MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
March 17, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Tuesday, March 17, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Karyn Werner, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Brad Spires, Broker/Salesman, RE/MAX Reality Affiliates, Gardnerville, Nevada
Brian C. Padgett, Attorney, Law Office of Brian C. Padgett, Las Vegas, Nevada
George Ross, representing the City of North Las Vegas
Alan B. Rabkin, General Counsel, Heritage Bank of Nevada
Troy Morris, Vice President of Special Assets, Nevada State Bank
Matt Kershaw, Chief Commercial Officer, Clark County Credit Union
Josh Hicks, representing Rialto Capital Advisors, LLC
Mark Fiorentino, representing Kaempfer Crowell
Frank Flansburg, Attorney, Schwartz Flansburg, PLLC, Las Vegas, Nevada
Sean T. Higgins, representing BFB Enterprises

Chairman Hansen:
[Roll was taken. Committee protocol and rules were explained.] We have two bills today and we will take them out of order. We will start with Assembly Bill 201. Assemblywoman Kirkpatrick will present the bill.

Assembly Bill 201: Revises provisions governing eminent domain. (BDR 3-960)

Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1:
You have an amendment (Exhibit C) to this bill in front of you. I would like to start out with a brief history of why I am bringing this bill. Last session, we had a huge foreclosure crisis across the state. I live in North Las Vegas where it was very apparent that every third house was in foreclosure. To give you an example, there were a little over 4,523 mortgages that would have fallen under this type of legislative scheme, with 3,920 of those homes underwater on their first mortgage. North Las Vegas grew very fast from 2007 to 2013. During that time, we saw a lot of creative financing maneuvers. For instance, you could buy a home with zero money down and they would put the down payment at the back of your loan. What happened was that all of these loans

were sold and people were left not even knowing who owned the title to their home. There was a lot of new development, but it was reported nationwide that North Las Vegas was one of the hardest hit areas.

Last session we worked on legislation to help with foreclosure mediations so people could stay in their homes and live with the repercussion of the value. To give you an example, I bought my home in 1999 for $98,000. In 1999, with five children, that was a big investment for our family. In 2007 my house was valued at $79,000. That shows how hard people were hit in North Las Vegas. Today the value is coming up, which is helpful.

Last session we had some folks come to the Legislature and ask us to introduce legislation that would have allowed the city to foreclose on homes through eminent domain. They begged for legislation, but many of the North Las Vegas delegation got together and said that they needed to know more about it. No legislation was passed on eminent domain because I felt that it was too risky for residents of North Las Vegas, and I did not want to set a precedent for the rest of the state.

Senator Spearman, Assemblywoman Neal, Assemblyman Thompson, and I continued to meet after session with these people to understand what their program was. You have some information in here on how the program worked (Exhibit D). Basically, the program was going to form a partnership with the city to come in and talk with the people who are underwater and to give them three choices. First, you let the city take over your deed of trust. Second, let us help you get refinanced and, if you cannot, we will lease your own home back to you. There was no guarantee for them. Last, they would give the homeowner cash for keys. It sounded good to a lot of people who had the types of loans that were not backed by the Federal Housing Administration (FHA). These loans were backed by investment groups or other folks. Many people were interested in keeping their homes so the city had town hall meetings. Unclear information was given out so the city agreed to move forward with hearing more testimony. During that time, there was still a lot of angst among folks like me and the others elected from North Las Vegas trying to understand what the guarantee was. You give away your home in hopes of getting to retain it; that is really what it was. By the time you read through all of the fine print and everything, you were not going to own your home—the city or the investment group would. The investment group promised to bring in staff that was qualified to do all of the work. Assemblyman Thompson can tell you that they promised the world. There was another hearing where the city entered into a contract with them and all of their promises. We had the elections and things changed. In the interim, the city ended up paying for legal opinions, and everything they said, they were not supposed to do.

While all of this was going on, there was litigation happening across the country because this group was successful in getting a couple of local governments in California to buy into this: Salinas and Richmond. If you look at the cities they were targeting, they were cities where there were lots of houses underwater. Most of you know that North Las Vegas was underwater at that time, on the brink of financial hardship, so they were targeted. After the election, the city said they wanted out of the program because there was not supposed to be any money involved. In reality the city ended up with a nice legal bill to pay. Their word was not factual. I am glad that we did not pass any legislation to help this process along. It would have allowed the cities to be more involved.

That is the background on why we are here today. I hope this Committee agrees with me that we do not want local governments in the business of owning homes in this manner—by just taking them from residents. Many of us worked on the People's Initiative to Stop the Taking of Our Land (PISTOL) Law so there would be some stability for everyone. After reading the bill, which was very broad, I realized it encompassed a lot more people, so I brought an amendment that specifically does not allow local governments to get into a risky business with a third party in order to take folks' homes.

That is the theatrics of what was happening in North Las Vegas. The residents were being hoodwinked. I have with me the really smart legal people who helped me understand this idea so we could fix it and keep it from happening again.

Brad Spires, Broker/Salesman, RE/MAX Reality Affiliates, Gardnerville, Nevada:
I am serving again, after an eight-year absence, as the Legislative Chair for the Nevada Association of Realtors. Assemblyman Anderson had a good question yesterday, so I thought I would clarify some of the misunderstanding about what this process is. When you buy a house, you get a recorded instrument that is called a grant, bargain, and sale deed. This started out West when people would say give me the deed and I will give you the money, and the other person would say no, give me the money and I will give you the deed. We came up with a title company. When the money is in and the owner of the property has signed and notarized the deed, the deed gets recorded and the money gets released. That grant, bargain, and sale deed designates who owns the property. What we are talking about is not the conveyance of the property or the grant, bargain, and sale deed that shows who owns it. We are talking about a recorded security instrument called a deed of trust, which can be either a note included with a deed of trust or the deed of trust with a separate note. It is the encumbrance on the property of the money that is owed—and who that money is owed to—giving them the ability to foreclose on the property to get their funds back if you do not pay. We are not talking about

the change of title on the property. We are actually talking about this establishing that a governmental entity cannot come and take over a deed of trust.

In addition, these were all performing loans. That means that these folks were not trying to do a strategic default. They did not want to lose their house. They were making the payments. The idea is that the lenders were going to come in and take this deed of trust, exercise under the deed of trust to get a lender to take a smaller amount, and let the people stay in the house. They would not change the deed on the house, but the homeowners are now tenants and the guys that took the property are going to loan them money, maybe. It is very convoluted and interesting. Whoever came up with the idea must have had a lot of time on their hands to come up with something like this. It would have been the government taking a recorded instrument that was securing the third-party interest in the property. Not a good idea. In addition, the loans were performing; the people were paying their bills. If this happened, their credit was ruined and their chances of getting another loan with an institutional lender were greatly diminished. It was not good for the homeowner at all. As private property rights proponents, that is what we are all about.

It was wonderful to have Assemblywoman Kirkpatrick, Mayor John Lee, and his new councilman there and they understood what was taking place, so we were able to short stock it. We do not need to be in the business of taking recorded instruments under eminent domain. You know that eminent domain was not provided for that; it was for taking property for the public good. That is certainly not what this was.

Chairman Hansen:
Was there a legal challenge to this? Basically, they are getting around the PISTOL Amendment in our *Nevada Constitution*, which prohibits that kind of abuse. They had it go through a third party. Did anyone successfully challenge this in the courts?

Assemblywoman Kirkpatrick:
Yes, they did in California. That was one of the things that is in your background material. You will see that the FHA issued a statement that they did not believe this was in the best interest. There was a case in Salinas, California, but they were already too far into it. Luckily, in Nevada we did not go down that road.

