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

(*Nevada Revised Statutes* 218.682)

SUMMARY MINUTES AND ACTION REPORT

The sixth meeting and work session of the Nevada Legislative Commission's Subcommittee to Study Mortgage Lending and Housing Issues was held on August 4, 2008, at 9 a.m. in Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was videoconferenced to Room 2134 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. A copy of this set of "Summary Minutes and Action Report," including the "Meeting Notice and Agenda" (**Exhibit A**) and other substantive exhibits, is available on the Nevada Legislature's website at www.leg.state.nv.us/74th/Interim. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (e-mail: publications@lcb.state.nv.us; telephone: 775/684-6835).

SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblyman Marcus L. Conklin, Chairman
Senator Bob Beers
Senator Warren B. Hardy II
Senator Michael A. Schneider
Assemblyman Tom Grady
Assemblywoman Marilyn Kirkpatrick

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

David Ziegler, Principal Research Analyst, Research Division
Kelly S. Gregory, Senior Research Analyst, Research Division
Daniel Yu, Deputy Legislative Counsel, Legal Division
Lucinda Benjamin, Senior Research Secretary, Research Division

OPENING REMARKS

- Assemblyman Marcus L. Conklin, Chairman, opened the meeting and welcomed members and the public to the sixth meeting and work session of the 2007-2008 Interim.

APPROVAL OF THE "SUMMARY MINUTES AND ACTION REPORT" OF THE MEETINGS HELD ON APRIL 22, 2008, AND JUNE 2, 2008, IN LAS VEGAS

- The Subcommittee **APPROVED THE FOLLOWING ACTION**:

  SENATOR HARDY MOVED TO APPROVE THE MINUTES OF THE APRIL 22, 2008, AND JUNE 2, 2008, MEETINGS IN LAS VEGAS, NEVADA. THE MOTION WAS SECONDED BY ASSEMBLYWOMAN KIRKPATRICK, WHICH PASSED UNANIMOUSLY.

- Chairman Conklin discussed information that was presented during the Subcommittee's previous meetings, submittal of recommendations, and work session procedures.

UPDATE ON RECENT FEDERAL LEGISLATION AND REGULATIONS RELATED TO MORTGAGE LENDING PROBLEMS, INCLUDING THE HOUSING AND ECONOMIC RECOVERY ACT OF 2008 (H.R. 3221) AND REGULATION Z (TRUTH IN LENDING) OF THE FEDERAL RESERVE BOARD

- Shannon C. Raborn, Southern Nevada Director, Office of United States Senator Harry Reid, Las Vegas, provided an update on H.R. 3221 (Housing and Economic Recovery Act of 2008), 110th Congress, introduced by U.S. Representative Nancy Pelosi (D-California). She referred to a letter from Senator Reid to the Subcommittee and explained the major provisions in H.R. 3221 as: (1) confronting the foreclosure crises; (2) ensuring the availability of mortgage credit; (3) incentivizing home buyers and communities; and (4) establishing new rules to prevent future crises. Please see **Exhibit B**. Again referring to the letter from Senator Reid, Ms. Raborn also provided information on the:

  1. Appropriation for nonprofit counseling agencies;

  2. Assistance for borrowers to move into a stable loan product;

  3. Modernization of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Mortgage Corporation (Freddie Mac) programs;

  4. Temporary emergency authority to the United States Department of the Treasury;

  5. Authorization of $11 billion in revenue bonds for funding loans to first-time home buyers and refinancing certain loans, with $100 million available for Nevada;

6. Creation of a refundable tax credit for first-time home buyers;

7. Provision of $3.9 billion to localities to purchase foreclosed homes;

8. Updates for the Truth in Lending Act (TILA)[1];

9. Uniform licensing program for mortgage brokers; and

10. Changes in the income tax laws to create a new standard deduction for homeowners, expand the Low-Income Housing Tax Credit, provide Alternative Minimum Tax relief, and reform the rules on real estate investment trusts

- Ms. Raborn responded to a question from Chairman Conklin and stated that an additional $150 million appropriation was included in H.R. 3221 for counseling services. She explained the initial funding for counseling services provided in a previous bill was required to have 50 percent of the funding available within a short time frame, which was directed through the NeighborWorks America program as grant funding for states. Ms. Raborn offered to investigate the actual time frame for distribution of H.R. 3221 funding and to provide additional information to staff, as required.

