminally ill, has had to go to hospice, and does not have any relatives close by, what happens to the home that appears abandoned where nobody is really watching after it? Would that person have protection under this bill while in hospice because with the reverse mortgage, the bank is not going to come in until after the person passes on.

Senator Ford:
As I understand reverse mortgages, the equity in the home is being used to pay the monthly mortgage amount. Is the question whether the person in hospice can be declared to have abandoned their home under this statute?

Assemblyman Carrillo:
Yes.

Senator Ford:
You may have come up with another hypothetical event I think that is few and far between. Whether someone would invoke this statute under those circumstances, I could not tell you. I cannot tell you whether they will have the ordinary protections that are contemplated under this because, as I have indicated, if all of the conditions are being met as outlined in the bill, it runs the risk of being declared an abandoned property. It could very well be that we get some folks who are not intended to be addressed with this. I think the scenarios that you and Mr. Ohrenschall gave are extreme examples that are not the norm for the 13,000 abandoned homes in Clark County that are eligible to be listed on the abandoned homes registry.

Assemblyman Carrillo:
I feel that if it is one constituent that has that situation, it is one too many. I understand the 13,000, but if it is a constituent of yours, you want to make sure that constituent is taken care of.

Senator Ford:
We would be happy to entertain an amendment, Mr. Carrillo, if you want to submit something for consideration relative to addressing that concern. I do not disagree with you that one is too many. What I am saying is that no bill can avoid all unintended consequences.

Chairman Frierson:
Following up on that, I will ask a question that I think is the basis of my understanding of the bill. Currently a property can be declared a nuisance or unlivable depending on how bad the condition of the property has gotten. In the absence of this bill, there is: (a) a lack of a paper trail; and (b) no efforts to contact the appropriate person. In many instances, the existence of the steps that are put forth in this bill provide the extra efforts to reach out to contact the appropriate people to avoid a property being unnecessarily declared a nuisance or otherwise impacting the homeowner or the tenant in a way that they might otherwise not have a mechanism to get notice.

Senator Ford:
I think that is exactly right. The prime example is the notice is going to be on the front door. If someone does see a home that has a notice on the door, they very well may ultimately get notice because maybe a neighbor does know the person who is in hospice and is able to let someone know their home is in danger of being declared abandoned. These are hypotheticals that have just as many outcomes as they do abilities for drafting a hypothetical. I think some of the safeguards we have placed into this bill provide additional notice that otherwise would not take place absent this piece of legislation.

Chairman Frierson:
Are there any other questions from the Committee? Seeing none, again, thank you, Senator Ford. I will now invite those in Carson City who wish to provide testimony in support of S.B. 278 (R1) to come forward.

Bill Uffelman, President and CEO, Nevada Bankers Association:
We have worked closely with the Senator on this bill and we appreciate all his efforts. We support the bill. If I may, Assemblyman Carrillo, speak to your concern with the person who has a reverse mortgage. They cannot default on the mortgage. Even though the property may look abandoned, the fact that the mortgage holder, the bank, is not pursuing it takes it off the table. It may be declared a nuisance by the city or the county, but that is a different process from this process. As long as the person is living relative to that reverse mortgage, they are in good standing. In response to Mr. Ohrenschall's example, I thought you said the individual was still paying his mortgage, that he left to work at a seasonal job out of state.

[Vice Chairman Ohrenschall assumed the Chair.]

Vice Chairman Ohrenschall:
Mr. Uffelman, the person in my example had fallen behind in his mortgage payments, but he was still hoping to save the house. He thought everything was on hold but did not know that a kid had broken in the back door.

Bill Uffelman:
Yes, I understand the issue. This process is, in addition to and in substitution for, the normal foreclosure process with mediation. You do not get to this one unless it really, really looks abandoned.

Vice Chairman Ohrenschall:
Are there any questions for Mr. Uffelman? [There were none.] Thank you for your testimony.

George Ross, representing Bank of America:
I am representing Bank of America which supports S.B. 278 (R1), and we appreciate the opportunity to work with Senator Ford. As others described, he reached out and we had an outstanding environment in which to develop this bill with a lot of input. He did choose to begin it with the bill that, of all the ones that are in the country, seems to have the most prospect of success. None of them have worked as well as everybody hoped. I do not know if anybody has ever put as much work into a bill of this type as Senator Ford has. He has really worked hard on this. We appreciate the opportunity to support him on this bill and we are in great hopes that this bill accomplishes its purposes.

I would add one comment in response to a number of general comments of the Committee. A lot of bills have unintended consequences, one of which was Assembly Bill No. 284 of the 76th Session. One of those unintended consequences was an almost cessation of foreclosures. That is a big reason why there are so many abandoned properties, because banks do not own them. Consequently, they cannot go on that property and maintain those properties so that is one of these orphans. I know they drive HOAs and neighborhoods crazy, but the banks cannot do anything about it. Once they own the property, before they sell it or rent it, then they can go in and maintain. But until that happens, they have had this hiatus for over a year now.

Vice Chairman Ohrenschall:
One question I have is if S.B. 278 (R1) does pass, do you foresee your client being able to move a lot of houses back into inventory?

George Ross:
It is hard to say just how many would be done with this. Those that were financially advantageous to do so, I would say they will take advantage of it. There are financial decisions as to which option they choose. There will be a number of cases where that is the case and they will. I would also say there are many others where they will just use the normal procedure.

Vice Chairman Ohrenschall:
Thank you. Are there any questions from the Committee? [There were none.]

Cheryl Blomstrom, representing United Trustees Association:
You have heard a lot of testimony this morning. We very much appreciate working with the sponsor of the bill and feel that our input was received well. We are very grateful to have the compromise bill you have in front of you today. We support S.B. 278 (R1).

[Chairman Frierson reassumed the Chair.]

Chairman Frierson:
Thank you very much. Are there any questions from the Committee? Seeing none, is there anyone else in Carson City wishing to offer testimony in support? I will go to Las Vegas and invite testimony in support.

Keith Lynam, representing Nevada Association of Realtors:
As the legislative chairman for the Nevada Association of Realtors (NAR), I would like to echo previous comments. We appreciate Senator Ford and the sponsors of this bill working so hard and tirelessly to address what we think is one of the most pressing issues that we face in Nevada. In our "Face of Foreclosure" report that the NAR put forth, we put the spotlight on abandoned homes to address some of the concerns that have been expressed by the Committee. We feel there are thousands and thousands of truly abandoned homes this market can absorb literally within days if we have that process.

A couple things with regard to the examples brought up is that it is incumbent upon the delinquent homeowner to keep the communication going between the financial institution so that it does not rise to that level of abandonment whether they are living in the home or not. We think that there is still a responsibility to keep those communication lines open. We are comfortable with the process and have always discerned the difference between an abandoned home and a vacant home. The flip side is that it is our hope the financial institutions do take advantage of this abandoned homes process and to remove these properties from the blight they are causing on our neighborhoods and what we call the recovery to the housing market. These abandoned homes truly stand in the

way to recovery. Nevada Association of Realtors is proud to support this and we thank the Senator for bringing the bill forward.

