

SUMMARY OF RECOMMENDATIONS

LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY MORTGAGE LENDING AND HOUSING ISSUES

Nevada Revised Statutes 218.682

This summary presents the recommendations approved by the Legislative Commission's Subcommittee to Study Mortgage Lending and Housing Issues at its final meeting on August 4, 2008, in Las Vegas. The corresponding bill draft request (BDR) number follows each recommendation for legislation.

RECOMMENDATIONS FOR LEGISLATION

1. Enact legislation authorizing the creation of community land trusts (CLTs) designed to serve very low, low, and moderate income households. A CLT is a nonprofit entity created primarily to acquire real estate to be held in a long-term ground lease for the primary purpose of providing affordable home ownership. The owner of a home in a CLT would be issued a deed recorded in the county where the home is located and assigned a separate parcel number. The CLT would receive a real property tax exemption for the land and retain a preemptive option to purchase any structural improvements on the land at a price determined by formula and specified in the ground lease to ensure that the improvements remain affordable. **(BDR -227)**
2. Enact legislation related to mortgage agents, bankers, and brokers and related professions, as follows: **(BDR -230)**
 - a. To clarify that the Department of Business and Industry (DBI) has enforcement authority over foreclosure consultants, without implementing a new licensing scheme, and requiring the Commissioner, Division of Mortgage Lending, DBI, to adopt regulations to carry out the statutory provisions;
 - b. To increase the maximum fine for escrow agents and agencies from \$500 to \$10,000, consistent with the maximum fine for other licensees of the Division of Mortgage Lending, DBI;
 - c. To require mortgage brokers to post a surety bond;
 - d. To require registration of out-of-state mortgage loan servicers who conduct business in the State of Nevada;

- e. To authorize administrative fines and other appropriate penalties upon a person who, without a license or statutory exemption, conducts any business or activity for which an escrow agency or mortgage agent, banker, or broker license is required;
 - f. To establish that a mortgage broker has a fiduciary duty to a client; and
 - g. To authorize the Division of Mortgage Lending, DBI, to order its licensees to pay restitution to a consumer, in addition to its existing authority to levy fines.
3. Enact legislation to establish a recovery fund for persons harmed by the actions of licensed mortgage agents, bankers, or brokers, similar to the existing fund for real estate licensees in Chapter 645 of NRS. **(BDR -229)**
4. Enact legislation related to foreclosure on residential mortgages, as follows: **(BDR -228)**
- a. To create a hotline, ombudsman, service coordinator, or other mechanism to coordinate the services of State agencies and officers with jurisdiction over mortgage lending, including the Divisions of Financial Institutions and Mortgage Lending, DBI, and the Bureau of Consumer Protection in the Office of the Attorney General;
 - b. To require a notice of sale to include the telephone number of such a hotline, ombudsman, or service coordinator, as well as contact information for the lender's loss mitigation department, if any, or other person who can provide information on the status of the foreclosure process;
 - c. To require a landlord to disclose to a prospective tenant, on a statutorily prescribed form, if the property offered for rent is the subject of a notice of default or notice of sale, and provide that willful failure to disclose would constitute a deceptive trade practice under Chapter 598 of NRS, subject to both civil and criminal penalties;
 - d. To require posting of a notice of default and notice of sale at the physical address of the affected property, to be displayed prominently while the foreclosure process is pending, and to make it unlawful to willfully remove or deface the notice without authorization;
 - e. To require a notice of default and notice of sale to be sent to the licensing authority if the occupant of the premises is a licensed medical facility or facility for the dependent under Chapter 449 of NRS;

- f. To require a specific notice to a tenant, stating that a notice of sale has been posted and the tenant has the option of breaking his lease or remaining in the home subject to eviction under Nevada's eviction laws, and including an explanation of eviction time frames;
 - g. To provide that a tenant occupying a home after a foreclosure sale must receive at least 60 days' notice (or notice equal to the length of his existing tenancy, if less than 60 days) before being placed in unlawful detainer; to establish specific contents for the notice; to authorize the new owner to offer a cash payment for early return of the property or to negotiate a different outcome (e.g., new rental agreement); and to provide that a tenant who peacefully surrenders property under these circumstances would not have a record of eviction placed in his credit file or elsewhere, since he is not at fault;
 - h. To provide that in a post-foreclosure eviction action, copies of all legally-required notices, including the notice preceding unlawful detainer and the summons and complaint must be given to the occupant of the property; and
 - i. To clarify that a lender or new owner who takes title to a home through foreclosure is subject to all applicable existing ordinances, regulations, and rules regarding the maintenance of the home, including covenants, conditions, and restrictions of a homeowners' association.
5. Enact legislation to create a central repository for Nevada housing data and related data, with funding from the Account for Low-Income Housing (Housing Trust Fund), to assist State and local government agencies with planning and implementation efforts.
- (BDR -225)**