- Dave Ziegler, Principal Research Analyst, Research Division, Legislative Counsel Bureau (LCB), provided information on the final rule that amends the Federal Reserve's Regulation Z[2]. He also clarified that the final rule applies to all mortgage lenders and not just those supervised and examined by the Board. He detailed the key provisions for higher-priced mortgage loans where the lender must: (1) assess the borrower's ability to repay; (2) verify income and assets; (3) assess no prepayment penalty; and (4) establish escrow accounts for taxes and insurance. Continuing, he stated for all loans secured by the consumer's principal dwelling, coercing a real estate appraiser is prohibited, as are certain loan servicing practices, and a good faith estimate is required for all loans, which includes home improvement loans and the refinancing of an initial home-purchase loan. Mr. Ziegler indicated the effective date of Regulation Z is October 1, 2009, and the escrow requirement is effective in 2010. Please see **Exhibit C**, **Exhibit D**, and **Exhibit E**.

- Chairman Conklin explained the work session procedures and stated the Subcommittee would first consider all recommendations proposing to draft legislation and then would address all other recommendations. He noted that the recommendations for statements in the final report would be addressed after consideration of Recommendation No. 16.

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[1] 15 U.S.C. 1601 *et seq.,* enacted on May 29, 1968, as Title I of the Consumer Credit Protection Act (Public Law 90-321), 90th Congress, introduced by Leonor Kretzer Sullivan (D-Missouri), effective July 1, 1969.

[2] 12 *Code of Federal Regulations* 226, which was adopted under the Home Ownership and Equity Protection Act of 1994, Title I, Subtitle B of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325.

WORK SESSION—DISCUSSION AND POSSIBLE ACTION ON RECOMMENDATIONS RELATING TO:

- ***Consumer Counseling and Education***
- ***Foreclosure Consultants***
- ***New Loans and Refinancing***
- ***Neighborhood Preservation***
- ***Licensing and Oversight of Agents, Brokers, Escrow Agencies, and Lenders***
- ***Practices of Agents, Brokers, Escrow Agents, and Lenders***
- ***Fraud and Deceptive Trade Practices***
- ***Policies and Practices Affecting Tenants***
- ***Mortgage Lending and Housing Issues, Generally***

Dave Ziegler, previously identified, read each recommendation calling for drafting of legislation into the record and provided a brief explanation, as necessary, to the Subcommittee members. Please see the "Work Session Document" in **Exhibit F**. The Subcommittee considered all other recommendations (i.e., those calling for inclusion of a statement in the Subcommittee's final report) as a group, after consideration of Recommendation No. 16.

CONSUMER COUNSELING AND EDUCATION

***RECOMMENDATION NO. 1.A* — Draft legislation to 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, Reno, and John Sias, independent mortgage loan originator, All Western Mortgage, Las Vegas.)

***RECOMMENDATION NO. 1.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.)

- Senator Hardy complimented the staff and Chairman on the "Work Session Document." In his view, he stated that the challenge is to balance what actions are good for the consumer and the penalties for fraud, without increasing the cost of mortgage loans. He discussed Recommendation No. 1.a. and the requirement for counseling and stated that loans with a greater than 100 percent loan-to-value ratio cannot be obtained at this time because of existing market conditions. He referred to the counseling assistance in H.R. 3221 in addition to requirements in Regulation Z regarding higher-priced mortgages. Senator Hardy stated support for 1.b. but not for 1.a., which in his opinion would be rendered moot by H.R. 3221 and Regulation Z.

- Assemblywoman Kirkpatrick expressed support for Recommendation Nos. 1.a. and 1.b. and said approval of the recommendations would allow them to be discussed during the 2009 Legislative Session, when more is known about H.R. 3221 and Regulation Z.

- Senator Hardy voiced concern that the Subcommittee's actions should not increase the price of loans and houses.

- Chairman Conklin clarified that funds for counseling are not normally paid by State funds and expressed concern about sustained availability of adequate funding for counseling if mandated by statute.

- Senator Hardy also expressed concern for making counseling mandatory in the NRS and preferred to add a statement in the final report strongly encouraging counseling programs.