Chairman Frierson:
Thank you, Mr. Lynam. Are there any questions from the Committee? Seeing none, is there anyone in Las Vegas in support of S.B. 278 (R1)? I will invite anyone wishing to offer testimony in opposition to S.B. 278 (R1) to come forward. Mr. Friedrich, I invite you to go first.

Jonathan Friedrich, Commissioner, Common-Interest Communities and Condominium Hotels:
Thank you, Mr. Chairman. For the record, I am a homeowner representative on the Commission for Common-Interest Communities and Condominium Hotels. I am speaking as a Commissioner with the full authority and consent of the Chairman. Based upon the Committee's rules, we are technically opposed because we offered an amendment that was submitted to the Senate on April 12, 2013, and it never made it into the bill on the Senate side. The members of the Commission ask that it be reintroduced. A letter was sent on April 27, 2013. It is a minor amendment (Exhibit D) which reads, "That the information on the registry only be viewed by a government agency, local police, fire department and a lending or financial institution." That is the extent of the amendment.

With regard to Ms. Dondero Loop's question on going onto private property in a homeowners' association, there is an existing statute, NRS 116.310312, that does allow someone from the association to go onto the property, exterior only, to try to maintain it. So there is some coverage there in trying to maintain the property.

The original letter from the Commission dated April 12, 2013, unanimously supported the bill. Thank you. I will try to answer any questions you may have.

Chairman Frierson:
Thank you, Mr. Friedrich. Are there any questions from the Committee? I would only ask that you make sure to coordinate with the sponsor of the bill so that we can have something in writing as to whether or not the sponsor deems it to be a friendly amendment or not.

Jonathan Friedrich:
Mr. Chairman, a copy of the April 27 letter was sent to Senator Ford and Senator Jones.

Chairman Frierson:
Thank you, I have it. That just does not relieve you of the obligation to communicate with the sponsors. Until they say so in writing or on the record, it is not considered a friendly amendment. I am just suggesting that, if it is something you are interested in furthering, you coordinate with the sponsor, and the sponsor can so indicate it if it is something he believes is consistent with his intent.

Jonathan Friedrich:
Thank you, sir. I will reach out to them.

Chairman Frierson:
Thank you. Are there any other questions for Mr. Friedrich? I see Mr. Ortiz and I am going to ask you a follow-up question about Mr. Friedrich's amendment.

Alex Ortiz, representing Clark County:
We appreciate the efforts of Senator Ford on this measure. We have worked closely with him and have been a part of this discussion throughout the session here. By the rules of the Committee, we must sit in opposition because we do propose a friendly amendment (Exhibit E) which I have spoken to Senator Ford about. The amendment has four parts to it. I am going to talk about the last three and then come back to the first.

Number two on our amendment essentially says to change the fee for certification for not more than $300 to recapture costs. As the mock-up indicates, that has already been addressed there. The third part of the amendment clarifies that the law does not prohibit continued enforcement of existing codes, regulations, or ordinances that are in place by local government. We do have, under Title 11 of the Clark County Code, Section 11.06.070, Abatement of Public Nuisances, a process where there is a registration and maintenance of abandoned residential property. It is a process that has been in place for a couple of years and it has been working fine for us.

The final part is that local government should be granted legal immunity from performing the certification process of abandoned properties or properties in danger of being abandoned. Part of that, I believe, was also captured in the proposed mock-up on page 6 which states "for any civil damages as a result of any act or omission, not amounting to gross negligence, or for trespass." We just want to ensure that also would cover wrongly certified homes. That is the intent of our amendment.

I will come back to the first one which is designate a contractor to perform the certification. The reason is our resources are personnel, our staff, and we are

very slim in that area of code enforcement. We essentially have 13 code enforcement specialists who are responsible for approximately 12,000 cases per year. This equates to about 46 cases per day. Our specialists are out in the field on a daily basis responding to inquiries. It is beyond just the homes and abandoned homes. They respond to graffiti abatement, green pools, inoperable vehicles, shopping carts, and all sorts of issues. So we respectfully request to be given the ability to contract this out to somebody who, interestingly enough, we already use for the registration process. That is essentially the four parts to our proposed amendment. If you have any questions, I would be glad to answer them. Thank you.

Chairman Frierson:
Thank you, Mr. Ortiz. Are there any questions for Mr. Ortiz? My question is related to the amendment proposed by Mr. Friedrich. What is the county's current system with respect to the confidentiality of that information and whether or not it is only made available to local government and law enforcement, or if it is otherwise available.

Alex Ortiz:
I do not have an exact answer, but I can comfortably say that it is kept confidential.

Chairman Frierson:
Thank you. Would you provide the Committee with a copy of the ordinance that sets up the registry? It makes me wonder if that other language is necessary if the ordinance itself incorporates confidentiality.

Alex Ortiz:
I sure will. I have it in front of me here but I do not recall the specific provision.

Chairman Frierson:
Thank you. Are there any other questions? [There were none.]

Keith Tierney, representing Civil Rights for Seniors and Senior Law Program of Northern Nevada:
Assemblyman Carrillo, I appreciate your hypothetical. I am here to say that hypothetical is real. Civil Rights for Seniors was contacted by an heir after the grandmother became ill and went into a convalescent facility and then died. Before the out-of-state heirs could come and even get a summary administration on the estate, the house was foreclosed. The house looked like it was abandoned because no one was taking care of the house because the woman was in a convalescent hospital and then died. Even under a summary administration, which took 60 days, the heirs could not obtain any kind of relief

in order to then start talking to the bank and, by the way, the heirs were not allowed to talk to the bank because they had no order on the summary administration.

Given that seniors are the fastest growing population in Washoe County and in Carson City, those 85 years of age and older are also a fast-growing population. With the illnesses that are facing our seniors, I would ask you to reflect on that particular aspect of this bill. Also, there is a question about being relieved of trespass liability which raises Fourth Amendment unreasonable search and seizure which we asked this Committee to examine in a letter we submitted (Exhibit F). Thank you.

Chairman Frierson:
Thank you. Are there any questions from the Committee? Seeing none, is there other testimony in opposition?

Philip A. Olsen, Private Citizen, Tahoe City, California:
Good morning, Mr. Chairman and members of the Committee. I am a member of the State Bar of Nevada. I represent a number of homeowners; however, I am speaking today only on behalf of myself.

I have looked at this bill and I am seriously concerned about the Fourth Amendment constitutionality question. What this bill does is it authorizes an agency of the state of Nevada to enter a private residence without a warrant. Warrantless searches of people's homes violate the Fourth Amendment to the *U.S. Constitution*. I am also concerned about the right of privacy recognized by the Supreme Court in this state. This bill authorizes the beneficiary who has a reasonable belief that the property may be abandoned to enter a person's residence. I also have concerns about the notice provisions. First, there is notice to the homeowner. There is no provision giving the homeowner the right to notice or an opportunity to be heard prior to the county agency entering the person's home. That would appear to violate the due process clause of the Fourteenth Amendment to the *U.S. Constitution*. And finally, I question the rationale behind this. What the bill does is it shortens the period of time between the notice of default and the notice of sale from 90 days to 60 days.