Chairman Hansen:
But that does not explain your amendment and why you are going to ensure they do not have some way to bypass the constitutional prohibition.

Assemblyman Elliot T. Anderson:
At some point, if we are going through the traditional eminent domain process, the government will have to compensate for that deed of trust and promissory note. Having that cleared up was very helpful.

Assemblyman Gardner:
From the look of this, it does not affect traditional eminent domain at all. That is my understanding, and I just want to make sure that is on the record.

Assemblywoman Kirkpatrick:
That is why I made the amendment: to be clear that it specifically has to do with local government. We worked for years to get good language into the *Nevada Constitution*, so I did not want to mess with that.

Brian C. Padgett, Attorney, Law Office of Brian C. Padgett, Las Vegas, Nevada:
I have been an eminent domain attorney for 16 years; that is all I do. I defend landowners. Assemblywoman Kirkpatrick showed me the legislation that was proposed. We talked about the intent of the legislation, which I think is absolutely correct. You cannot have any circumvention of PISTOL or the amendments that were created by the judiciary and the Assembly in 2008 that followed and tracked PISTOL. Without this legislation, that could happen. When I looked at the legislation, I thought it seemed overbroad, so there was alternate language offered that I think better clarifies what the Assemblywoman is trying to do. It works. This will go a long way to ensure that our *Nevada Constitution* and our statutory scheme providing for eminent domain is not a runaround. As you know, the power of eminent domain is one of the most awesome powers that the government has. There are limits on that though. Typically, I do not oppose condemning authorities acquiring property that they need to expand roads, highways, and make public improvements. I usually differ on the amount of compensation that the condemning authorities have to pay. One thing that you never have is the why. The reason PISTOL was a valid issue and was so popular was because our landowners here in Nevada reacted violently to any governmental action that might have allowed for governmental entities to pass property on to a third party. In effect, when you have this group out of California come in with this idea that they would talk to a governmental entity or municipality and get them to cooperate to condemn mortgages, that was exactly *Kelo* [*Kelo v. City of New London* 545 U.S. 469 (2005)] all over again.

I have to say that what Assemblywoman Kirkpatrick is doing is the right and just thing, and is proper to ensure we do not have a problem like this on our hands in the future. Luckily, nothing went forward with North Las Vegas. The Mayor understood right away what was going on and put his foot down, along with the rest of the city council. This will short-circuit any future attempts to move around the *Nevada Constitution* and statutory scheme and protect landowners' rights while still being fair to the government.

Chairman Hansen:
Is there anyone who would like to testify in favor of A.B. 201 at this time?

George Ross, representing the City of North Las Vegas:
The city is very much in favor of this bill. We would like to thank Assemblywoman Kirkpatrick for bringing this bill, and we urge your support.

Chairman Hansen:
Is there anyone else who would like to testify on this bill in the north or the south? Seeing no one, we will open it up for anyone who would like to testify against A.B. 201. Seeing no one, is there anyone who is in the neutral position who would like to testify? You are coming out with no opposition. Would you like to make closing comments?

Assemblywoman Kirkpatrick:
Thank you for allowing the bill to be heard on this St. Patrick's Day.

Chairman Hansen:
With that we will close the hearing on Assembly Bill 201. We will open the hearing on Assembly Bill 195. The presenter will be Assemblyman Nelson.

Assembly Bill 195: Revises provisions governing deficiency judgments. (BDR 3-865)

Assemblyman Erven T. Nelson, Assembly District No. 5:
I am going to give a brief introduction and then turn this over to the real experts. The genesis of this bill—as far as I am concerned—is that, as a practicing lawyer, I ran into these statutes and had a few cases where they played an important role. I became curious and started researching the language of the statutes and the background of them. After I was elected, I decided it would be a good idea to have a bill to clean up some of the problems and ambiguities that had been pointed out by a number of practitioners, as well as the Supreme Court of Nevada. I drafted the bill. Some people think that various groups put me up to this, but I actually did this on my own and later people came to say it was a good idea and wanted to help.

From a very basic standpoint, I am sure that all of you know what a deficiency judgment is, but I will explain it for the record. When a loan goes into default, the lender will foreclose and at the foreclosure sale the lender will receive less money than is owed on the debt and that creates a deficiency. The borrower gets credit for the higher of the amount gained at the foreclosure sale, or the fair market value of the property. To use an example, if $100,000 is owed on the debt and the foreclosure sale price is $70,000, but the fair-market value of the property is $80,000, the deficiency would be $20,000. That is the amount in a residential situation that a lender can pursue. As we all know, with the collapse of the real estate market in 2007 to 2009 and beyond, a number of protections were added, one of which allowed that qualifying residential loans were protected so banks could not pursue deficiency judgments. There were certain criteria that had to be met. For example, it had to be a primary residence, and to be a purchase money loan—meaning the money borrowed had to actually purchase the home. There were a few other criteria that had to be met.

In 2011, things were still bad, as you all know, so another protection was added. Apparently, this protection was initially intended for residential loans and not commercial loans, although that is disputed. If Community Bank makes a loan—and some of these banks are not in the business of keeping loans for a long time—they will sell those loans on a secondary market. The secondary lenders would come in and purchase those loans. Sometimes loans were sold because the banks just were not in the business of keeping loans long term, and other times they were sold because the loan got into trouble. It might be that the borrower was not making the payments or, because of the appraisals the value of the collateral went below the amount owed on the loan. Those are called underwater loans as you know. Many, many loans came to be underwater, both commercial and residential.

Assembly Bill No. 273 of the 76th Session was passed in 2011 and there were some interesting, unintended consequences as a result of the bill. I have spoken with a number of secondary lenders about this. It removed the incentive for them to purchase these loans. Imagine if you were purchasing a loan that was underwater or in default. Are you going to want to pay full value for that loan? If it is a $1 million loan, are you going to pay $1 million? No, unless all you want is an income stream. They would come in and purchase at what is called a discount. What the bill said was, if you purchase at a discount, say you paid $500,000 for the loan, that is all you can ever get if you foreclose. The result was that the originating banks were unable to sell some of their loans because the secondary lenders stopped purchasing them.

I ran into this in my own practice. The law has become an impediment to infusing capital into the Nevada economy, particularly for commercial loans. Original lenders cannot rebalance their financial assets on the books because there are fewer options to transfer such commercial loans to successor lenders. As a result, we have all seen many empty lots. If you drive around Las Vegas, there are many half-constructed commercial buildings. I can see a couple of high rises out my office window that have been half completed for five years. Now they will have to be torn down because of the exposure to the elements.

What the bill does is remove the deficiency judgment caps for commercial properties going forward. There is an amendment (Exhibit E) on the Nevada Electronic Legislative Information System (NELIS) that maintains A.B. No. 273 of the 76th Session's deficiency cap protection for homeowners. This bill will not hurt or affect residential loans which otherwise qualify for the anti-deficiency protection.

Alan B. Rabkin, General Counsel, Heritage Bank of Nevada:
I have practiced in this area for 37 years. I do not want to repeat my prepared testimony, which should be on NELIS now (Exhibit F). I think it will take you through the issues because there are several sides to this question.

It is easiest to conceptualize this. First of all, if the loan is paying as agreed, you never come into contact with *Nevada Revised Statutes* (NRS) 40.459 or NRS 40.455. You are never going to get there because the customer/borrower is going to pay the loan back 100 percent and you are fine. If it is a qualifying residential loan, the banks have nowhere to go on a deficiency after a foreclosure. Although that is not fine, it is final at that point, and there is nothing the bank can do. We are talking about both banks and nonbanks as being lenders. We are down to a small piece of the pie. We are down to a piece of the pie which is nonqualifying residential loans and the universe of commercial loans. I am not going to address nonqualifying residential loans because my bank does not get into that.