SUBCOMMITTEE ACTIONS

The members of the Subcommittee to Study Mortgage Lending and Housing Issues voted to include the following statements in the Subcommittee's final report:

- 6. Supporting the continuance of required third-party counseling for consumers entering into certain loans and stressing that the Subcommittee discourages, in principle, the marketing of loans such as those that result in a loan-to-value ratio greater than 100 percent;
- 7. Stressing the importance of appropriate Housing Division, DBI, funding and programs to assist qualified distressed homeowners;

8. Supporting consumer education programs, such as, the Jump Start Coalition, and the inclusion of financial literacy in school curricula;
9. Supporting a proposal to establish a toll-free telephone hotline to coordinate consumer services in the mortgage industry in Nevada;
10. Supporting creation of a Home Bond Market, in which a public corporation would purchase troubled mortgages at a discount and refinance them at a lower rate with federal loan guarantees, and in which forgiven debt would become a second lien upon the property, due upon sale;
11. Encouraging consumer counseling agencies to focus their outreach activities precisely, since the criteria for qualifying for refinancing assistance are very specific; supporting relaxation of the Federal Home Administration (FHA), U.S. Department of Housing and Urban Development, requirement that a borrower must be at least 60 days delinquent to qualify for a FHA Secure loan; and supporting incentives to lenders to use the FHA Secure program;
12. Stressing that the Housing Division, DBI, should be prepared to intervene in neighborhoods to help them avoid blight and, if necessary, to help individuals transition into different living situations;
13. Supporting the creation of lease-back programs that allow occupants of homes lost through foreclosure to continue to occupy those homes as tenants;
14. Supporting mechanisms to transfer investor-owned homes lost through foreclosure to first-time buyers, with good loans;
15. Stressing the Subcommittee's intent that lenders or new owners taking title to a home after a foreclosure sale must abide by all applicable statutes, ordinances, and contractual obligations pertaining to the maintenance of the exterior of the property by maintaining any foliage, taking action against trespass, covering or draining any swimming pool, and taking other action as required;
16. Supporting an evaluation of Nevada's mortgage lending laws, to determine whether they appropriately address deceptive and fraudulent acts and impose sufficient penalties;
17. Supporting the concepts of notifying a tenant that his home is in the foreclosure process; providing a tenant with a fair opportunity to understand and prepare for foreclosure; and making notice requirements practical, reasonable, and respectful of privacy and contractual rights;

18. Encouraging outreach to prospective renters of single-family homes, urging them to use caution regarding defaults and pending foreclosures;
19. Supporting “cash-for-keys” programs, in which a tenant would receive \$2,000 or other amounts from the lender for moving expenses if he voluntarily vacates his home within 30 days after a foreclosure sale;
20. Encouraging lenders to work with licensed property managers to allow tenants to continue to rent homes acquired through foreclosure sales, pending resale;
21. Encouraging government agencies, nonprofits, and other private entities to develop and distribute educational materials making tenants aware of their rights regarding the return of security deposits;
22. Supporting such Nevada programs as the Housing Trust Fund, which produce much-needed affordable multifamily rental housing throughout the State, and stating that public money for affordable housing should not be diverted from existing programs, which are already oversubscribed; and
23. Supporting efforts of professionals within first-time homebuyer programs to restore confidence in housing markets by stressing that there is opportunity, even during bad times.

In addition, the Subcommittee directed staff to:

24. Prepare a letter to be sent on the Subcommittee’s behalf to units of local government emphasizing their rights and duties to adopt and enforce ordinances regarding maintenance of residential property, particularly as those ordinances apply to homes changing hands through foreclosure, and urging them to submit suggestions to the 2009 Legislative Session regarding any additional authority they require in this regard;
25. Prepare a letter to be sent on the Subcommittee’s behalf to Nevada’s Congressional Delegation and the President of the United States, urging Congress and the President to conduct investigations and hold hearings on the actions of investment banks and other financial institutions that have enriched those entities but have also created grave problems for Nevada’s residents, neighborhoods, and government agencies; and

Prepare a letter to be sent on the Subcommittee’s behalf to the Attorney General of the State of Nevada urging that an investigation be conducted on whether mortgage lenders who are exempt from State licensing as mortgage agents, bankers, or brokers have conducted inappropriate activities to the detriment of Nevada’s consumers.