Chairman Frierson:
Thank you, Mr. Olsen. My first question is, have you spoken with the sponsor of the bill?

Philip Olsen:
No, I have not.

Chairman Frierson:
That is protocol and a courtesy because, oftentimes, issues can be worked out beforehand.

Philip Olsen:
I apologize. I was not aware of the provisions in this bill until it was too late.

Chairman Frierson:
The sponsor of the bill is an attorney, as is the cosponsor, as is the Chairman. The Fourth Amendment applies to the state and its agents in a criminal context. Would you elaborate on how this is related to anything criminal or anything related to law enforcement or their agents.

Philip Olsen:
I disagree. I do not believe that the Fourth Amendment is limited to criminal contexts. The Fourth Amendment prohibits searches of private residences without a search warrant regardless of whether there is a criminal proceeding.

Chairman Frierson:
Are you aware of search warrants that are ever issued in noncriminal matters?

Philip Olsen:
No, I am not. The government cannot go into somebody's house without their consent for whatever purpose and that is what the Fourth Amendment prohibits and that is what this bill would allow.

Chairman Frierson:
The remedy in a Fourth Amendment issue is, if evidence is obtained in violation of the Fourth Amendment, that evidence is not admissible.

Philip Olsen:
That is one remedy. Another remedy is that the person whose Fourth Amendment rights have been violated may sue in federal district court under 42 USC § 1983 for civil damages against the person who, acting under state law, has violated a person's constitutional rights.

Chairman Frierson:
Are you aware of any 1983 acts that did not arise out of an original criminal context?

Philip Olsen:
I am not.

Chairman Frierson:
I would ask that you communicate with the sponsor as I always do before a hearing so that we can get as much information as we possibly can and avoid wasting time if there are areas that we can maybe agree on and remedy before we have a hearing.

Philip Olsen:
I appreciate that.

Chairman Frierson:
Are there any other questions from the Committee? Seeing none, is there anyone else wishing to offer testimony in opposition to S.B. 278 (R1) either here or in Las Vegas? Seeing none, I invite those both in Carson City and in Las Vegas wishing to testify in a neutral position to come forward. Seeing none, I invite Senator Ford back up for any closing remarks.

Senator Ford:
Thank you, Mr. Chairman. I will endeavor to address a few of the issues that were raised, most for the first time. I will talk a little bit about the contractor immunity issue that Mr. Ortiz brought up. He did mention that to me, and I have indicated that, of the four proposals in his amendment, I can accept the last three. I am a little concerned about the first one because the inclusion of the governmental entity in this process was by request of Legal Aid of Southern Nevada just to ensure that there is a check and balance, if you will, and that there is a neutral third party who is visually determining and checking off on what a beneficiary has stated as reason for vacancy. I am a little concerned about bringing in a contractor. One reason is because that is one step removed from the municipality that was requested by Legal Aid to be included. I would much rather keep Legal Aid appeased in that regard.

Secondly, we are offering the municipalities immunity from their determination as to whether or not the affidavit has been sufficiently checked. If two things are said to have been used to verify abandonment, then all that the municipality has to do is go out and check those two things. It is not requested to check the litany of other things in the statute to declare it abandoned. I think the benefit certainly outweighs the burden when it comes to clearing up the blight that we are talking about.

I will not endeavor to get into a constitutional debate on the Fourth and Fourteenth Amendment issues. I, too, have my understanding about it. I am not quite certain that this bill invokes those issues and, frankly, had I been addressed or these been brought to my attention, I would have gotten an opinion from the Legislative Counsel Bureau (LCB) so that we could have

assured ourselves that there was no issue. I will, in fact, go back now and ask LCB to look into it just because it has been raised.

As regards to rationale for this bill, it cannot be clearer. We have abandoned homes that are messing up our neighborhoods the banks can do nothing about. Our neighbors are asking us to deal with it and we, as legislators, have an opportunity to address the situation. That is the rationale. The fact that we add 30 days on the front side before beginning the foreclosure process, I think militates in favor of this bill. Why? Because we are attempting to ensure that we do not mistakenly declare a home abandoned. So why that is a complaint for the bill, I am at a loss to understand.

Chairman Frierson:
Thank you, Senator. My question is whether you addressed the proposal or had an opportunity to review the submittal by Mr. Friedrich.

Senator Ford:
Thank you for reminding me about that. I have the exact same response that you did, Mr. Chairman, as to whether it was a necessary proposal. Some municipalities already have their registries set up. This bill authorizes other organizations or municipalities to set up their own registries. I would respectfully request, as you have, that we take a look at the ordinance as already exists to make certain that such an amendment would not be superfluous.

Chairman Frierson:
Thank you, Senator. Is there any follow-up?

Assemblyman Wheeler:
Senator Ford, thank you for bringing this forward. I think it is a good bill. One of the things we might want to look at is the Interim Finance Committee's (IFC) ability to make changes as this bill goes forward. So if there are mistakes that are being made or if there are complaints, we can always come back to the IFC and make those changes. Thank you.

Chairman Frierson:
Mr. Wheeler, I am not entirely sure that is the way that would work. I think that Senator Ford is open to suggestions and ways. The IFC did refine this, and you may be talking about the Legislative Commission. They still make recommendations. I do not know if they can necessarily make legislative changes. I think LCB is certainly able to make changes that are corrections such as typos and things of that nature.

That being said, thank you very much, Senator Ford. I will close the hearing on S.B. 278 (R1) and now open the hearing on Senate Bill 321 (1st Reprint).

Senate Bill 321 (1st Reprint): Enacts a "Homeowner's Bill of Rights." (BDR 9-748)

Assemblyman James Healey, Clark County Assembly District No. 35:
Good morning, Mr. Chairman and Committee members. Thank you very much for your consideration of this very important bill for all our constituents in the state of Nevada. As you have heard this morning with the previous testimony, foreclosures and abandoned properties are a huge problem for our state. We are excited to bring forth this morning a bill that we classify as the Homeowner's Bill of Rights. Senator Jones has worked tremendously hard, along with many of us, to ensure that we put into statute some law that will protect our homeowners.

In consideration of Assemblywoman Kirkpatrick's time, Mr. Chairman, if I may allow her to give her testimony as I know she has stepped away from another meeting to be here, and then I will come back to comments if that is alright with you.

Chairman Frierson:
Thank you, Mr. Healey, and certainly, Assemblywoman Kirkpatrick, welcome.