I will address the commercial loan area that has historically been subject to deficiency because the bank wants to realize full repayment either from its collateral or from the general assets of the borrower or any guarantors. It has always looked upon these various people, whom we call obligors, to make sure they repay the loan as agreed since they received the money fair value and they expect fair value in return. For decades, the safety valve here was bankruptcy. If a commercial loan cannot be paid back as agreed, the bankruptcy judges are experts at resolving the issue between creditors and debtors. There is no reason to involve state statutes because thousands of debtors across the United States having trouble paying back their commercial loans are currently in bankruptcy court resolving their loans. Bankruptcy judges have plenary powers to resolve those loans in a fair and just way. There are provisions such as cram-down and other things that can be done to reflect the real value of the collateral and the general assets of the commercial borrower.

We are at a point in 2011 where things had been going that way; people had been repaying their commercial loans. If they could not, they suffered a deficiency, in which case they might decide to file bankruptcy or pay the deficiency separate and apart from the collateral. In 2011, we did something at the very end of session that has caused the courts in Nevada to be clogged. We have tremendous judicial resources being applied to the very bill that we are talking about in 2011. The problem was that we said when you transfer a loan—and that transfer could occur either voluntarily or involuntarily—it could occur voluntarily by a bank-to-bank sale or a lender-to-lender sale, or it could occur because the bank was closed because of financial difficulties. The Federal Deposit Insurance Corporation (FDIC) or a governmental agency transferred the loan. In that situation, unfortunately, the way the bill is currently interpreted it could potentially apply to commercial lending. It dries up capital. Why would I spend $500,000 to buy a loan worth $1 million on its face and only be able to collect $500,000?

Nevada is the outlier in this area. We are the only state with the commercial situation where transfers of loans are subject to deficiency caps. For that reason, the word on the street among banks and nonbank lenders is that Nevada is not a good place to infuse capital. Usually, you infuse capital if you are an out-of-state lender by buying a smaller bank's loan portfolio. My bank might put together millions of dollars of loans and package and pool those loans and sell them to a money-centered bank. Why? Because we want to recycle our capital. We do not necessarily want to use all of our capital to make 100 loans. We would like to make 1,000 loans so we package up the first 100 that we create, sell them off, and create another 100, then sell that off. The money-centered banks have the ability to buy our loans. Do they usually buy our loans above par—meaning above face value—yes, they do. Would there ever be an implication of this statute? No. In those rare cases where you are packaging and pooling bad loans, no one is going to pay par, or full value. They are always going to pay under par. There is always going to be the discount that we heard about. In that situation, Nevada banks are now stuck; they cannot sell those loans.

That is our dilemma. This bill addresses that dilemma in two ways. First, it removes the section of NRS 40.459 that we added in 2011. It takes it out, but it does not go away for residential lending. In the amendment you will see that it reinserts the language about qualifying residential loans, which is the key term. It continues the inability to transfer or sell loans at less than par value and restricts the ability of the purchaser of that type of loan—and only those loans—to what they paid for the loan, thereby eliminating the concerns that there is a trading in the hardship residential loans. It removes the impediment of transferring commercial loans.

Assemblyman Elliot T. Anderson:
I am trying to get an idea of the scope of the nonperforming loan market. We obviously had quite the calamity between 2007 and whenever it ended. How many loans did you sell? How much can you speak for other lenders? How many of these loans go on the nonperforming market? When it comes down to it, that is what we are talking about. We are not talking about recycling performing loans.

Alan Rabkin:
My bank happens to be a growing bank. When you have a growing bank, both infusion of profitability and in capital, you hardly ever sell off loans since you have the ability to make new loans off of your existing profitability. You may not know this, but banks lend a multiple of their capital. They do not lend their capital. Because of the existence of deposit insurance, they are allowed to lend off of their deposits, their capital, and a multiple of that as well. Heritage Bank, being a growing bank here in the north, has not faced the need to package and pool loans as other banks have because we are profitable. Banks that were not profitable, primarily those who suffered the decline of residential lending in Las Vegas, were unprofitable because they were marking down their loans based upon the decline in collateral strength, although some of those banks are now very profitable. As they mark down loans, it depletes their capital. It is charged against their capital and they face a capital problem in that situation. The regulators are saying that they must maintain a certain level of profitability. They address that situation by selling off the good loans if they can and package and pool the bad loans to get them off of their books. We heard that terminology as balancing their books. They are doing that because the regulators are whispering in one ear that they need to maintain sufficient capital and you better do something; then in the other ear they have new people who want to borrow money. They want to take out a loan from the bank. They need to bridge that gap somehow. The way they do that is to either go to the stock market and raise more capital, which in the 2008 to 2012 period was almost nonexistent. They could also package and pool their loans to sell them off to recycle as much capital as they could. Some of the banks in Clark County survived by being able to package and pool their loans.

In 2011, things changed abruptly, and some of them were forced to go to the capital markets to get capital rather than to transfer their assets to someone else. It did close out one option for a struggling bank to be able to package and pool their loans off at a discount and to be able to survive by recycling their capital.

Assemblyman Elliot T. Anderson:
What I am trying to get ahold of is how many nonperforming loans are sold generally in Nevada? I want to know the scope of the issue we are talking about.

Alan Rabkin:
For competitive reasons, I am not privy to what other banks' level of packaging and pooling and selling off individual or pooled loans is. I suspect that it was substantial among the banks in southern Nevada because of the decline of property values during that period of time. Probably less so now. We are always in a cycle. When I was writing my Ph.D. dissertation on the cycles of financial crisis, I found that the cycles are getting tighter and tighter. They used to be 30 years apart, then they were 20 years apart, and now they are 12 to 15 years apart. We are always looking at or staring down the tunnel of the next financial crisis. Even though I believe there has been a subsidence in the problem loans that are being packaged and pooled, it is coming again. Capital will be scarce again, and in the next financial crisis the banks will be forced to once again package and pool problem loans at a discount to survive.

There are other reasons that they package and pool loans at a discount. They might have an immediate need to raise capital. Of course the acquisition or acquiring party might not have time to adequately investigate every loan, so they arbitrarily discount the loan to cover any potential problems in that pooled package at a later date. It is not always that the bank is struggling and needs to recycle capital. It might just be that there is a merger coming up or something where immediate capital is needed.

Assemblyman Jones:
Both of you mentioned that this problem was created in 2011 and there is a backlog of cases, et cetera. This will become effective upon passage and it says it does not affect previously foreclosed mortgages. Are there some banks that have not foreclosed or have not issued a notice of default that are just sitting there because of the law? Will it help any of the past problems or is it just too bad? We have a window from 2011 to 2015 that is going to be stuck in a quagmire. Do we move forward from there?

Alan Rabkin:
I can speak to that issue. My dream wish would be to somehow make this retroactive, but I realize that many of these issues have already passed through

the courts. On the sections we are talking about—NRS 430.459 and NRS 40.455—the way this works is that they come into play at the point of foreclosure. If an entity has not already foreclosed a deed of trust and is holding off to see what this session is going to do, whatever the statutes are after this session ends is probably what they will face as far as the antideficiency statutes. If banks or nonbanks are waiting, they have not really jeopardized their rights to take advantage of whatever we do here. Anyone who has already foreclosed has probably already suffered the 2011 regime up until the present and there is no corrective cure for that. It has already happened.

Assemblyman Jones:
Do we have an estimate of what part of the foreclosed market will be affected by this? What are we looking at?