- Assemblyman Grady stated the Subcommittee should strongly discourage loans with greater than 100 percent loan-to-value ratio; Chairman Conklin said that tightening of the credit market has addressed that issue.

- Senator Hardy agreed with Assemblyman Grady and supported the need to make a very strong statement that 100 percent loan-to-value loans are not acceptable and suggested Recommendation No. 1.a. be moved to the statements portion of the final report.

- The Subcommittee **APPROVED THE FOLLOWING ACTION**:

  SENATOR HARDY MOVED FOR APPROVAL OF RECOMMENDATION NO. 1.B. TO CREATE A MECHANISM TO COORDINATE THE SERVICES OF STATE AGENCIES AND OFFICERS WITH JURISDICTION OVER MORTGAGE LENDING. THE MOTION WAS SECONDED BY ASSEMBLYMAN GRADY, WHICH PASSED UNANIMOUSLY.

RECOMMENDATION NO. 2.A. ***— Include a statement in the final report 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.)

RECOMMENDATION NO. 2.B. — Include a statement in the final report 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.)

RECOMMENDATION NO. 2.C. — Include a statement in the final report supporting a proposal to establish a toll-free telephone hotline to coordinate consumer services in the mortgage industry. (Subcommittee action, October 22, 2007.)

Recommendation Nos. 2.a., 2.b., and 2.c. were addressed after consideration of Recommendation No. 16.

FORECLOSURE CONSULTANTS

RECOMMENDATION NO. 3.A. — Draft legislation to 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.)

RECOMMENDATION NO. 3.B. — Draft legislation to give the DBI additional authority over foreclosure consultants, as necessary. (Suggested by Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association, Las Vegas.)

RECOMMENDATION NO. 3.C. — Draft legislation to 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.)

- Daniel Yu, Deputy Legislative Counsel, Legal Division, LCB, agreed with Chairman Conklin's statement that clarification is needed in the NRS for the Division of Mortgage Lending's authority over foreclosure consultants conducting business in Nevada, whether or not they are licensed.

- Discussion was held on the broad range of existing regulatory authority in the *Nevada Revised Statutes* (NRS).

- Senator Hardy stated clarification is needed of the authority to regulate foreclosure consultants in the NRS and stated the DBI could provide recommendations on regulations.

- THE SUBCOMMITTEE **APPROVED THE FOLLOWING ACTION**:

  ASSEMBLYMAN SENATOR HARDY MOVED TO DRAFT LEGISLATION STATING THE DBI HAS AUTHORITY OVER FORECLOSURE CONSULTANTS, AND THE DBI WILL DEVELOP PROPOSED REGULATIONS FOR ADDITIONAL AUTHORITY OVER FORECLOSURE CONSULTANTS, AS NECESSARY. THE MOTION WAS SECONDED BY ASSEMBLYWOMAN KIRPATRICK, WHICH PASSED UNANIMOUSLY.

NEW LOANS AND REFINANCING

***RECOMMENDATION NO. 4.A.* — Include a statement in the final report 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.)

***RECOMMENDATION NO. 4.B.* — Include a statement in the final report 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.)

Recommendation Nos. 4.a. and 4.b. were addressed after consideration of Recommendation No. 16.

NEIGHBORHOOD PRESERVATION

***RECOMMENDATION NO. 5.A.* — Draft legislation to authorize creation of community land trusts, consistent with the points in the memorandum from Ernie Adler dated April 8, 2008. Please see *Exhibit G* and *Exhibit H*.** (Suggested by Ernie Adler, Counsel, Nevada Rural Housing Authority (NRHA), Carson City.)

***RECOMMENDATION NO. 5.B.* — Draft legislation to 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.)

- Assemblyman Grady informed the Subcommittee that the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System (NRS 218.53871) discussed community land trusts as a mechanism to acquire land for low-cost housing in areas of high-priced properties and was encouraged to draft legislation to address the issue.

- Assemblywoman Kirkpatrick stated support for Recommendation Nos. 5.a. and 5.b. to authorize the development of community land trusts and to address public safety issues that arise from unmaintained properties, which can negatively affect neighborhoods.

- Senator Schneider stated it is imperative that lenders maintain properties and noted homeowners' associations are having difficulties collecting dues and funds for ongoing maintenance expenses.