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:
Good morning, and thank you for the opportunity to be before your Committee. Mr. Chairman and Committee members, I just want to reemphasize the importance of doing something to keep our folks in their homes and to keep our neighborhoods as they were intended. There are currently a little over 16,000 properties that are in the foreclosure status. In Assembly District No. 1, we have 263 filings for every 1,000 residents. So I truly know the importance of the foreclosure process. Although the foreclosure rate is going down—the number of properties received for foreclosure filings in the United States, as of February is 25 percent lower—Nevada still has a long way to go in order to be on par. Specifically, my district is comprised of some older, as well as some new, subdivisions. When times were good, there were houses that sold for over $300,000 and the tax rolls on them will show they are now valued at about $75,000. So, not only is it a huge hit to the local government, it is a huge hit to the neighborhood. We spent much of the city's time for many years trying to have a nice planned development that we could bring to our city that now sits predominantly vacant. The folks that are there cannot even enjoy the services that they bought into. I wanted you to know the importance it has to me and my district. I want nothing more than to get those houses filled with

residents who are paying their property tax and are contributing to the community, but we just have not figured out how to get there. I do believe that this helps the situation and I would hope that you take it under consideration. I am happy to take some questions if you have any. Thank you.

Chairman Frierson:
Thank you, Assemblywoman Kirkpatrick. We appreciate your making the time to come here to show the Committee that this is something that is important to you and in your district as well. We have not gone through the provisions of the bill but preliminarily, does anyone have any questions for Assemblywoman Kirkpatrick? Seeing none, thank you.

Assemblyman Healey:
Thank you, Assemblywoman Kirkpatrick. Senator Jones and I constantly hear the frustration and the cry for help from our constituents. I represent Assembly District No. 35 which has the third highest number of foreclosures in the state. Walking door to door and talking to constituents in our community, we hear the frustration in dealing with a system that is broke and does not make it easy for those families who truly want to do the right thing. This bill will allow the residents of Nevada an opportunity to take necessary steps to do everything possible to stay in their homes. What does that mean to our communities? That means we do not have, as Senator Ford earlier presented, all of these abandoned homes, homes that people have been forced to walk away from because they cannot get a response from their lender. People are upside down far beyond recovery, but they want to stay in their homes. Their kids are in the schools in those neighborhoods and they have met their neighbors.

A personal experience I will share is that I lived in Henderson for 13 years. I owned a home there. Fortunately, I still have a job outside of my legislative life. However, my house was terribly upside down even 13 years after I bought it. I tried to contact my lender to see what my options were. I got the runaround for months. This went on for almost a year until finally they said, sorry, you do not qualify to refinance. So I asked them what my options were. I had been paying my mortgage, but I needed some help because it was a struggle. The bank said the best thing you could do is go into default and then short sell. I had no choice but to stop paying my mortgage because that is what I was told was my option. I did exactly what the bank instructed me to do. I went into default and, of course, we all know what that does to our credit, and then I started the short sell process which took an additional nine months to complete. So I was forced to leave my home.

These are the types of stories that we, as legislators, should not stand for. There are several bills before us this session that give our homeowners the rights that they need to do what they can to stay in their homes. If there comes a time in the process where they cannot stay in their homes—and that is going to happen because people are over their head and cannot afford to stay in those homes whether they get refinanced or not—there needs to be a clean, clear, efficient process so homeowners know what their options are, and to be able to get out gracefully.

We are very excited with S.B. 321 (R1). This is the Nevada Homeowner's Bill of Rights, and I would like to just give you a few bullet points of what the intention of our bill is. It will require borrowers to be sent a foreclosure notice, a preforeclosure notice with information about their loan, and options on how to avoid foreclosure. Mortgage servicers are barred from starting foreclosure without first contacting a homeowner via phone or mail to evaluate the homeowner for the loan modification options first. We want to be able to evaluate the homeowner and then understand what options actually pertain to that homeowner's situation.

Next, mortgage servicers shall serve as a single point of contact so that we can continue to progress and make sure that we have someone who understands who we are, what our case is, and we do not have to go through the frustration of getting nowhere every single time a call or contact is made.

Mortgage servicers must give borrowers who submit a loan modification application a yes or no decision with an explanation before the servicer commences the foreclosure process. We have residents sitting out there who have no idea what the status of their application is and then all of a sudden they get a foreclosure notice. That has got to stop.

Mortgage servicers are barred from dual tracking. This is the practice of sending a file to the foreclosure department while the homeowner is being considered for a loan modification.

Chairman Frierson:
Mr. Healey, there are some members that will have to leave but they have questions they would like to ask.

Assemblyman Duncan:
Thank you, Assemblyman Healey and Senator Jones. Looking through all the exhibits that were posted on the Nevada Electronic Legislative Information System (NELIS), I have seen a lot of exhibits about the Consumer Financial Protection Bureau (CFPB). The mortgage servicing rules that were established

by the Attorney General in the National Mortgage Settlement are over 300 pages and deal with the types of things you are talking about. I am curious how S.B. 321 (R1) differs from those national servicing rules? How is this bill giving more protection; how do they differ? [See (Exhibit G) and (Exhibit H)].

Senator Justin Jones, Clark County Senatorial District No. 9:
One is the National Mortgage Settlement agreement. That is an agreement that applies to the top five banks that all signed on. Forty-nine attorneys general agreed to the provisions. What this legislation focuses on is applying the National Mortgage Settlement agreement rules to the other servicers that are not covered. That is really the genesis of this particular bill.

With regard to the CFPB, I have certainly had discussions, but here is my concern. The CFPB was created in 2011 and it has been operating without a director confirmed by the Senate since its inception. A few days ago, a House committee banned the acting director, Richard Cordray, from even appearing at a hearing. The CFPB's existence is tenuous at best and could be defunded or eliminated at any time. I appreciate the concerns and know that there have been one or two other states that have looked at that option. I think we need rules here in the state of Nevada that we know are going to get enforced.

Assemblyman Duncan:
Do you know approximately how many entities will be subject to S.B. 321 (R1)? Again, clarify for me if I am wrong, but the scenarios that Mr. Healey was talking about with regard to loan servicers and mortgage agencies, they have to abide by some of the things that he was talking about already. Is that correct?

Senator Jones:
Again, you are mixing two different concepts. One is the National Mortgage Settlement and I said there were multiple servicers that are not covered by the National Mortgage Settlement agreement. The CFPB covers potentially all servicers. Just to be clear, there are two different concepts there.

Chairman Frierson:
I know that we have a chart (Exhibit G) that compares the provisions in S.B. 321 (R1) and CFPB. We will be able to go further into that once some of the other testimonies are presented.

Assemblywoman Fiore:
Thank you for bringing this bill forward, and as you see, my district is number one (Exhibit I) with foreclosure notices. It is a huge problem. I am just nervous that it might be set up to fail. As a person goes through the foreclosure

process, their credit gets ruined and then how are they supposed to refinance if their credit is ruined?

Assemblyman Healey:
Thank you, Assemblywoman Fiore. The intent of this bill will prevent that scenario from even happening. The scenario that I shared earlier would not happen under this bill. The Homeowner's Bill of Rights, S.B. 321 (R1), sets a process in place to avoid a person from going into default immediately. There are foreclosure avoidance programs put in place that are offered first. Those were not offered to me then but they would be offered now under this. This just ensures that the state of Nevada will always have these provisions in place.

