

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Fifth Session
February 18, 2009**

The Committee on Commerce and Labor was called to order by Vice Chairman Kelvin Atkinson at 1:38 p.m. on Wednesday, February 18, 2009, in Room 4100 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/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chairman
Assemblyman Bernie Anderson
Assemblyman Morse Arberry, Jr.
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman Ed A. Goedhart
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Mark A. Manendo
Assemblywoman Kathy McClain
Assemblyman John Ocegüera
Assemblyman James A. Settlemeyer

COMMITTEE MEMBERS ABSENT:

Assemblywoman Barbara E. Buckley (excused)

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Dan Yu, Committee Counsel
Earlene Miller, Committee Secretary
Sally Stoner, Committee Assistant
Andrew Diss, Committee Manager

OTHERS PRESENT:

Sylvia A. Smith, President, Nevada Land Title Association, Reno, Nevada
Norma Spaeth, representing Nevada Land Title Association, Las Vegas, Nevada
Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas,
Nevada
Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, Department of
Business and Industry
Ernest K. Nielsen, Attorney, Washoe County Senior Law Project, Reno, Nevada

Vice Chairman Atkinson:

[Roll called.] Today we have two bills to be presented by Chairman Conklin.
We will open the hearing on Assembly Bill 133.

Assembly Bill 133: Establishes provisions concerning the disbursement of
escrow money in real estate transactions. (BDR 54-647)

Assemblyman Marcus Conklin, Clark County Assembly District No. 37:

This measure is directed at providing protections for the consumer in a time
when they are making the biggest investment of their lives, the purchase of a
home. Assembly Bill 133 is long overdue in Nevada. California, Arizona, Utah,
Colorado, Washington, and Hawaii already have similar protections in place.
I was surprised to learn that Nevada's statutes were lacking in this area.
Known as "good funds legislation" within the title industry, A.B. 133 provides a
level of confidence for the consumer against unscrupulous mortgage lenders,
particularly in these uncertain financial times. Sylvia Smith will explain the
provisions of the bill, and Norma Spaeth will provide you with some real-life
examples that have occurred over the past few years with consumers losing
"loan locks," losing funding, and being put through undue hardship and
suffering in the midst of their real estate transactions.

Sylvia A. Smith, President, Nevada Land Title Association, Reno, Nevada:

Assembly Bill 133 is a very important piece of legislation for the title industry.
The bill makes provisions that require that funds deposited into escrow in a real
estate transaction be in the form of "good funds." This would include electronic

wire transfers, cashier's checks drawn on a bank in the State of Nevada, cash, or any other funds that can be converted to immediate cash. In an escrow transaction, we are the neutral party and the depository for documents and funds. When we have mutually-executed instructions on a real estate transaction, we record and disburse the money to the parties that are due. Because currently there are no "good funds" statutes, anyone can bring us a check; we close the escrow and disburse the funds.

We are asking that "good funds" legislation be passed so that we have to be in receipt of a wire transfer, cashier's check, or other good funds, so that we can record and immediately disburse funds the same day. Most states in the United States have "good funds" laws. It is good common sense that we have this legislation.

Vice Chairman Atkinson:

Are there any questions from the Committee for Ms. Smith?

Assemblyman Arberry:

What if you have an investor with a cashier's check from an out-of-state bank?

Sylvia A. Smith:

According to this legislation, it could be recorded the next day. We would deposit the funds that day; the cashier's check would process that night and be recorded the next day when the funds are available. We are just asking for the time for the check to clear so that we have good funds.

Assemblyman Arberry:

So you will still be able to accept the out-of-state cashier's check. What about money orders?

Sylvia A. Smith:

Money orders would be considered "good funds."

Assemblyman Christensen:

Would a cashier's check from a Wells Fargo Bank in Florida be treated differently from a check drawn from a Nevada branch?

Sylvia A. Smith:

It would need to be deposited, cleared that evening, and recorded the next day.

Assemblyman Christensen:

It would be delayed because it was from out of state?

Sylvia A. Smith:

That is correct.

Assemblyman Christensen:

Is that by statute or is that by preference of title companies?

Sylvia A. Smith:

It is through federal banking. Even if a cashier's check is drawn on a Wells Fargo Bank in another state, it would require processing and payment that night. It is not "immediate funds" when drawn from out of state.

