

**Legislative Commission's Subcommittee to
Study Mortgage Lending and Housing Issues**
(Nevada Revised Statutes 218.682)

**WORK SESSION
DOCUMENT**

(Includes Exhibit)



August 4, 2008

Prepared by the Research Division
Legislative Counsel Bureau

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(Nevada Revised Statutes 218.682)

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WORK SESSION DOCUMENT

Legislative Commission's Subcommittee to Study
Mortgage Lending and Housing Issues

(Nevada Revised Statutes 218.682)

August 4, 2008

To assist the Legislative Commission's Subcommittee to Study Mortgage Lending and Housing Issues in its deliberations, the Subcommittee chairman and staff have compiled the following list of recommendations.

This document covers a range of proposed legislation for the 2009 Legislative Session, as well as statements for inclusion in the final report. Each adopted item will become part of the Subcommittee's final report to the 75th Session of the Nevada Legislature.

The Subcommittee may request up to five legislative measures and must submit its requests to the Legislative Counsel on or before September 1, 2008, in accordance with subsection 3 of *Nevada Revised Statutes* (NRS) 218.2429.

Subcommittee members and members of the public made numerous recommendations in correspondence and at the Subcommittee's five hearings on October 22, 2007; December 3, 2007; January 28, 2008; April 22, 2008; and June 2, 2008. The source of each recommendation appears in parentheses. However, if several persons contributed or made similar statements, only the main source is noted. Also, the chairman and the staff have combined similar items and adjusted terminology for clarity and consistency.

The document lists the recommendations under selected topics, but not in order of importance or priority. At this time, they do not necessarily have the support of the Subcommittee chair or members.

Each recommendation is conceptual in nature and will be subject to further discussion. The Subcommittee may accept, reject, modify, or take no action on each one.

During the process of drafting legislation, the Legislative Counsel may consult with the chairman, the staff, or other persons to obtain clarification or additional details. If a recommendation mentions a specific NRS chapter or section, its completion may also require amendments to other related chapters or sections. Finally, the eventual implementation of a recommendation may have a fiscal impact. The staff will work, as necessary, with the appropriate parties to include fiscal estimates in the Subcommittee's final report.

RECOMMENDATIONS

CONSUMER COUNSELING AND EDUCATION
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1. Draft legislation to:
 - a. Require mandatory third-party counseling on certain loans, including those with a loan-to-value ratio greater than 100 percent, similar to the existing requirements for reverse mortgages and some first-time buyers. (Suggested by Ernie Nielsen, Attorney, Senior Law Project of Washoe County Senior Services, and John Sias, independent mortgage loan originator, All Western Mortgage, Las Vegas)
 - b. Create a mechanism to coordinate the services of State agencies and officers with jurisdiction over mortgage lending. For example, create a hotline or establish an ombudsman or "service coordinator" position. The Division of Financial Institutions and the Division of Mortgage Lending, Department of Business and Industry (DBI), and the Bureau of Consumer Protection, Office of the Attorney General, presently have jurisdiction over various aspects of mortgage lending. (Suggested by Ernie Nielsen, Attorney, Senior Law Project of Washoe County Senior Services)

2. Include a statement in the final report:
 - a. Stressing the importance of appropriate Housing Division, DBI, funding and programs to assist qualified distressed homeowners. (Suggested by George Ross, Director, Legislative and Government Affairs, Snell and Wilmer LLC representing Bank of America)
 - b. Supporting local consumer education programs (e.g., Jump Start Coalition) and the inclusion of financial literacy in school curricula. (Suggested by Nevada Consumer Finance Association, Carson City)

- c. Supporting a proposal to establish a toll-free telephone hotline to coordinate consumer services in the mortgage industry. (Subcommittee action, October 22, 2007)

FORECLOSURE CONSULTANTS

3. Draft legislation to:
 - a. Authorize the Division of Mortgage Lending, DBI, to exercise its normal enforcement authority over foreclosure consultants, who are not licensed unless they hold an agent or broker license, or require licensing of foreclosure consultants. (Suggested by Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, DBI)
 - b. Give the DBI additional authority over foreclosure consultants, as necessary. (Suggested by Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association, Las Vegas)
 - c. Establish enhanced standards to prevent foreclosure consultants from pressuring vulnerable distressed borrowers. (Suggested by George Ross, Director, Legislative and Government Affairs, Snell and Wilmer LLC representing Bank of America)