Assemblywoman Fiore:
As soon as you are 30 days late on your mortgage, the three credit bureaus will start dinging your credit. That will not get stopped so your credit scores, going through this process will not enable you to refinance at the end of this process, unless you are going to put in an amendment that says that credit scores do not matter.

Senator Jones:
We are not going to solve every problem with this bill. I cannot prevent the credit rating agencies from damaging someone's credit score because they have defaulted on their mortgage. What I will tell you is that this provides a process so that you, a homeowner, can have assurance that you are going to get action from a lender.

Assemblyman Martin:
When you were drafting this bill and speaking about it with others, what was the reaction of the banks when you came up with this proposal?

Senator Jones:
I have been in contact with the lenders. We have homeowners who have loans through the five top banks that are subject to these procedures right now, but everybody else is not. It is really about being fair and ensuring that all homeowners go through the same steps to allow for loss mitigation efforts, for the foreclosure mediation process, and making sure that we do not get to a foreclosure without having gone through the notice provisions.

Chairman Frierson:
I am going to ask that you go ahead and present the bill.

Senator Jones:
In 1995, my grandparents purchased a modest ranch-style home in southeast Las Vegas that was intended to be their retirement home. However, as their retirement savings dwindled after the market crash in 2008, my grandparents fell on hard times. They were not able to pay their mortgage payment. They both tried to reenter the workforce to make ends meet, but suffered from health issues. My grandparents were too proud to ask for help, but after my grandma broke down in tears with my mom one day, my mom asked if I would jump in and try to help. I gathered the mortgage paperwork and contacted their loan servicer to try and get additional information about mitigation programs.

I naively thought that because I was a lawyer I might get some attention, but I got the same runaround that my grandparents had and that so many Nevadans have had over the past few years. The stress on my grandparents, as a result of this process, was tremendous. While my grandfather was undergoing testing for pancreatic cancer and my grandmother's Alzheimer's progressed, they received a notice of breach and election to sell. My grandfather died soon thereafter and the bank foreclosed on the house that he and my grandmother had lived for more than 15 years.

My grandfather's story is a tragic one, but one all too familiar to homeowners and former homeowners across the state and particularly in southern Nevada. Senate Bill 321 (1st Reprint), Nevada's Homeowner's Bill of Rights, seeks to put a stop to some of the more egregious practices of banks, practices that five of the largest lenders have already agreed to by way of the National Mortgage Settlement Agreement. In February 2012, 49 state attorneys general and the federal government announced a historical joint state federal settlement with the country's five largest mortgage servicers: Ally/GMAC, Bank of America, Citi, JPMorgan Chase, and Wells Fargo which provides as much as $25 billion in relief to distressed borrowers. The settlement provides benefits to borrowers whose loans are owned by the settling banks and to borrowers whose loans they service. However, homeowners who, by no fault of their own, are serviced by another loan servicer do not enjoy the same protections. The primary purpose of the Homeowner's Bill of Rights is to apply those same protections across all servicers.

Sections 1 through 3 of the bill deal with the definitions for terms used such as "borrower" and "residential mortgage loan." Sections 8 through 16 create additional restrictions on the exercise of a trustee's power of sale and judicial foreclosure on a residential mortgage loan. Section 10 requires that at least 30 days prior to recording a notice of default, and at least 30 days after the borrower's default, the mortgage servicer must send a preforeclosure notice to the borrower with information about the loan and options to avoid foreclosure.

Section 11 prohibits mortgage servicers from starting foreclosure proceedings without first contacting or attempting to contact the homeowner via phone and email to evaluate the homeowner for other loan modification options.

Section 13 prohibits mortgage servicers from dual tracking, which is the practice of sending a file to the foreclosure department while the homeowner is being considered for a loan modification. Section 13 requires mortgage servicers to give borrowers who apply for a loan modification a yes or no response. Section 13, subsection 5, prohibits mortgage servicers from charging fees for the loan modification application process or during a trial plan for loss mitigation options.

Section 14 requires mortgage servicers to have a single point of contact for borrowers seeking information about their loans and throughout the modification process. Section 15 requires a mortgage servicer to dismiss certain civil actions and withdraw notice of default if the borrower accepts a permanent foreclosure prevention alternative, a notice of sale is not recorded within nine months, or a foreclosure sale is not conducted within 90 days after a notice of sale is recorded. Section 16 provides for civil remedies for material violations of the bill, and makes clear that servicers that are signatories to the National Mortgage Settlement Agreement and in compliance with these terms, are not liable under sections 2 through 16 of the bill.

Section 18 allows a defendant in an owner-occupied judicial foreclosure action to participate in the foreclosure mediation process just as those who are subject to a trustee sale. Finally, section 30 states that sections 2 through 16 will only apply to trust agreements that have a notice of default recorded on or after October 2013.

Mr. Chairman and members of the Committee, I still regret that I was not able to find a way to keep my grandparents in their long-time home, but if this Homeowner's Bill of Rights gives someone else's grandparents, or parents, or son or daughter the tools to stay in their homes and work more diligently with their lender, I feel a little bit of solace for what I could not achieve for my grandparents.

This bill passed out of Senate Judiciary unanimously and passed out of the full Senate with unanimous support. Realtors and lenders raised some continuing concerns that we were not able to address before the deadlines in the Senate. However, I believe we have resolved those concerns with realtors and community banks. Title insurers did not participate in the Senate side and raised concerns for the first time late last week after this bill was scheduled for hearing. I have met with them and will do the best I can at this late juncture to

address their concerns, as long as they are reasonable and do not disrupt the important homeowner protections in this bill.

Assemblyman Healey and I hope to have an omnibus mock-up amendment completed for the Committee early next week to address these continuing concerns. I am happy to address any questions or comments from the Committee at the Chairman's discretion.

Assemblywoman Spiegel:
In section 3, I can understand why you omitted or exempted people who turn in the keys to the property, or people who have gone through bankruptcy, but I frequently have seen television commercials for helping you through a loan. I am wondering if consumers have fallen prey to some folks who are not helping them and why they would be exempted from this.

Senator Jones:
It certainly was not our intent to do that. I am happy to look at that issue. I will work with you, Assemblywoman Spiegel, on that.

Assemblywoman Cohen:
I have three questions. Section 7.5 mentions the credit unions. Why does this not apply to the credit unions?

Senator Jones:
The intent of the bill was to ensure that borrowers facing foreclosure received the same protections. Credit unions came to me and asked if we would agree to exempt them. I asked them for hard data because I am a data guy. They presented me with information that credit unions in the state of Nevada have had fewer than 100 foreclosures across all of them. I thought it was reasonable given that credit unions are in a different circumstance than large commercial banks in that you can walk in to your credit union, talk to the person who wrote your loan, and get the type of answers that you do not get from a large commercial lender.

Assemblywoman Cohen:
On page 5, line 32, where it says the website address needs to be provided, I would just suggest inserting the link right there for the U.S. Department of Housing and Urban Development.