Alan Rabkin:
This is the overhang that we talked about. How big is the overhang that exists out there? Some estimate that it is significant, that there are lenders holding back on taking the full foreclosure remedy. However, I see workouts being done by banks now that things are improving and property values are improving. There is more room for banks to work with their defaulted borrowers. If they have waited for years, there is even more incentive to do that because they have probably already written down that asset on their books. They may have even written it down to zero. It is only a recovery for them now and not a classified asset. To be honest, the length of time that has passed since the beginning of the crisis until now—and there is no overhang—is in the borrowers favor. Going forward now that times are better, banks will have more options if we make this change. I am not sure if this change will upset or impact what has gone on before; that is already established at this point. I cannot make a prediction because I do not work for Bank of America or City or Wells Fargo or any of the big national banks with a lot of portfolios. With my bank, things have already been worked out. We have funded very few classified loans from that period of time.

Assemblywoman Diaz:
Are all commercial loans created equal? The reason I ask is that I recall testimony from 2011 or 2013 where there were some small to medium businesses that had started from the ground up and had significantly invested a lot of their own money into projects. Then, because of the fall, they lost anything of value in their investment and were sued by the banks for the deficiency. Those properties no longer have the value that they had when they obtained the loan. My concern is where we are leaving these folks. Do we leave them or are they still going to be sued for that deficiency? You said there

might be options for them moving forward, but I want to make sure they are not harmed.

Alan Rabkin:
One thing that is not being changed under the statute right now is that, if there has already been a foreclosure, the banks would have taken action within six months after the foreclosure to shore up this bare value or deficiency for the property that was foreclosed. Any of those situations that you are talking about have already been quantified. If there is a deficiency, it is already established. It is up to the bank to decide if it is collectible. There may have been a bankruptcy filing to discharge it, et cetera. I am not sure that this statute has a lot of impact on prior actions that took place during the financial crisis period.

Going forward, this really does not change anything to qualifying residential loans. For commercial loans, it would give the bank options to seek the deficiency after foreclosure. I find that banks tend not to want to invest new dollars into collecting uncollectible deficiencies. The bank has the choice. If I had a small business that had nothing left and I foreclosed and got 50 to 90 percent of my loan paid back, a critical decision would have to be made by the special creditary of a bank to decide if it is worth filing a lawsuit in the county where the property exists to get 10 percent or 20 percent of the deficient amount, prove it up, and go through the whole court process, and then perhaps realize the bankruptcy filing thereafter anyway.

In the case of my bank, which I can speak to, a high percentage of the loans that you are talking about were not pursued. It was decided that it was not in the bank's interest to invest new dollars to collect small amounts of deficiency, or the bank offered a generous single lump sum payment or a multiyear payment to get rid of the deficiency. The deficiency may be $60,000 to $90,000 and the bank might say that if you pay them $20,000, they would not seek the deficiency. I think smaller deficiencies like you are talking about tend to lead to workouts. To be honest, large deficiencies from the large commercial borrowers who walk away structurally or through intention from the loan are usually pursued. They are usually taken up by the bank and pursued until they realize the full value of their assets.

Assemblywoman Diaz:
That triggered another memory where the testifier was in the same situation as homeowners. Banks were not negotiating with them. They wanted to salvage as much as they could and tried to make their payments and keep the property. First, they were told to come to this office, then go to that corporate place, and then the property was sold right out from under their feet. It does not sit well with me that, as a bank, you do not want to negotiate with your existing

customers, but then you sell it for pennies on the dollar to someone else. That is where it gets out of hand for me.

Alan Rabkin:
I can speak to that issue. You are addressing situations where some of the large national banks—and there is a place for them in lending—had thousands, if not tens of thousands, of loans that all simultaneously defaulted. I am talking about commercial loans. Then you have the Heritage Bank, Meadows Bank, or another community bank in the state that may have had a few dozen loans fail. We had the ability to resolve a few dozen loans, so it was not a challenge for community banks. The national banks were overwhelmed by the severity of the financial crisis. The stories that you hear oftentimes occur when you have thousands of loans defaulting at one time, as opposed to just a few. I make no apologies for the national banks, but I think a lot of the backlog has been resolved. They are handling their current loan defaults more timely than they did in 2009 or so. Some of the stories that you heard leading up to the 2011 Session are anecdotal stories that occurred during 2009 and 2010. I am not hearing those types of stories now even from our competitors, the national banks. I think things have improved quite a bit.

Assemblywoman Seaman:
When the caps on these loans were implemented in 2011, did you see many commercial developers whose projects went bad not pay back loans so the lender bank was out the money?

Alan Rabkin:
We do not back a lot of developers, but I have participated in groups that have studied this issue. Generally, a developer goes to a bank, the bank makes a loan and portfolios the loan and expects the repayment of the loan. The developer has nothing to do but repay the loan. It is not a transferred loan, so the developer has to pay back 100 percent of it. That is normal for development in Nevada. You might have heard about the transfer of loans from the FDIC or a distressed bank to an investor. Those are transferred loans that would fall under NRS 40.459 and would be subject to the cap. Those might be the type of loans that you are hearing about. The great majority of developmental loans are initiated by a Nevada bank—maybe from a national bank—for Nevada real estate and must be repaid 100 percent on the dollar. They do not qualify under NRS 40.459 for a cap on deficiencies.

Chairman Hansen:
Who buys hardship loans? I am curious. You have a loan with a face value of $1 million, the market collapses, and you try to sell it for $500,000. With a cap, no one wants to buy it. Even in the absence of the cap, these risk-taking

people turn around and file bankruptcy to try to get the difference between the $500,000 and $1 million.

Alan Rabkin:
It comes in different stripes. Typically, residential portfolios are not subject to deficiency in Nevada, so those are usually negotiated between individuals and homeowners. Discounts are taken on an individual home basis. I really cannot speak to the residential side of this. On the commercial side, most of this was coming from banks that failed. The FDIC pooled the loans that the bank that bought the failed bank did not want. We were able to pick and choose what loans from a failed bank we wanted to take on. We throw the bad fish back to the taxpayers of the United States—the FDIC. In the savings and loan debacle in the late eighties, the FDIC had their own corporation, the Resolution Trust Corporation, where they liquidated their own loans. This time, Sheila Bair, managing the FDIC's resources, decided that it was better to pool and package distressed loans that banks threw back, that they did not want to buy from a failed bank. They put them into pools and packages, sold them off at ridiculous prices, and the purchasers of those commercial loans tried to realize full value of the loan. That is where some of the bad press came about. Banks did not do that. Banks that portfolioed a loan were entitled to collect 100 percent on the dollar. They were not really in that market. That was mainly nonbank investors. Not all of them were irresponsible. Some were very responsible and negotiated discounts with the borrowers and tried to get another bank to refinance the obligation, et cetera. You are right. It is a distressed and risky market. The FDIC and other packagers and poolers of loans would put good loans in with really terrible loans and try to dress them up a little. When you looked into some of these portfolios, some of them were very risky. The percentage paid was an average percentage for the entire pool. One loan might be worth 90 cents on the dollar, and another may be worth almost nothing on the dollar, and an average was selected for that pool.

Chairman Hansen:
They just cost-averaged it out. That typically means going into court to sue to get the difference between what they paid and the face value of the loan. Right?

Alan Rabkin:
Some did. Instead of trying to litigate their way to full recovery, others realized more success by negotiating their way to partial recovery at a profit.

Chairman Hansen:
Is there anyone down south who would like to testify in favor of the bill?