- Senator Hardy did not support Recommendation No. 5.b. due to the potentially high costs that could be incurred by new homeowners and was of the opinion that the problem could be addressed by local ordinances and homeowner association contracts.

- Chairman Conklin referred the Subcommittee members to the information provided by Ernie Adler, Counsel, NRHA, on community land trusts in the "Work Session Document."

- Assemblywoman Kirkpatrick asked if the Subcommittee could address the public safety issue with a strong statement in the final report.

- Senator Schneider said the real estate market is seeing more sales and banks are forcing prices down, which lowers the value of surrounding properties. He said the lenders are responsible for maintaining the property not taxpayers and supported stringent laws to maintain properties in Nevada.

- Senator Hardy stated he recognized the severity of the problem but reiterated that local governments could address the issue with ordinances and regulations.

- Senator Beers requested an explanation of the foreclosure process for houses in common-interest communities.

- Senator Schneider stated that banks do not maintain the properties or pay dues to homeowners' associations. In his opinion, local governments should not be spending funds to address the problem because private lenders are responsible.

- The Subcommittee **APPROVED THE FOLLOWING ACTION**:

  SENATOR HARDY MOVED TO ACCEPT RECOMMENDATION 5.A. TO DRAFT LEGISLATION TO AUTHORIZE THE CREATION OF COMMUNITY LAND TRUSTS AND RECOMMENDATION NO. 5.B. TO DRAFT LEGISLATION TO CLARIFY THAT HOMEOWNERS' REQUIREMENTS SHIFT TO NEW OWNERS THAT HAVE TAKEN TITLE AFTER A FORECLOSURE SALE, INCLUDING RESPONSIBILITY FOR

COMPLIANCE WITH LOCAL GOVERNMENT ORDINANCES AND HOMEOWNERS' ASSOCIATION REGULATIONS.

- Senator Schneider clarified that owners of foreclosed properties could possibly be located outside of the United States.

- Senator Beers was of the opinion that the lien process would address that issue. Daniel Yu, previously identified, concurred.

- Chairman Conklin called for a second on the motion.

THE MOTION WAS SECONDED BY SENATOR SCHNEIDER, WHICH PASSED UNANIMOUSLY.

- Chairman Conklin said, without objection from the Subcommittee, he would direct a letter to be drafted to local governments emphasizing the right to use their authority to adopt and enforce ordinances regarding the maintenance of residential property. He also said the Subcommittee would consider a new item 6.d., confirming the Subcommittee's desire to have new owners abide by all statutes pertaining to the exterior of vacant properties, maintenance of foliage, attention to standing water, and so on.

RECOMMENDATION NO. 6.A. ***— Include a statement in the final report 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.)

RECOMMENDATION NO. 6.B. ***— Include a statement in the final report 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.)

RECOMMENDATION NO. 6.C. ***— Include a statement in the final report 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 [HUD].)

Recommendation Nos. 6.a., 6.b., and 6.c. were addressed after consideration of Recommendation No. 16.

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

RECOMMENDATION NO. 7.A. ***— Draft legislation to 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.)

RECOMMENDATION NO. 7.B. ***— Draft legislation to 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.)

RECOMMENDATION NO. 7.C. ***— Draft legislation to register or license out-of-state mortgage loan servicers.*** (Suggested by Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, DBI.)

RECOMMENDATION NO. 7.D. ***— Draft legislation to 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.)

RECOMMENDATION NO. 7.E. ***— Draft legislation to 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.)

RECOMMENDATION NO. 7.F. ***— Draft legislation to 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, Reno.)

RECOMMENDATION NO. 7.G. ***— Draft legislation to give the Mortgage Lending Division, DBI, the authority to order its licensees to pay restitution to a consumer in addition to the authority to levy fines.*** (Suggested by Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, DBI.)

- Chairman Conklin said that Recommendation No. 7.d. may have already been addressed under Recommendation No. 3.b. Regarding Recommendation No. 7.e., Chairman Conklin read into the record citations for other recovery funds that currently exist in NRS. He said those funds are normally paid for through the licensing process and would likely involve a fee increase.

- Senator Hardy stated the Subcommittee has identified consumer fraud in the housing market and stated support for all of the policy recommendations. In his view, funding would be vetted by the 2009 Legislature.