Senator Jones:
I appreciate that suggestion.

Assemblywoman Cohen:
Then the last one is section 15, subsection 1, on page 12, line 37 of the mock-up. With the civil action, it makes reference to dismissing the civil action with prejudice. If the lender is going through the process and eventually the homeowner does not comply, does that "with prejudice" mean that a suit can never be brought by the lender?

Senator Jones:
I will look at that and talk with Legal. As I stated, it was an adaptation of a lot of what went into the National Mortgage Settlement agreement.

Chairman Frierson:
Are there any other questions from the Committee?

Assemblyman Ohrenschall:
On page 5, line 29, you reference a telephone number or electronic mail address that a borrower may use to obtain information. Do you envision that telephone number being the same number as was mentioned in the Chairman's Assembly Bill 300?

Assemblyman Healey:
Our intent is that the number we are referencing here would be a telephone number that would actually be established by the lender. I believe the telephone number the Chairman mentioned was a general number for assistance, if I remember correctly.

Chairman Frierson:
There was a toll-free number provision in A.B. 300. I will ask the banks to address that when they come up.

Assemblyman Ohrenschall:
Would you walk us through the safeguards so that someone who does not have an intent to save their home, does not abuse the provisions?

Senator Jones:
I appreciate the question and it is one that I have worked on with realtors, banks, and others to make sure that we are not enabling people who are simply trying to game the system. I think what we have done is ensure that there is notice at the beginning and that there is an opportunity for someone to go into either the foreclosure mediation process or into another loss mitigation process. One of the things that will be in the amendment is clarification so that you cannot game the system.

Chairman Frierson:
Are there any other questions from the Committee? Seeing none, I invite those wishing to offer testimony in support of S.B. 321 (R1) to come forward in Carson City and in Las Vegas. I would ask that you be concise and not repeat what has been said previously.

Ernest Figueroa, Chief Deputy Attorney General, Consumer Counsel, Bureau of Consumer Protection, Office of the Attorney General:
I am one of the attorneys for the State who has worked on previous mortgage-related issues. I was involved in Nevada's Countrywide Financial settlement, the Nevada Bank of America servicer litigation, and the multistate National Mortgage Settlement. I have provided written testimony (Exhibit J) and without reiterating those particular statements, there were certain instances that required the servicing standards in the multistate National Mortgage Settlement, but a very important takeaway is that the servicing standards in the multistate National Mortgage Settlement sunset after three years and only apply to the top five servicers. What that has created is a situation where you have some residents who are able to take advantage of those servicing standards and some residents who can not. If I recall correctly, I believe that 60 percent of most mortgages in Nevada are serviced by the top five servicers but there is a large gap of residents that have no place to turn which is why S.B. 321 (R1) is of importance. Finally, I would like to call to your attention the letter in support filed by the Center for Responsible Lending and Consumers Union (Exhibit K). In the interest of time, I am open for any questions.

Chairman Frierson:
Thank you, Mr. Figueroa. We have circulated the document you provided. Are there any questions from the Committee? [There were none.]

Marlene Lockard, representing Retired Public Employees of Nevada:
We support this measure for all of the reasons previously testified to. Thank you.

Chairman Frierson:
Thank you, Ms. Lockard. Are there any questions from the Committee? [There were none.]

Barry Gold, representing American Association of Retired Persons:
You have a copy of my written testimony (Exhibit L). I would just like to highlight what people have said about lenders foreclosing without even giving homeowners the options that are available to them. Seniors are especially vulnerable to mortgage foreclosure and they need a specific set of guidelines that will help them. Something simple is that single point of contact which

would help people like Senator Jones mentioned about his grandparents. This bill would make lenders and mortgage servicers accountable, so on behalf of our 390,000 American Association of Retired Persons (AARP) Nevada members, we strongly support S.B. 321 (R1), the Homeowner's Bill of Rights, which will help Nevadans stay in their homes. We urge the Committee to pass it. Thank you.

Chairman Frierson:
Is there anyone else in Carson City wishing to testify in support? [There was no one.] I invite those in Las Vegas wishing to offer testimony in support.

Venicia Considine, representing Legal Aid Center of Southern Nevada:
I am appearing today as a concerned citizen and as an attorney who represents clients in a variety of consumer defense-related issues including foreclosure. I am grateful for the opportunity to testify on this important piece of legislation that we obviously support. I did provide written testimony including three stories from clients to help members of the Committee hear those voices (Exhibit M).

[Vice Chairman Ohrenschall assumed the Chair.]

Vice Chairman Ohrenschall:
Thank you. Are there any questions for Ms. Considine?

Assemblywoman Spiegel:
I was recently made aware of private label mortgages many of which have provisions that say no reduction of principal may be allowed. Does this bill cover those mortgages as well, and would it supersede any provisions in those mortgages that say there can be no principal reduction?

Venicia Considine:
This bill does not require that the banks and servicers do anything that they are not already required to do. If there is a servicer, bank, or investor that does not allow principle reductions, this bill will not require them to do it. What it will require is that a homeowner who responds or requests help be reviewed for all of the loss mitigation options that they are available for.

Vice Chairman Ohrenschall:
Ms. Considine, if there are no other questions from the Committee, could you walk us through how S.B. 321 (R1) would work with the current foreclosure mediation program?

Venicia Considine:
The current foreclosure mediation program is specifically for owner-occupied and nonjudicial foreclosed properties. What this bill changes is only allowing owner-occupied people who are in a judicial foreclosure the ability to elect mediation as well. Further, I believe that this would help mediation if a homeowner receives those offers for attempts for loss mitigations from the servicer and they have elected mediation. When that homeowner goes to mediation, they can sit with the representative of the owner of the loan at that mediation and go over all of those options and have it decided there if it is not already determined prior to the mediation. In a way, it will make the foreclosure mediation program more efficient.

Vice Chairman Ohrenschall:
Thank you. Is there anyone else in Las Vegas that would like to speak in favor of the measure?

Howard Watts, representing Progressive Leadership Alliance of Nevada:
Thank you, Mr. Vice Chairman and members of the Committee. I am representing the Progressive Leadership Alliance of Nevada and we support S.B. 321 (R1). We are considering it for inclusion in our Racial Equity Report Card. According to the Center for Responsible Lending, between 2004 and 2008, African Americans and Latinos were 1.6 times as likely to have mortgages with one or more risky elements in them. [Mr. Watts continued to read from prepared testimony (Exhibit N).]

We agree with what everyone else has said before. We think it is time to expand this basic floor of servicing requirements to the other half of Nevada. I am available for any questions that you may have. Thank you.

Vice Chairman Ohrenschall:
Thank you, Mr. Watts. Are there any questions from the Committee? [There were none.]