Troy Morris, Vice President of Special Assets, Nevada State Bank:
I have been in the banking industry for almost 21 years, 19 of them in Nevada. My testimony today is not intended to add anything new to this discussion, but rather, to hopefully add some color to the debate from my perspective as a Nevada banker.

I have been with Nevada State Bank for almost seven years and over four with the Special Assets Group. We handle the bank's nonperforming loan portfolio. Our group manages about 200 nonperforming loans at any given time. The dollar value is about $110 million to $120 million. Nonperforming loans create a problem for banks since these loans require additional reserves, making less capital available to lend to qualified borrowers, resulting in higher interest rates. Like any commodity, the price or interest rate of the loan is determined by the bank's supply of money to lend and demand for the loan. When there is an undersupply of lendable capital, the rates go up. Nonperforming loans also affect the bank's financial performance. Less interest income is earned from nonperforming loans, which has a direct negative effect on the bottom line of the bank.

My employer, Nevada State Bank, employs almost 800 people in Nevada. Its ability to do so is largely dependent on its ability to earn normal profits from good performing loans. Banks have a strong desire to collect nonperforming loans. That money then becomes available to lend to better performing borrowers. Historically, note sales have been a tool with which banks can recover all or a portion of the capital outlay for these assets. As investors, we are willing to risk our own capital for a potential economic profit, just as you would expect from any investment. Foreclosures on real property or liquidation of other tangible collateral is expensive and very time-consuming. It is not always recoverable from the borrower. Banks do have the ability to collect on any deficiency between the note balance and the collateral value, but those deficiencies are rarely collected in full and are often settled for less. Investors do not have that ability at this point.

As it stands today, the current law provides a strong disincentive for investors to come in and acquire these nonperforming notes. It should be amended to allow the collection of deficiencies. If there were stronger demands for these assets in the secondary markets, Nevada banks could significantly improve their financial performance by recapturing otherwise uncollectible capital and making good quality performing loans with that money.

Assemblyman Jones:
As a banker in southern Nevada, would you have any idea how big this overhang is? We have not been able to get a direct answer on that.

Troy Morris:
If my bank is any indication, our problem asset portfolio consists of about 200 loans at any given moment. It goes up and down depending on how we resolve them. With the dollar value between $110 million and $120 million or a bit more, it is a revolving door. As we resolve some, more come in so it is a consistent number. From that dollar amount, if we could take the money that is out there on these problem assets and sell them all at a discount of even 50 percent, that would free up $50 million to $60 million in capital. That could then be loaned to better qualified borrowers that we could actually make money on. I can only speak for my bank.

Assemblyman Jones:
I am sure you run with other bankers at cocktail hour, so do you have any idea on them? Are there a lot of other bankers that have a similar situation or can you comment on that?

Troy Morris:
I really could not comment on that. I know other banks, both large and small, have similar problem loans in their portfolio, especially those that are secured by real property, and in particular office buildings. They are significantly underoccupied and perform very poorly. Some aspects of the real estate industry are coming back. Retail real estate is doing well these days, but, again, if they are underoccupied, they perform poorly. We have a very big problem with unoccupied office space in Clark County.

Assemblyman Elliot T. Anderson:
Can you tell me about the timeline when you have a problem asset? When you have a commercial borrower that gets a loan and starts paying but misses a payment, how long does it take from missing a payment to selling the asset? How many months or payments does the borrower have to be in arrears? During that time, do you try to take the asset out of the problem asset portfolio through any means that you can share with us?

Troy Morris:
Generally speaking, loans will go about 90 days past due before we start taking any significant action to collect the loan. If a borrower starts to get a little bit late, misses a payment or gets 30 days past due but has the ability to make it up, we usually work quite a bit with that borrower to let him bump along so he

can maintain his occupancy on the property. It is usually 90 days before we start taking any action.

Chairman Hansen:
It is interesting dealing with bankers. When you go to a bank and ask for a loan but the banker is concerned that you cannot pay it back, then he is a bad guy. I go to you and you loan me the money but I cannot pay it back, once again you are the bad guy when you try to collect the money. No matter what you guys do, it seems you are never the good guy in this.

Is there anyone else down south who wants to testify in favor of A.B. 195?

Matt Kershaw, Chief Commercial Officer, Clark County Credit Union:
I will not add anything to the previous testimony; it was covered well. I do want to make a few remarks in response to some of the questions that were asked. Regarding the number of nonperforming loans that we have sold over the last several years, it has been just a handful. Deficiency judgments have helped us work through those problems more quickly so that we do not have to go through foreclosures, bankruptcies, or some of the other things that happen. It is a benefit and an incentive. What I noticed when someone comes in to buy a note is that they look at the collateral value and what they can collect on a deficiency. If there is no ability to collect on a deficiency, you are going to get less out of that note. It damages our position financially.

As far as overhang, we have a handful of problem loans. It is not a huge amount, but we have some out there that need to be worked through. From my perspective, we always try to work out our loans with our membership. If a borrower sees that a bank or credit union's normal practice is to sell loans and they do not have to worry about the deficiency, the incentive to work out the loan is not there. That could be a possibility.

Chairman Hansen:
Is there anyone else down south who wants to testify in favor of this bill? Seeing no one, we will come back north.

Josh Hicks, representing Rialto Capital Advisors, LLC:
I am here today to make a few remarks on behalf of Rialto Capital Advisors, LLC. We are here in support of A.B. 195, as well as the amendment from Assemblyman Nelson. Rialto is also a member of the Nevada Bankers Association, so we are also supportive of their efforts on this bill. I will be brief because you have heard a lot of information today. I want to provide Rialto's perspective. My client is one of the purchasers of these types of secondary

market loans, and they do this on a national scale. I want to share some of their thoughts on that, as well as their experiences in Nevada.

As you have heard, these are important sources for capital. It is not always the most glorious thing, buying loans on the secondary market, but it is an important part of the economy. It infuses more capital into the system and provides capital for small banks and a way for them to divest themselves from some of these nonperforming loans. Another important role that groups like my client play is to come in and take over some of these kinds of properties, rehabilitate them, and get them going. By the way, Rialto is just a commercial loan purchaser; that is what they do. They rehabilitate, rent, and get these things going. They turn properties from vacant places into productive rentals or sales, and that has a whole waterfall effect on the economy. It provides jobs when getting them up and running and jobs once they are running. Property tax revenues are now paid since many of these properties are very delinquent in paying their property taxes as well.

Investors do buy these loans at discounts, particularly nonperforming loans. There are significant risks that come with that. My client has informed me that you will not typically see anything as deep as a 50 percent discount on a loan unless there is something really risky about it or, if you got it from a failed bank, there might be a discount more than that. These are purchased in pools like you heard Mr. Rabkin talk about that come with a lot of risk. For every loan in the pool that is going to work out, there will be a loan that is not going to work out. That is how those things are priced and why there is a discount.

As far as the national perspective, you heard testimony—and I just want to reiterate it—that Nevada is the only state that has a cap on deficiencies. There was an effort in Georgia a few years ago to do something like this, but it was unsuccessful. There is a strong disincentive to infuse capital in the purchase of secondary loans and the secondary loan market. In fact, my client has not purchased any loans in Nevada since that law was passed in 2011. They are willing to get back into the market and infuse more capital here, but they would seek the passage of the law before they do that. We are supportive of A.B. 195 with the amendment.

Chairman Hansen:
If a bank sells your client a loan with a face value of $1 million for $500,000, is there any kind of insurance that they can get to make up the difference? They loaned $1 million. Is there a tax credit? Do they just eat the $500,000?