Assemblyman Christensen:

That is true even if the check is verified to be negotiable?

Sylvia A. Smith:

That is correct.

Assemblyman Manendo:

My concern is the difficulty of the process. How is this beneficial if you still have to wait?

Sylvia A. Smith:

That is the point of the legislation. The check may not be good. We cannot commingle escrow funds in our trust accounts. In order to protect the funds for all parties, we are requesting to have "good funds" in order to close the escrow. All checks may not be good. Once we have recorded and disbursed the funds, if the funds were not good, we would have to cover those funds and then undo the transaction.

Assemblyman Manendo:

You are still going to have that delay.

Assemblyman Settlemeyer:

Does this apply to out-of-state wire transfers?

Sylvia A. Smith:

Generally, if it is an interstate electronic wire transfer, it is available that day. The only delay would be if it did not get through the federal system. We consider wires "good funds."

Assemblywoman Kirkpatrick:

If you have a cashier's check from a local bank, it will not be posted until the next day. What is the difference?

Sylvia A. Smith:

If you came into our office with a Nevada cashier's check at 3:59 p.m. and we had funding from the lender, we would make every attempt to record, close, and disburse. The difference would be that we would get the check deposited that day. We have electronic scanning in our offices; so it would process quickly.

Assemblyman Conklin:

This is getting at large-scale transactions. The average consumer closes when the title company tells him it is time to meet and close. Built into that will be a schedule for how long it will take for the money to be available. If the money is not available, the entire contract will become void. We are trying to provide the appropriate amount of time (like most other states in the union) so that in fact, when it is time to close, the money is there. This is trying to clean up the process and will require more planning at the consumer level.

Assemblywoman Kirkpatrick:

I understand.

Vice Chairman Atkinson:

We will now take testimony from Ms. Spaeth.

Norma Spaeth, representing Nevada Land Title Association, Las Vegas, Nevada: Assembly Bill 133 would seem to be a commonsense practice. However, we have seen, in our economic uncertainty over the last several years, unscrupulous practices that make this a necessary bill for Nevada. I am going to give you a couple of examples. There are hundreds if not thousands more incidents like these that have happened in our industry.

Silver State Mortgage was a large mortgage company which operated all over the state. They issued a check to a title company at 4 p.m. after buyers and sellers had signed. The next morning at 8 a.m. the doors closed at Silver State Mortgage. The check that was issued was no longer any good because the bank that had the line of credit for Silver State Mortgage canceled it. The buyer scrambled to get a new loan and could not. The seller canceled the transaction. It cost the buyer financial and emotional hardship. The most recent experience we had is when Lehman Brothers filed bankruptcy. Any check they had issued for mortgage funding was immediately frozen by the bankruptcy court, and no mortgage funds could be used until the court ordered those funds to be used. Unfortunately, there were hundreds of buyers who lost property or the ability to buy a home.

We think A.B. 133 is sound public policy. It makes sense for anyone who is involved in a real estate transaction. We urge the Committee's favorable consideration of the bill.

Vice Chairman Atkinson:

Is this your last speaker?

Assemblyman Conklin:

Yes, that is everyone I have worked with on the bill.

Vice Chairman Atkinson:

Are there any questions? Is there anyone to testify in favor of the bill?

Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:

We support A.B. 133.

Vice Chairman Atkinson:

Are there any questions for Mr. Uffelman? Is there anyone else to speak in favor of the bill? Is there anyone to testify against the bill? Is there anyone to testify from the neutral position?

Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, Department of Business and Industry:

The only concern I have with this bill is the term "escrow officer" in a statutory scheme that does not use the term anywhere else. That term applies to the title insurance industry in Chapter 692A of *Nevada Revised Statutes* (NRS), but is not used in Chapter 645A. My suggestion, as set forth in the written comments ([Exhibit C](#)), is to change the terminology to "escrow agency" and to adopt a similar section in NRS Chapter 692A specifically for escrow officers. Other than that, we support the bill.

Vice Chairman Atkinson:

Mr. Conklin, do you have issues with Mr. Waltuch's document?

Assemblyman Conklin:

I will defer to legal counsel.