NEW LOANS AND REFINANCING

4. Include a statement in the final report:
 - a. 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. Forgiven debt would become a second lien upon the property, due upon sale. (Suggested by Lou Baker, private citizen, Las Vegas)
 - b. 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 Housing Administration (FHA) requirement that a borrower must be at least 60 days delinquent to qualify for a FHASecure loan; and supporting incentives to lenders to use the FHASecure

program. (Suggested by Gail Burks, President and Chief Executive Officer, Nevada Fair Housing Center, Inc., Las Vegas)

NEIGHBORHOOD PRESERVATION

5. Draft legislation to:
 - a. Authorize creation of community land trusts, consistent with the points in the memorandum from Ernie Adler dated April 8, 2008, copy attached. (Suggested by Ernie Adler, Counsel, Nevada Rural Housing Authority, Carson City)
 - b. Require lenders or new owners that have taken title after a foreclosure sale to maintain the exterior of vacant property, including maintaining any foliage, addressing standing water, and taking action against trespass, and to cover or drain any swimming pool. (Suggested by Senator Michael A. Schneider, Clark County Senatorial District No. 11)

6. Include a statement in the final report:
 - a. 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. (Suggested by George Ross, Director, Legislative and Government Affairs, Snell and Wilmer LLC representing Bank of America)
 - b. Supporting the creation of lease-back programs that allow occupants of homes lost through foreclosure to continue to occupy those homes as tenants. (Suggested by Michele Johnson, President and Chief Executive Officer, Consumer Credit Counseling Services of Southern Nevada)
 - c. Supporting mechanisms to transfer investor-owned homes lost through foreclosure to first-time buyers, with good loans. (Suggested by Tony Ramirez, Field Office Director, Reno Field Office, United States Department of Housing and Urban Development)

**LICENSING AND OVERSIGHT OF AGENTS, BROKERS,
ESCROW AGENCIES, AND LENDERS**

7. Draft legislation to:

- a. Increase the maximum fine for violations by escrow agents and agencies from \$500 to \$10,000, consistent with the maximum fine for other licensees. (Suggested by Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, DBI)
- b. Require mortgage brokers to post a bond or carry liability insurance. (Subcommittee discussion with Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, DBI, on April 22, 2008)
- c. Register or license out-of-state mortgage loan servicers. (Suggested by Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, DBI)
- d. Authorize administrative fines and other penalties, as appropriate, upon a person who, without a license or statutory exemption, conducts any business or activity for which a escrow agency or mortgage agent, banker, or broker license is required. (Suggested by Chairman Marcus L. Conklin, Clark County Assembly District No. 37)
- e. Establish a victims' fund for persons victimized by mortgage lenders, brokers, or agents, similar to the existing recovery funds for licensed contractors, manufactured housing, and real estate licensees. (Suggested by Ernie Nielsen, Attorney, Senior Law Project of Washoe County Senior Services)
- f. Establish that a mortgage broker has a fiduciary duty to a client. (Suggested by Ernie Nielsen, Attorney, Senior Law Project of Washoe County Senior Services)
- g. In addition to the authority to levy fines, give the Mortgage Lending Division the authority to order its licensees to pay restitution to a consumer. (Suggested by Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, DBI)

PRACTICES OF AGENTS, BROKERS, ESCROW AGENTS, AND LENDERS

8. Draft legislation to:

- a. Enhance disclosures to all parties in a mortgage transaction. Required disclosures

should include, without limitation, the amount and source of all compensation a broker will receive as a result of the transaction. (Suggested by Chairman Marcus L. Conklin, Clark County Assembly District No. 37)

- b. Require a lender to contact a borrower who is an owner-occupant, or make a diligent effort to do so, at least 30 days before filing a notice of default. The purpose of the contact is to assess the borrower's financial situation and explore options for avoiding foreclosure. The lender would be required to offer the borrower the opportunity to request a meeting and to give the borrower contact information for a HUD-certified housing counseling agency. (Suggested by Chairman Marcus L. Conklin, Clark County Assembly District No. 37)

FRAUD AND DECEPTIVE TRADE PRACTICES

9. Draft legislation to increase maximum penalties for mortgage fraud to ten years imprisonment and/or a \$110,000 fine. (Suggested by Dawn Hefley, private citizen, Las Vegas)
10. Include a statement in the final report supporting an evaluation of Nevada's laws to determine whether they appropriately address deceptive and fraudulent acts and impose sufficient penalties. (Suggested by George Ross, Director, Legislative and Government Affairs, Snell and Wilmer LLC representing Bank of America)

POLICIES AND PRACTICES AFFECTING TENANTS

Please note: The vast majority of residential foreclosures in Nevada are nonjudicial proceedings under a deed of trust, pursuant to NRS 107.080 through 107.100. The trustee must record the **notice of default and election to sell**, also known as the **notice of default**, at least three months before exercising the power of sale granted in the deed. At least three months after recording the notice of default, the trustee may record the **notice of sale** and must provide it to the borrower, post it for 20 days, and publish it once a week for three weeks before the sale may take place.