Josh Hicks:
I am not sure. I guess it would depend on what the specifics of the loan would be. If you are talking about the $500,000 deficiency, that is something the bank or lender would pursue. There could be a lot of other things that could potentially eat into that—other creditors or things like that—and impact it.

Chairman Hansen:
Is there anyone else who would like to testify in favor of the bill at this time? Seeing no one, I will open it up to the opposition. Is there anyone who wants to testify against A.B. 195?

Mark Fiorentino, representing Kaempfer Crowell:
We represent a number of individuals and companies who are opposed to the bill in its current form. I will list a few for you for the record, some of whom testified last session when you had a very similar bill that essentially would have done the same thing. We represent John Ritter and the Focus Property Group, Garry Goett and the Olympia Companies, and Tom McCormick, who is the owner and founder of Astoria Homes.

I am going to start at the point where we agree with Mr. Rabkin to ensure everyone fully understands. It is absolutely true that banks were not the genesis of the bill in 2011 that you would repeal today if you pass A.B. 195. You heard testimony last session—and we will reconfirm it today—that the folks we represent never had trouble working out deals with their banks. The bill that was passed in 2011, Assembly Bill No. 273 of the 76th Session, did not affect banks. It only affected circumstances where the loan was sold. If you are my banker and still own the loan and I borrowed $1 million but I am defaulting, that law would have no impact on you. You could seek a full deficiency from me. You will hear testimony, and we will again reaffirm it, that we never had that problem. The bill was not needed for that situation. Why? Because local banks are lenders. We have relationships, and there were incentives and interest in working with us to make sure we survived.

This bill dealt with a different situation where the loans were sold to investors who did not have the same incentive or interest. Do not kid yourself, the bill was necessary because they were wiping out real people, real individuals, and real companies by seeking deficiency judgments in excess of what they earned on the value of the property.

I have given you a couple of examples (Exhibit G), but I will walk through only one of them so you can understand the magnitude of the problem and why the bill was initially passed. Assembly Bill 195 would repeal very critical protections in its original form for both residential and commercial borrowers. These are real people and, as I said, these protections were put in place in response to the worst economic downturn in Nevada's history. The protections were put in place to prevent predatory practices that were occurring at the time and are still occurring today and to protect people that the Legislature, at least in 2011, recognized needed help to recover and thus rebuild the economy.

I sent each of you a link of the testimony from last session on a bill that would have done the same thing. We edited that because there are two people you really need to hear from to hear the other side of the story. You will hear from a lady named Stacy Yahraus-Lewis, who was a small business owner, and why that protection is so important to her. You will also hear from Tom McCormick, who was the founder of Astoria Homes, which at one time was the most successful independent home builder in Nevada. It is important that you hear why that law was so important and why repealing it would be so bad.

Chairman Hansen:
I would like you to limit it to the commercial side because I understand that the amendments eliminate the residential side. Please focus on what the bill will actually address at that point. There is no reason to get into the residential foreclosure market.

Mark Fiorentino:
I will only talk about the first page of this since the second page deals with residential and the third page deals with an issue that nobody disputes. To walk you through an example of what was occurring before you passed A.B. 273 of the 76th Session, these are made-up numbers because they are round and easy to understand. You have a loan amount of $5 million. I am a commercial builder of a small shopping center, and I borrowed the money from my bank to build the shopping center. The crash happens. My land is no longer worth what it was when you loaned me the money. Then something else happened. You, the bank, sold the note to someone else, either through an FDIC sale because your bank failed or because you were doing it voluntarily as is consistent with the testimony that you heard here today. Now the investor who bought the loan goes after the borrower. The value of the land at this time is $2.5 million in our example. They foreclose. They only paid $1 million for the loan with the discount. Last time you heard testimony, you heard people say that loans were being bought at ten cents on the dollar. We used a twenty-cents-on-the-dollar example. You have already made a 150 percent profit because you paid $1 million for the loan and you have land that is worth $2.5 million. Before A.B. 273 of the 76th Session, they were going back after the deficiency, the difference between $2.5 million and $5 million. You have already made $1.5 million, but you want to go get the extra $2.5 million. That was wiping people out. Without that law, there was no incentive for you to

work it out if you have already earned a 150 percent profit by just buying the loan and foreclosing on the land. Why would you work out a deficiency with me? That is exactly what was occurring.

We will now show testimony from an Assembly Committee on Judiciary meeting on April 4, 2013. You will hear from Stacy Yahraus-Lewis as she testified last session. [Watched video (Exhibit H).]

The next speaker is Tom McCormick. Before I play this, he asked me to convey his regrets that he could not be here this time to repeat his testimony in person, and to thank you for your willingness to listen to his testimony again.

Chairman Hansen:
I remember hearing his testimony in 2013, and it was my question that Stacy Yahraus-Lewis was answering in that clip.

Mark Fiorentino:
The next clip is not as long and you will be hearing from Tom McCormick. [Watched video (Exhibit I).]

Thank you for listening to that. It was important for you to hear the other side of the story. If you repeal—which is what A.B. 195 would do—those provisions, it would be devastating to real people, people who mattered when the economy was good and people who matter when the economy is recovering and who want to recover with it.

I will leave you with this: A.B. 195 is unnecessary. What you heard was that you need to fix the market going forward so banks can continue to sell loans. What you should do, and what we suggested to Assemblyman Nelson, is to sunset the provisions with respect to commercial loans so that any new loans going forward would not be subject to these provisions. If in fact—and we disagree—this law is impacting the ability going forward to not only make new loans but to sell them on the secondary market, you would address that issue and you would do it without devastating the people who are relying on the current law.

Assemblyman Gardner:
This is regarding the predatory practices that you gave us (Exhibit G). You talk about all of this money that a predatory institution makes. Would it not be just as easy to say that $4 million is all the money that person did not spend? They had a $5 million loan, and they are trying to get the money back. I am not sure I agree with you that it is predatory to ask for the money that is due under the contract that was signed.

Mark Fiorentino:
That is usually not what occurs. Remember Ms. Yahraus-Lewis's testimony where she had a construction loan. It is not that she took the money and put it in her pocket and benefitted by it. She was actually using it to pay back the people who did the construction. It is the same thing in most cases. Mr. McCormick, for example, used the money to buy the land; that is where the money went. He did not pocket it or profit from it. He used it to buy the land, which was the purpose of the original loan. You heard his testimony that if they had foreclosed immediately, his deficiency would have been much narrower than it was, but they waited two years during the crash and the value of the property continued to plummet. At a certain point, even in his case, it began to rise but he did not get the benefit of that in the negotiations with the person who purchased the loan.

What is also very important, because it addresses some of the other issues, is that you heard him say he had 13 of those loans. In 2012, when he was dealing with his original bank, they all got worked out to the satisfaction of both parties. However, in the cases where the loans were sold, they were not worked out, and you can see why.

Assemblywoman Seaman:
These are very unfortunate scenarios, but is it fair to say that sophisticated investors gamble that an unprecedented market rise would continue?

Mark Fiorentino:
Do you mean from the people who bought the notes?

Assemblywoman Seaman:
Yes. No. I mean from these investors doing the projects.

Mark Fiorentino:
It is fair to say that the folks who were caught in this position—the ones who were protected by that 2011 law that we are asking you not to repeal—did not see the devastation coming. To answer your question a little differently, they were absolutely banking on the economy continuing to grow so they would be able to continue paying back their loans and continue to operate profitable businesses.