Daniel Yu, Committee Counsel:

My understanding of the bill is: to regulate all persons handling or administering escrows and the disbursement of funds from escrow accounts, it would be necessary to bring in the term "escrow officer" as it is defined in Chapter 692A of NRS, which governs title insurance companies. That term is not used in

Chapter 645A of NRS, and therefore, it is necessary to bring it in. Section 1, subsection 3, of the bill references the definition in NRS Chapter 692A. By doing so, we would bring in any person acting as an escrow agent under the employment of a title insurance company or a title insurance agent as licensed pursuant to Chapter 692A of NRS. From a drafting perspective, I believe it is necessary to bring in that term to regulate all persons who would be administering such funds.

The term "escrow agencies" is not currently defined or used in the provisions of this bill. I believe that would be a redundancy and does not add or detract anything from the bill. The term currently used in the bill in section 1, subsection 1, is "No escrow officer or person who acts as an escrow agent may disburse money from an escrow account." The way it is phrased would capture any person who administers escrow funds. Redefining the term or using the term "escrow agency" would not add anything to the provisions of the bill.

Vice Chairman Atkinson:

I hope that addresses your concerns, Mr. Waltuch.

Joseph L. Waltuch:

Yes, thank you very much.

Vice Chairman Atkinson:

Are there any other questions from the Committee? Is there anyone else wanting to testify on A.B. 133? We will close the hearing on A.B. 133. We will open the hearing on Assembly Bill 141.

Assembly Bill 141: Establishes a recovery fund for persons defrauded by mortgage brokers, mortgage agents or mortgage bankers. (BDR 54-229)

Assemblyman Marcus Conklin, Clark County Assembly District No. 37:

Assembly Bill 141 is presented on behalf of the Legislative Commission's Subcommittee to Study Mortgage Lending and Housing Issues, which I chaired in the interim. I would like to recognize my colleague who was a very hardworking member of that subcommittee, Assemblywoman Kirkpatrick, as well as other members of the subcommittee, Assemblyman Grady, Senator Beers, Senator Hardy, and Senator Schneider.

This bill establishes the Mortgage Education, Research and Recovery Fund. A portion of the license fees for mortgage agents, brokers, and bankers will be deposited in the fund, which must maintain a balance of \$300,000 for satisfying claims. When a person has obtained a final judgment for fraud, misrepresentation, or deceit by a licensed mortgage agent, banker, or broker, he

may file a petition for payment from the fund of up to \$25,000 per judgment. He must also show that he has tried to recover damages from the licensee and that no assets or insufficient assets were found.

The bill has provisions similar to the provisions for the Real Estate Education, Research and Recovery Fund in Chapter 645 of *Nevada Revised Statute* (NRS). Nevada also has recovery funds for contractors and manufactured housing. This is not an uncommon practice. Mortgage fraud is a serious problem in our state. About a year ago, law enforcement agencies, including Las Vegas Metro, the Nevada Attorney General's Office, the Federal Bureau of Investigation, the Internal Revenue Service, and the United States Attorney General's Office, created the Southern Nevada Mortgage Fraud Task Force. Its members have prosecuted a number of cases, including one with six defendants and 227 properties and losses to lenders of more than \$17 million.

I urge your support for this bill. It would give the customers and businesses that deal with our mortgage lending professionals the same kind of opportunities for recovery that we have given to those who deal with contractors, real estate professionals, and manufactured home services. The investment that we make in our homes is, for most of us, the largest investment of our lives. Setting up a recovery fund for those who have been harmed by fraud and deceit is an appropriate step.

Vice Chairman Atkinson:

Does the Committee have any questions?

Assemblywoman Gansert:

Are you going to take a percentage of the fees that are already charged, and what levels of reserves are in the accounts?

Assemblyman Conklin:

This was purposefully designed not to have a fiscal note. I do not know what the current reserves are. There is another bill, Assembly Bill 152, proposed this session, which will require the licensure of foreclosure consultants, loan modification consultants, and anyone doing business under NRS Chapter 645. The hope was that taking a small percentage from the expanded number of people governed by this, and putting it into the recovery fund, would be a wash in terms of revenue.

Assemblywoman Gansert:

In this bill, you have not defined the percentage. The account has accrued a reserve in the past. What has the reserve been over the past year?