Before the foreclosure sale (“pre-foreclosure”):

11. Draft legislation to:
 - a. 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. Failure to disclose would constitute a deceptive trade practice under Chapter 598 of NRS, subject to both civil and criminal penalties. (Incorporates suggestions of Jon Sasser, Washoe Legal Services, Reno, and Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association (NBA), Las Vegas, and discussion with The Honorable Douglas E. Smith, Chief Judge, Department 2, Las Vegas Township Justice Court)

- b. Require posting of the notice of default and notice of sale at the physical address of the affected property, to be displayed prominently at that address as long as the foreclosure process is pending. Make it unlawful to remove the notice without authorization. (Incorporates suggestions of Steve Kilgore, Deputy Director, Henderson Constable's office, and Jon Sasser, Washoe Legal Services, Reno, and discussion with The Honorable Douglas E. Smith, Chief Judge, Department 2, Las Vegas Township Justice Court)
- c. Require the 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. (Suggested by Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1)
- d. Require the notice of sale to include: (1) the telephone number of the service coordinator or ombudsman, if any, recommended in Recommendation No. 1(b); and (2) 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. (Based on a suggestion of Steve Kilgore, Deputy Director, Henderson Constable's office)
- e. Include in NRS a specific template for a notice to a tenant, stating that a notice of sale has been posted and the tenant has the option of breaking the lease or remaining in the home subject to eviction under NRS 40.255. The notice to the tenant must also include an explanation of the eviction timeframes in NRS 40.255. (Suggested by Jon Sasser, Washoe Legal Services, Reno)

12. Include a statement in the final report:

- a. 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. (Suggested by George Ross, Director, Legislative and Government Affairs, Snell and Wilmer LLC representing Bank of America)
- b. Encouraging outreach to prospective renters of single-family homes, urging them to use caution regarding defaults and pending foreclosures. (Suggested by Bill Uffelman, President and Chief Executive Officer, NBA, Las Vegas)

Please note: After a foreclosure sale, the lender or new owner who has taken title to the property must place the occupant in **unlawful detainer** before taking an eviction action in court. The lender or new owner must serve the occupant/tenant with a three-day notice and wait three judicial days to place the occupant in unlawful detainer. The lender or new owner may then seek to enforce the right of possession through an eviction action after serving the occupant/tenant with a **summons and complaint**, giving him the opportunity to answer, obtaining a writ of restitution either by default or after a hearing, and having him evicted by a sheriff or constable if he fails to leave voluntarily. See NRS 40.255 and 40.290 through 40.420.

After the foreclosure sale (“post-foreclosure”):

13. Draft legislation to:

- a. Provide that a tenant must receive 60 days’ notice before being placed in unlawful detainer. (Suggested by George Ross, Director, Legislative and Government Affairs, Snell and Wilmer LLC representing Bank of America)

Or provide that a tenant must receive 60 days’ notice before being placed in unlawful detainer. The notice should say: (1) since the new owner assumes all obligations of the prior owner, including the requirement to refund deposits, the property must remain in good condition at the end of the 60 days and the new owner may inspect it; (2) the tenant may be subject to an eviction action during the 60 days for nonpayment of rent, nuisance, or illegal activity; and (3) the tenant should pay rent to the new owner during the 60-day period. The 60-day notice would not apply to a week-to-week or month-to-month tenancy or a tenant who has a rental agreement that expires on its own terms before 60 days. The legislation would not prohibit the new owner from offering a cash payment for early return of the property or from negotiating a different outcome (e.g., purchase or new rental agreement). A tenant who peacefully surrenders property under this legislation would not have a record of eviction placed in his credit file or elsewhere, since he is not at fault. (Suggested by Bill Uffelmann, President and Chief Executive Officer, NBA, Las Vegas)