Assemblyman Jones:
Going along with what Assemblywoman Seaman was saying, it seems to me this law completely shifts the burden of risk to the back of the sophisticated investor. In a free market society, that means you can have your winners, but the bank has to take the losers. That to me is not fair. I get the

purchase-money mortgages for individual homeowners, so the deficiency judgment is being relieved, but not commercial enterprises. I have had businesses where something unfortunate comes, but I get the wins when it wins, but to be able to shift the burden or risk just does not seem fair to me on a commercial venture. We are sophisticated business people and that is the nature of this. Granted, we got caught in a tsunami of the unfortunate, but I saw that crash coming. I saw it two years before it happened. Just because the other developers had blinders on and were going full speed ahead, why should only the bank have the risk and not the individual businessmen.

Mark Fiorentino:
I would respectfully disagree with you because we are not talking about banks. We are not talking about situations where the bank owned the loan and kept it. Everyone who testified today, including the proponents of this bill, told you that in those circumstances we worked it out. We are talking about a different circumstance where an investor came in and bought the loan at a discount. The other thing is that there is no shifting of risk at all. Assembly Bill 273 of the 76th Session allowed you to fully recover if you were an investor and you bought the loan and if there was, in fact, a deficiency—the value of the land was less than what you paid for it—you could still recoup your investment plus interest and costs. We did not shift anything. All we did was limit the devastation that you could create in circumstances where you bought the loan at a discount.

Assemblywoman Diaz:
I want you to explain the difference between repealing the law and sunsetting the law. What are we looking at if we repeal it versus sunsetting it?

Mark Fiorentino:
If you repeal it, the language that we suggested would say that these protections for commercial buyers only—leave them in place for residential buyers—would no longer apply to any new loan entered into after the effective date of this act. So banks could go back to making loans under the exact same circumstances that they were making them prior to the adoption of the law. Anyone who is currently relying on this protection, because they have an existing loan that was issued prior to the effective date of the act, would have the same benefits that they would currently. You would not devastate the people who are relying on this to try to recover, but you would fix the purported problem that going forward we have affected the lending market. If you repeal it, you both allegedly affect the future market, and you also deprive the people who are currently relying on those protections. It is very bad for them.

Assemblywoman Seaman:
Your point is based on the distress of 2008, so why would this cap no longer be necessary?

Mark Fiorentino:
I think that is what I just said. If you agree that the cap needs to be removed to eliminate any unintended consequences on the lending market, then you should sunset it. If you repeal it, all of the loans where people are having problems and are fighting to survive and pay them off have already all occurred. All of the devastation cannot be fixed by anything that can be done here at the Legislature. They are all working over loans where the market has already done its thing.

Chairman Hansen:
There is someone else down south who would like to testify in opposition to the bill.

Frank Flansburg, Attorney, Schwartz Flansburg, PLLC, Las Vegas, Nevada:
I am representing Ken Templeton who is unable to speak today, but I want to tell you his story and why this statute is so necessary today. Before I do, I am privileged to have represented clients like Mr. Templeton, Mr. McCormick, and Ms. Yahraus-Lewis. I have been dealing with these issues pre- and post-2011, so what I can tell you is that the statute has worked. It has done its job, and it still works today. One of the primary objectives of the statute was to compel dialogue between the holders of these notes who had purchased them with a predatory intent in mind and the borrowers and guarantors who are subject to them—to create a dialogue so a compromise could be reached. I can tell you firsthand, because I represent those clients and have for the past few years, that dialogue has occurred and we have worked out compromises that are fair and balanced. There are no winners and there are no losers. It is a fair, balanced compromise considering everything at risk. There is still work that needs to be done.

Case in point is Mr. Templeton's story. Mr. Templeton is a Nevada businessman and has spent half a century in this state. He is in every sense a Nevada businessman: gaming licensee, real estate licensee, pharmacy business, construction, real estate, and senior living apartments. But what makes his story unique is that he is not someone who rails against banks or holds picket signs against the bank. He is a banker. He spent 30 years in the banking industry, served on the board of three separate banks, and, in fact, he has even been involved in hard-money lending. He knows the right way to do things and that is what the law that is in place now does. It ensures the right thing to have a dialogue. Case in point is before the economy turned, one of

Mr. Templeton's businesses was senior living apartments for vibrant communities for our aged citizens. At one point, he had over ten senior living apartments down south in Las Vegas. At the time the economy turned, there was one under development. I will refer to that as Carefree Senior Living at the Willows (Carefree Willows). Carefree Willows was just being finished as the economy turned. Mr. Templeton had $9 million of equity, that is $9 million of his own money invested in that property. When the economy turned, Mr. Templeton's company and he were current on the payments. The loan was not in default and he continued to make payments. The bank came to him and said that they were feeling insecure because it was not leasing up the way it should, so would he mind reducing the principal balance of the loan by $10 million to $15 million. He had already invested nearly $10 million of his own money in capital equity and could not do it. The bank told him they were going to declare him in default although his loan was current. That is called a loan covenant default. If they deemed him to be in default, they could sell his loan to someone who wants to take it and seek a deficiency. Mr. Templeton asked them not to do it, but to sell it to him. If they were going to sell it at a discount, he wanted to see what capital he could raise to buy out the loan. The bank said no, they were not going to sell it to him, and he would have to deal with whomever. The loan was sold for pennies on the dollar. When it was sold, the first thing this predatory purchaser did was to pursue the property as aggressively as possible, so much so that Mr. Templeton's company did seek bankruptcy protection for restructuring. Let me be clear, not liquidation, restructuring. We wanted to pay off all creditors, but over time. We needed time to do it. The predatory purchaser said that was not good enough, so they sued Mr. Templeton in state court on his verity personally. They got summary judgment against him personally. We took it to the Supreme Court of Nevada and had it reversed. We came back to the district court and stayed everything and allowed the bankruptcy to proceed, which was good news for us until this predatory purchaser sued Mr. Templeton personally in the bankruptcy case. They were pursuing as much leverage as they could to go after the property. Mr. Templeton submitted plans through his companies in the bankruptcy to pay off the loans in full.

Keep in mind that one of the things that happens in a restructuring process, which some of you may know already, is that you have to make payments to the purchaser, or the holder of the note, while the plan is being considered. During the time that this plan was being considered, Mr. Templeton and his companies paid an additional $8 million to this purchaser, but when Mr. Templeton and his companies offered a plan to pay it off in full, the predatory purchaser was not interested. Why? The obvious answer is that they wanted the property. Why they wanted the property is even more interesting. The reason they wanted the property was the predatory purchaser owns nine other senior-living apartments in the community, coincidentally, the ones that Mr. Templeton used to own. They wanted this tenth one and Mr. Templeton out of business. They want to take everything and every competitor there is and snuff it out so they would have a monopoly.

Those are the predatory purchasers, like the Lennars, that are only challenged by legislative restrictions such as this statute that is in place. The statute works. There is still work that needs to be done. I want to address a couple of things that have been raised today. One thing is that you can chill the commercial lending market and chill the secondary sales of these loans. From my experience, that has not happened. Commercial lending is as robust as I can remember it being during my entire time of representing my entrepreneur clients. Case in point, one of the predatory purchasers of loans that is most affected by the existing statute—who is before you advocating for repeal—has a new business venture. That new business venture is loaning money. They are not a bank, but now they are loaning money and selling those loans on the secondary market. The reality speaks against those slippery slope types of arguments that the industry is falling apart, but it is not. That is inaccurate; it is not true.

The law, as it is now, does not need to be fixed. We have heard a lot of questions about the overhang and things of that nature. The only time this law helps is in catastrophic economic conditions like we experienced. As the market improves, and as the fair market value of this property increases, this is not an issue. As an example, take the $5 million that we have been dealing with. Let us say that they have sold that loan at a discount for $2.5 million, but the property value is $6 million. That purchaser can then bid against that property for the full $5 million of that note. Therefore, the fair market value as it is increased really resolves this issue. That is the issue. The statute only preserves our entrepreneurial class during times of economic collapse. The statutes work because we have seen spouts of the economy coming through now. I have been on all sides of this issue.