Assemblyman Conklin:

Could we ask the Committee Policy Analyst to find that number for us? Could Committee Counsel tell us if it is a percentage or a flat amount?

Vice Chairman Atkinson:

Staff will have that information before this bill goes to work session. Are there any other questions from the Committee?

Ernest K. Nielsen, Attorney, Washoe County Senior Law Project, Reno, Nevada:

Our agency started in 1991. Since 1998, we have been a housing counseling agency, and in the last nine months, we have seen a lot of foreclosure cases. We average about 40 cases per month. We try to arrange loan modifications. Sometimes, the servicers are not willing or allowed by the trust to arrange modifications. We look at those cases more closely for legal issues. We often find that there is a lot of misinformation given at the time the people get the loan. Sometimes, they are not told that the loan is an "option" adjustable rate mortgage that says (on paper) it will trigger in five years, but in fact it will trigger in two or three years. There is often misrepresentation of income on the application.

Often, the first time people see these documents is when they go to the escrow company to close. Even worse, people have seen the documents for the first time when a notary public comes to their house to have the documents signed. Those are the people who are usually most surprised about what they have actually entered into.

One case was that of an elderly woman who already had a reverse mortgage. Her only housing expense was her homeowners' association fees. A broker talked her into "buying out" the reverse mortgage and getting a new mortgage. The first month the mortgage cost her over 75 percent of her income. We filed a lawsuit and were able to get a settlement with the originator of the loan. We also sued the broker. He defaulted, and we got a default judgment.

One of the problems in this industry in the past few years has been that the brokers seem to have disappeared or are no longer fiscally sound, making it difficult to enforce a judgment. In this case, the Mortgage Lending Division also got a citation against the broker by default. There are a lot of reasons why this bill is important, especially for people who are not able to get a loan modification from their servicer and who have been abused by the originator of the loan. Even though they get a judgment, they may not be able to enforce it because there are no assets.

There are some limitations to the bill. You get a default judgment because the defendant does not show up or does not answer. Then you file a petition with a request for the court to enter a judgment which is based on an affidavit, not on testimony that is cross-examined, so you get a default judgment. The language of this bill may not be totally clear about whether a default judgment is included in the term "final judgment." Another limitation is that if the Mortgage Lending Division acquires an order which leads to a citation that remains unfulfilled, the victim cannot use this bill as a mechanism by which to access any recovery funds. Also, this bill limits the offenses for a judgment to fraud, misrepresentation, and deceit.

Vice Chairman Atkinson:
Are there any questions?

Assemblyman Arberry:
Who makes the determination that the victim was defrauded? Can a person come in at any time and say he did not understand and request recovery funds?

Ernest K. Nielsen:
The requirement is that you have to file a lawsuit and you have to get a judgment. If the person does not answer, the attorney asks the clerk to enter a default. You have to petition for a default judgment, which outlines the specifics in an affidavit format, to allow the court to have a basis to enter a judgment. It is called a default judgment, which has a limitation that there is no other side to debate the issue. The question becomes, is a default judgment sufficient in terms of the statute to merit access to this fund? It is an appropriate question because, in so many of these cases, brokers cannot be found or lenders are bankrupt, so you do not have an adversary in the lawsuit. You have to put a prima facie set of facts by affidavit that allows the court to conclude that there should be a default judgment against this person.

Vice Chairman Atkinson:
Are there any other questions?

Assemblywoman McClain:
Were you planning to utilize any of the expertise of the Consumer Affairs Division to help with any of this?

Ernest K. Nielsen:
In the case I referred to, we helped the client to file a claim with the Mortgage Lending Division, which brought an action against the broker. They penalized the broker, but the victim never collected because the party defaulted. If there

is an opportunity to use the state agency or an enforcement mechanism, we usually do.

Vice Chairman Atkinson:

Thank you, Mr. Nielsen. Is there anyone to speak in favor of A.B. 141? Is there anyone to testify against the bill? Is there anyone to speak from a neutral position? Is there any public comment?

[Joseph L. Waltuch provided a written statement ([Exhibit D.](#))]

The meeting is adjourned [at 2:26 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Vice Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 18, 2009

Time of Meeting: 1:38 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 133	C	Joseph L. Waltuch	Statement
A.B. 141	D	Joseph L. Waltuch	Statement