- b. In a post-foreclosure eviction action, require that copies of all legally-required notices, including, without limitation, the notice preceding unlawful detainer and the summons and complaint, must be given to the occupant of the property. (Suggested by Chairman Marcus L. Conklin, Clark County Assembly District No. 37)

14. Include a statement in the final report:
 - a. Supporting “cash-for-keys” programs, in which a tenant would receive \$2,000 from the lender for moving expenses if he voluntarily vacates his home within 30 days after a foreclosure sale. (Suggested by George Ross, Director, Legislative and Government Affairs, Snell and Wilmer LLC representing Bank of America)
 - b. Encouraging lenders to work with licensed property managers to allow tenants to continue to rent homes acquired through foreclosure sales, pending resale. (Suggested by Jon Sasser, Washoe Legal Services, Reno)

Regarding renters and tenants, generally:

15. Include a statement in the final report 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. (Suggested by Jon Sasser, Washoe Legal Services, Reno)

MORTGAGE LENDING AND HOUSING ISSUES, GENERALLY

16. Draft 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.
17. Include a statement in the final report:
 - a. Supporting such Nevada programs as the Account for Low-Income Housing (“Housing Trust Fund”), which produce much-needed affordable multi-family rental housing throughout the State, and stating that public money for affordable housing should not be diverted from existing programs, which are already over-subscribed. (Suggested by Anne Harrington, Nevada Housing Coalition, Reno)
 - b. 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. (Suggested by Gail Burks, President and Chief Executive Officer, Nevada Fair Housing Center, Inc., Las Vegas)

EXHIBIT A

KILPATRICK, JOHNSTON & ADLER
Attorneys and Counselors at Law
412 NORTH DIVISION STREET
CARSON CITY, NEVADA 89703-4168

CHARLES M. KILPATRICK, LTD.
ROBERT G. JOHNSTON
ERNEST E. ADLER

(775) 882-6112
(775) 883-5149
FAX (775) 882-6114

MEMORANDUM

To: Committee Staff, David Ziegler



From: Ernest E. Adler, Esq.

Date: April 8, 2008

Re: Community Land Trust Legislation

From a Nevada perspective, Community Land Trust (CLT) Legislation should include:

1. CLT's should be designed to serve very low income (less than 50% of area median income), low income (50-80% of area income), and moderate income (80-120% of area median income) households.
2. The inclusion of low income families in the land trust may require that rental units be included in the housing portfolio.
3. A community land trust means a nonprofit entity that is qualified as charitable under 501(c)(3) of the Internal Revenue Code, a housing authority under Chapter 315, or a local government which has one of its purposes the acquisition of land to be held in for a 99-year or longer ground lease for the primary purpose of providing affordable home ownership.
4. The owner of the structural improvement in a CLT shall be issued a deed as proof of ownership which shall be recorded in the official public records of the county in which the structure is located, and assigned a separate Assessor's Parcel Number.
5. There shall be an ad valorem tax exemption to land that is owned by an exempt entity and is subject to a 99-year or longer ground lease for the purpose of providing affordable homeownership.

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6. A community land trust may convey structural improvements located on specific parcels of such land which are identified by a legal description contained in and subject to a ground lease having a term of at least 99 years to natural persons or families who meet the very-low, low, and moderate income limits, or the income limits for workforce housing. A community land trust shall retain a preemptive option to purchase any structural improvements on the land at a price determined by a formula specified in the ground lease which is designed to ensure that the structural improvements remain affordable.

7. In arriving at just valuation, a structural improvement that provides affordable housing on land owned by a community land trust and subject to a 99-year or longer ground lease shall be assessed using the following criteria:

a. The amount a willing purchaser would pay a willing seller shall be limited to the amount determined by the formula in the ground lease.

b. If the ground lease and all amendments and supplements thereto, or a memorandum documenting how such lease and amendments or supplements restrict the price at which the improvements may be sold, is recorded in the official public records of the county in which the leased land is located, the recorded lease and any amendments and supplements, or the recorded memorandum, shall be deemed a land use regulation during the term of the lease as amended or supplemented.

8. The provisions restricting the resale price and use of CLT property shall be enforceable despite significant changes in the area outside the CLT, despite changes that render the property greater value for other purposes, and irrespective of subsequent zoning ordinances which cannot override CLT restrictions. CLT restrictions will be enforced by the courts so long as they remain of value to the homeowner, current or future, or to the surrounding community. The courts will enforce the land restrictions even though the current homeowner will suffer significant economic loss if the restrictions are enforced.

E.E.A.