Assemblyman Araujo:
Do you know what effect this repeal would have on pending court cases?

Frank Flansburg:
I do not think it will have an effect on the way the language reads on pending court cases. It depends on what the court case is. If the trustee sale has occurred and they are pursuing the deficiency judgment in court at this time, it would probably not have an effect. The way the repeal is structured is that it would not affect any deficiency judgments that are the result of any trustee sale that was started before the enactment of the statute. That is window dressing.

I will explain why. Often, what they do is record a notice of deficiency and notice of sale in pursuit of the foreclosure and default. They also sue the guarantor separately for the full value of the note. When they sue the guarantor separately, the notice of sale is out there, but they may or may not have sold the property. What we fear is that they can rescind the notice of sale and wait for the statute to be repealed, and then re-record that notice of sale, which would put it squarely within a statute that is completely new and no longer has those protections.

Assemblywoman Diaz:
In your experience working with clients, defending them in this type of deficiency judgment case, is it the object of your client to not be accountable and not assume the debt of the loan, or is it more that they are caught between a rock and a hard place? They have invested their money into this but cannot negotiate to get that capital back, and now they are being sued for something that does not have that value. Please clarify for the Committee, is this what people are using to circumvent fiscal responsibility?

Frank Flansburg:
This is not a question of fiscal responsibility; it is a question of survival. In nearly all of the cases in which I have experience, my clients have invested all of their money into these projects, every last dime. They invested this money in the projects and still want to try to work something out within the range of capabilities. In every instance where you have the original banks, that has largely happened. There was an argument, for example, that all of these large commercial loans always go to judgment, and there is nothing that can happen. That is not true. It is not true because my clients try to work them out, just like Mr. Templeton who wants to pay this purchaser off in full. He wants some time to do it because of the restructuring program, but he wants to pay every dime. He just wants to survive this economic collapse. That is what this statute does. It creates dialog between the borrower and guarantor and the lender, not to absolve anyone of financial responsibility, but to survive this and give a pathway to resolution for both.

Assemblyman Elliot T. Anderson:
I am still on the one track of nonperforming loans being sold. I realize you may not have that, but is there anywhere that information can be found? Please speak anecdotally about how many nonperforming loans you have seen in your cases.

Frank Flansburg:
Empirically I do not have the statistics. What I can tell you is that, since the economy has improved, the loans are generally no longer nonperforming.

As the economy improves and the fair market value of the property stabilizes, we do not usually run into the nonperforming context of the loans any longer. If we do, the banks are free to foreclose and take over the property which has sufficient fair market value to be able to recover and move forward.

Anecdotally, I can tell you where we saw all of these nonperforming loans packaged and sold is from the economic collapse where banks failed and then the FDIC came in and packaged nonperforming loans and sold them. That is really where this has occurred. Generally speaking, you do not package commercial loans for sale. It is usually residential loan packages that get sold. The nonperforming loans are decreasing because the economy is increasing. With our economy improving, largely because of this law that is in effect, we were able to save our entrepreneurial class. We no longer see these nonperforming loans at the level that we did a handful of years ago.

Assemblyman Ohrenschall:
Earlier I heard Mr. Rabkin discuss how he felt repealing this section is going to help our economy. When former Assemblyman Conklin brought this bill, I voted for it back in 2011. Obviously, not all bills are perfect, and I acknowledge that. From the clients that you see, do you think this is going to lead to more of your clients —small business people—trying to pay off their debts or heading to the bankruptcy court for protection and walking away?

Frank Flansburg:
What is interesting is that I would venture to say that I have represented one of the highest number of clients who found themselves in these circumstances, and I can tell you that there are very few judgments. In nearly all cases, it is working toward the compromise. The places where we have had difficulty reaching a compromise are those cases where, because of another case that I took to the Supreme Court of Nevada, the law does not apply. The trustee sale occurred before 2011, and that was the ruling by the Supreme Court. Those cases are more difficult to resolve and generally do not resolve. The ones that are subject to our current statute do increase that dialogue. If you repeal it, what you are going to find is that we are going to be back to a situation where the law does not apply, there is no dialogue, and our entrepreneurs who invested and grew the economy are then wiped out. There is no reason for the predatory purchasers at that point in time to negotiate or seek a fair and balanced resolution.

Chairman Hansen:
Is there anyone else down south who wants to testify in opposition at this time? [There was no one.] We will come back up north for opposition.

Sean T. Higgins, representing BFB Enterprises:
Much like Mr. Fiorentino, I have been in this fight for the last two sessions. Last session I represented 15 clients. I am not going to go through any of their stories. If you were on this Committee last session, you heard the story over and over how these clients were all long-time Nevada residents and entrepreneurs and how they tried to work with these secondary lenders to work out their loans, and in every instance it was a bust. This law is in place to protect when we have catastrophic economic downturns. That is what it is here for. It does not hurt banks that make loans. It does not hurt secondary lenders. It only applies when you have a judgment from a secondary lender. This is a very small universe; it is not every time a loan is sold to a second bank that all of a sudden the borrower is going to stop payment because he knows he is only liable for the amount out there. The fact of the matter is most people want to continue with these because they are ongoing business enterprises. The fact of the matter is this law did exactly what it was intended to do when it was passed in 2011, and that is why it should remain in place.

Chairman Hansen:
You mentioned that it was a small universe, but Mr. Flansburg indicated this law is responsible for the economic recovery because we basically protected all of these entrepreneurs from predatory collection agencies. It cannot be both.

Sean T. Higgins:
When I say that, I mean in the universe of loans. Of the 15 clients that are represented here, at least 12 of them are out doing commercial building again in southern Nevada, so it has helped. If this was not in place, I doubt any of those people would have had the ability to do so, but since it was in place and there were limits placed on it, they are now out there reemploying people and capital and building in southern Nevada.

Chairman Hansen:
Is there anyone else who would like to testify in opposition to A.B. 195 at this time? Seeing no one, I will open it up to the neutral position in the north or south. Seeing no one, Assemblyman Nelson, would you like to come up and tie up any loose ends?

Assemblyman Nelson:
I think we have had plenty of testimony on this, and the bottom line is that the testimony of Mr. Rabkin and others is that this bill will foster more lending and economic recovery. We would ask you to pass the bill.

Chairman Hansen:
We will close the hearing on A.B. 195. We will now open up for any public comment. Is there anyone who wishes to speak? Seeing no one, we will close public testimony and come back to Committee business. Is there anything we need to cover at this time? Since there is none, this meeting is adjourned [at 10:09 a.m.].

RESPECTFULLY SUBMITTED:

Karyn Werner
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE:

EXHIBITS

Committee Name: **Committee on Judiciary**

Date: **March 17, 2015** **Time of Meeting:** **8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 201	C	Assemblywoman Kirkpatrick	Proposed amendment
A.B. 201	D	Assemblywoman Kirkpatrick	Packet of Eminent Domain Information
A.B. 195	E	Assemblyman Nelson	Proposed Amendment
A.B. 195	F	Alan Rabkin, General Counsel, Heritage Bank	Written Testimony
A.B. 195	G	Mark Fiorentino, representing Kaempfer Crowell	Examples of Predatory Practices
A.B. 195	H	Mark Fiorentino, representing Kaempfer Crowell	Video Presentation
A.B. 195	I	Mark Fiorentino, representing Kaempfer Crowell	Video Presentation