Keith Lynam, representing Nevada Association of Realtors:
We applaud Senator Jones and Assemblyman Healey for their efforts to protect Nevada homeowners and Nevada's housing market. We have learned and lived the lessons of the past. Our areas of concern were addressed and they revolved around a lot of the questions that have arisen in the Committee this morning. We applaud the Senator and Assemblyman for adopting our suggestions to improve on the dual tracking to the point where the bank can utilize any preforeclosure efforts while at the same time preventing them from going down the foreclosure track. We strongly support S.B. 321 (R1) with the

amendments that you will be seeing in the next day or two. I will stand for any questions.

Vice Chairman Ohrenschall:
Thank you, Mr. Lynam. Are there any questions for Mr. Lynam? [There were none.]

Tom Blanchard, representing Nevada Housing Alliance:
I submitted my testimony and apparently there has been a friendly amendment that Senator Jones has taken into consideration with the arm's length transaction affidavit (Exhibit O). I want to applaud him for that. That is a very proactive stance, and we need to have a way for distressed homeowners to be able to get out of the situation they are in because they are under water. I just want to thank you and I am here for any questions.

Vice Chairman Ohrenschall:
Thank you, Mr. Blanchard. Committee members, are there any questions? I am not seeing any. Is there anyone else in Carson City or in Las Vegas wishing to offer testimony in support of S.B. 321 (R1)? Seeing none, I invite those wishing to speak in opposition to S.B. 321 (R1) to come forward.

Keith Tierney, representing Civil Rights for Seniors and Senior Law Program of Northern Nevada:
Although in spirit I wholly support the bill, because of the definition of who objects, I am speaking in opposition because of the following proposed amendment which I have submitted (Exhibit P). Assemblywoman Spiegel's comment is where we are coming from. Section 3, subsection 2 states, "Has contracted with an organization, person or entity . . . ." If you were to remove that, now the bill does pertain to all homeowners; otherwise, you have carved out a subsection of homeowners which could raise an equal protection argument.

Vice Chairman Ohrenschall:
Mr. Tierney, I believe that section parallels the section in the California law. Do you know how that has worked? Have there been any challenges?

Keith Tierney:
I have not heard of any challenges yet.

Vice Chairman Ohrenschall:
Thank you. Are there any more questions from the Committee? [There were none.]

Cheryl Blomstrom, representing United Trustees Association:
We appreciate the intent of the bill and we believe the amendment we are proposing improves the bill. We are not coming from particular policy points of view. We are not coming with opposition to details within the bill. What we have is a conceptual amendment which we have given to Senator Jones and discussed with him. At his request, we have prioritized the issues in the bill needing clarification from our perspective. In order that trustees may adequately handle this type of work, we have provided it in three components: revisions to improve the consistency of the bill, to clarify issues, and address policy issues. [Ms. Blomstrom continued to read from (Exhibit Q).]

Vice Chairman Ohrenschall:
Thank you, Ms. Blomstrom. I trust you will reach out to Senator Jones and to Assemblyman Healey.

Cheryl Blomstrom:
We have reached out to Senator Jones. I have not yet reached out to Mr. Healey and I will do so. Thank you.

Assemblyman Thompson:
What are the differences between application and complete application?

Cheryl Blomstrom:
That is the question that we raised because an application could be one single piece of paper and there may be other records required, such as paystubs and tax returns, to review that application to make a solid determination.

Assemblyman Thompson:
Based on your experience, what is the percentage of applications that come in incomplete?

Cheryl Blomstrom:
Mr. Thompson, may I pass that question along to an attorney who practices in this area of law? I am not an attorney.

Assemblyman Thompson:
The reason why I am asking, and I would like to put this on the record, is I got the information from Assemblyman Healey, and I am not proud of it, but Assembly District 17 had 11,092 foreclosure notices. That was not on the chart because I am new to the Committee. As you would probably know, I am very concerned about consumer rights.

Vice Chairman Ohrenschall:
Are there any other questions, Committee members? [There were none.] Thank you for your testimony and for working with the bill sponsors.

Bill Uffelman, representing Nevada Bankers Association:
I appreciate the opportunity to be here. I submitted two amendments which I have discussed with Senator Jones. For the first amendment, on page 4, line 7, I am suggesting that "credit union, as defined in NRS 678.070" be deleted and that "financial institution, as defined in NRS 660.045" be inserted (Exhibit R).

Now I will speak to the larger issue for us. I put up a proposed amendment that has two proposals and I would like to focus on Proposal 2 (Exhibit S). Proposal 1 was an exemption for those in compliance with CFPB. I think the better approach, and the one I would urge you to consider strongly, is Proposal 2.

There is a comparison of the servicing provisions of S.B. 321 (R1) and the CFPB final rule (Exhibit G). The dates of when rules go into effect and when they expire were raised earlier. To review those dates, the National Mortgage Settlement went into effect February 2012 and it is good until 2015. The CFPB rule goes into effect in January 2014. Senate Bill 321 (1st Reprint) goes into effect October 1, 2013, presuming nothing changes with it. The CFPB rule came off of the National Mortgage Settlement in the same way that S.B. 321 (R1) was built around the National Mortgage Settlement so they cover the same things. The words may be different but, in fact, the actions are very similar. The net effect is the CFPB rule covers the same things that are in S.B. 321 (R1). Proposal 2 states that compliance with CFPB deems you to be in compliance with the law.

I appreciate the opportunity to be here and I will answer any questions you might have.

Vice Chairman Ohrenschall:
You mentioned that the rules proposed in S.B. 321 (R1) and CFPB rules are largely the same. Where does the issue arise, unless I am misunderstanding?

Bill Uffelman:
Mr. Vice Chairman, the issue becomes one of structure in relation to how an organization trains people. In my opinion, it would be far better to train people to the same standards and to the same sets of rules.

George Ross, representing Bank of America:
I would like to add to what Mr. Uffelman said. That is a good point to make to explain the primary problem that Bank of America has with the bill. We are very supportive of the amendment that Mr. Uffelman proposed. I will say clearly that with all the horror stories that we heard, under the National Mortgage Settlement, they go away. But our primary problem is this: partly duplication and partly that when you have state laws, you will have lawsuits and you will have court cases that involve those state laws. You will go before the judge and, as soon as those judges make decisions and make cases available that provide a different approach than is in the CFPB, we are going to have a conflict of laws. The banks are either going to have to obey the CFPB and disobey state law, or the banks are going to obey state law but get in trouble with the CFPB, which has more sweeping and powerful regulatory authority than virtually any regulatory body in the country (Exhibit T).

It puts you in a really untenable position which is why we supported the amendment. It would be nice if we could have one simple clear set of rules and laws to obey.

Vice Chairman Ohrenschall:
Thank you, Mr. Ross. Are there any questions for Mr. Ross or Mr. Uffelman? Seeing none, I do trust you will reach out to the sponsors.

George Ross:
I would like to say a few more words. I do appreciate the sponsor's willingness to sit with us and to consider our suggestions. I did raise the issue that we are very concerned that this bill might morph as it moves through the system. He assured me that that is not going to happen and, thus far, he has been a man of his word and I want him to know that we truly appreciate that.

I would like to make one comment in general. You have this law and this law is going to save all these situations you see on the chart; this is going to fix my district (Exhibit H). The people got foreclosed on because they were not making their payments. Even for those who get their mortgages renegotiated, study after study show that very close to 50 percent are eventually going to go into default. The default rate for those who go through the Nevada mediation system is far higher than 50 percent. This is not going to keep everybody in their homes. The reason why only 5 percent of the people show up at events at Bank of America to help people is because they realize they cannot make the payments.

Vice Chairman Ohrenschall:
That is true, Mr. Ross, but anything the Legislature can do to help, we have to look at it.

George Ross:
Absolutely. I just want to make the statement that this is not going to be the savior for everybody. It is not going to change all those numbers up there (Exhibit H).

Vice Chairman Ohrenschall:
I appreciate your comments, Mr. Ross. I do have to ask, Mr. Olsen, that you be brief because we have two more bills and then we have to head down to the floor.

Philip A. Olsen, Private Citizen, Tahoe City, California:
Yes, I fully understand.

I would like to begin by apologizing to the sponsors of the bill for any breach of protocol. I have not spoken to any sponsor regarding my concerns with this bill. It is my fault. I did not study the bill until it was too late.

I fully support the objectives of this bill. However, I am concerned about section 3, subsection 2, which exempts from the protections of this bill any homeowner who has contracted with an organization, person or entity whose primary business is advising persons who have decided to leave their homes.

Vice Chairman Ohrenschall:
That is the same concern that I believe that Mr. Tierney expressed. That is duly noted and I encourage you to reach out to the sponsors and try to discuss that concern. As I asked Mr. Tierney, that same provision is in California law and, as yet, has not been overturned.

Philip Olsen:
I fear that this bill will penalize people who retain attorneys. Homeowners have the right to legal counsel and should not be penalized for doing do. I suggest that this be either amended or deleted to clarify that it does not apply to people who seek legal counsel from attorneys who are licensed and are members of the State Bar of Nevada.

Vice Chairman Ohrenschall:
Thank you very much and I appreciate your brevity. Are there any questions for Mr. Olsen? [There were none.]

Kristin Schuler-Hintz, Partner, McCarthy & Holthus, LLP:
I think with the changes that have been suggested to bring everything into line, it is a great way to go so there will not be confusion. The complete application versus application is an area where what we want to do is avoid foreclosure delays because we want homes that have a realistic chance of being modified, be modified. I do hope that you consider the amendments that have been requested. Thank you.

Assemblywoman Spiegel:
You mentioned a trial modification. Would you explain what that is?

Kristin Schuler-Hintz:
A trial modification is generally required under most of the programs because it gives the borrowers an opportunity to try to see if they can actually make the proposed mortgage payment. When borrowers are desirous of keeping their homes, they are going to make a budget which they really may not be able to live within. This is their trial period to see if they can make it. If they do it, then it is great and it moves in to the final modification.

Vice Chairman Ohrenschall:
Are there any other questions for Ms. Schuler-Hintz? [There were none.] Is there anyone else in opposition here in Carson City or in Las Vegas? [There was no one.] Is there anyone wishing to testify in a neutral position? [There was no one.]

Senator Jones and Assemblyman Healey, would you like to come up for any closing remarks?

Assemblyman Healey:
We understand this bill is not intended to save everybody on that chart and keep them in their home. However, to the point of the Vice Chairman, if, as legislators, we can do anything to keep one of our constituents in their home, then this is good legislation. Thank you for your time and consideration.

Senator Jones:
Thank you very much to the Committee. I know this was long and arduous but I appreciate it. We will continue to work with everyone involved. I just had a brief conversation with Mr. Ross and we may have a solution for his CFPB request.

Vice Chairman Ohrenschall:
I appreciate your willingness to work with all the parties. Everyone has told me they like what you are trying to do with the bill, it just needs some minor tweaks. Thank you for bringing this bill.

I do apologize, but the first two bills ran very long and we do need to be down to the floor as we are being summoned by the Speaker. We will reschedule the two bills remaining, S.B. 389 (R1) and S.B. 424 (R1).

[The following exhibits were submitted to NELIS but not mentioned: (Exhibit U), (Exhibit V), (Exhibit W), and (Exhibit X).]

I will open it up for public comments. Seeing none, we will adjourn today's meeting [at 11:09 a.m.].

RESPECTFULLY SUBMITTED:

_____
Thelma Reindollar
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 2, 2013 **Time of Meeting: 8:19 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 278 (R1)	C	Senator Aaron Ford	Amendment
S.B. 278 (R1)	D	John Friedrich, Commissioner, Common-Interest Communities and Condominium Hotels	Amendment
S.B. 278 (R1)	E	Alex Ortiz, representing Clark County	Amendment
S.B. 278 (R1)	F	Keith Tierney, representing Civil Rights for Seniors and Senior Law Program of Northern Nevada	Testimony
S.B. 321 (R1)	G	Assemblyman Wes Duncan	CFPB chart comparing rules to S.B. 321 (R1)
S.B. 321 (R1)	H	Assemblyman Wes Duncan	CFPB chart comparing rules to AG Settlement and California bill
S.B. 321 (R1)	I	Assemblywoman Michele Fiore	Foreclosure Notices by District
S.B. 321 (R1)	J	Ernest Figueroa, Chief Deputy Attorney General, Office of the Attorney General	Testimony
S.B. 321 (R1)	K	Ernest Figueroa, Chief Deputy Attorney General, Office of the Attorney General	Letter of Support by Center for Responsible Lending and Consumers Union
S.B. 321 (R1)	L	Barry Gold, representing American Association of Retired Persons	Letter of Support from American Association of Retired Persons Nevada

S.B. 321 (R1)	M	Venicia Considine, Attorney, Legal Aid Center of Southern Nevada	Testimony
S.B. 321 (R1)	N	Howard Watts, representing Progressive Leadership Alliance of Nevada	Testimony
S.B. 321 (R1)	O	Tom Blanchard, representing Nevada Housing Alliance	Testimony and amendment
S.B. 321 (R1)	P	Keith Tierney, Senior Law Program of Northern Nevada	Amendment
S.B. 321 (R1)	Q	Cheryl Blomstrom, representing the United Trustees Association	Amendment
S.B. 321 (R1)	R	Bill Uffelman, President and CEO, Nevada Bankers Association	Amendment
S.B. 321 (R1)	S	Bill Uffelman, President and CEO, Nevada Bankers Association	Amendment
S.B. 321 (R1)	T	George Ross, representing Bank of America	CFPB's Sweeping Consumer Protection Authority
S.B. 321 (R1)	U	Oneishia Herring, Legislative Counsel, Center for Responsible Lending and Consumers Union	Closing the Gap
S.B. 321 (R1)	V	George Ross, representing Bank of America	Testimony
S.B. 321 (R1)	W	Michael E. Buckley, Real Estate Finance Committee, State Bar of Nevada	Amendment
S.B. 321 (R1)	X	Mary Law	Testimony