- Chairman Conklin clarified that Assembly Bill 440 (Chapter No. 492, *Statutes of Nevada 2007*) created felony penalties for many of the items in Recommendation Nos. 7.a. through 7.g.

- Assemblyman Grady asked what fines had been issued during the past 24 months and what dollar amount was collected by the DBI. Also, he questioned if current statutes were adequate.

- Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, DBI, explained that very few fines have been administered over the last ten months. Mr. Waltuch stated the largest fine was against Compass Financial Partners for a total of $14,000; otherwise the "cease and desist" authority has been used to bring companies into compliance, but fines have been nominal.

In response to a question from Chairman Conklin, Mr. Waltuch clarified that the language regarding fines is similar to Chapter 645B "Mortgage Brokers and Mortgage Agents" and Chapter 645E "Mortgage Bankers" of NRS and supported the increase from $500 to $10,000.

- Assemblywoman Kirkpatrick expressed support for all items in Recommendation Nos. 7.a. through 7.g.

- Chairman Conklin said that bonds can range from $25,000 to $50,000, and the bond referred to in Recommendation No. 7.b. was for fiduciary responsibility.

- Senator Hardy stated there are numerous questions regarding Recommendation Nos. 7.a. through 7.g. but reiterated the need for them to be evaluated by the 2009 Legislature.

Responding to a question from Senator Beers, Mr. Waltuch explained a bond is generally put in place to cover damages suffered by a consumer as a result of negligent or intentional acts of whoever is being bonded. In his view, H.R. 3221[3] will be mandatory upon states. He noted Section 1508 of the Act will require a state supervisory agency to mandate a bond or a net worth requirement based on the loan volume of the loan originator, or establish a victims' recovery fund; however, the LCB would need to determine if the federal legislation preempted State law.

- The Subcommittee **APPROVED THE FOLLOWING ACTION**:

  ASSEMBLYWOMAN KIRKPATRICK MOVED FOR APPROVAL OF RECOMMENDATION NOS. 7.A. THROUGH 7.G. THE MOTION WAS SECONDED BY SENATOR HARDY, WHICH PASSED WITH SENATOR BEERS VOTING NAY.

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[3] Secure and Fair Enforcement Mortgage Licensing Act of 2008, 110th Congress, introduced by U.S. Senator Diane Feinstein (D-California).

PRACTICES OF AGENTS, BROKERS, ESCROW AGENTS, AND LENDERS

RECOMMENDATION NO. 8.A. ***— Draft legislation to 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.)

RECOMMENDATION NO. 8.B. ***— Draft legislation to 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.)

After discussion, the Subcommittee took no action on Recommendation Nos. 8.a. and 8.b.

FRAUD AND DECEPTIVE TRADE PRACTICES

RECOMMENDATION NO. 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.)

After discussion, the Subcommittee took no action on Recommendation No. 9.

RECOMMENDATION NO. 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.)

Recommendation No. 10 was addressed after consideration of Recommendation No. 16.

POLICIES AND PRACTICES AFFECTING TENANTS

Before the Foreclosure Sale ("Pre-Foreclosure")

RECOMMENDATION NO. 11.A. ***— Draft legislation 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. 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.)

<u>RECOMMENDATION NO. 11.B.</u> — Draft legislation to 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.)

<u>RECOMMENDATION NO. 11.C.</u> — Draft legislation to 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.)

<u>RECOMMENDATION NO. 11.D.</u> — Draft legislation to 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.)

<u>RECOMMENDATION NO. 11.E.</u> — Draft legislation to 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 time frames in NRS 40.255. (Suggested by Jon Sasser, Washoe Legal Services, Reno.)

- Assemblywoman Kirkpatrick stated that Recommendation No. 11.c. is broadly worded and expressed concern that the notice of default and notice of sale 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 to protect the residents. She stated transferring residents to other facilities takes time to coordinate, and the notices would assist in ensuring adequate public safety measures are taken during the transfer.

- Senator Hardy commented that Recommendation Nos. 11.a. through 11.e. are issues that need to be further evaluated in public hearings during the 2009 Legislative Session. He suggested a willfulness standard be established for violations of the disclosures because of their stiff penalties; he stated the Subcommittee should approve the recommendations with the caveat that violations be determined as "willful," which may already be included in the deceptive trade practice statutes in NRS.

In response to a question from Chairman Conklin, Mr. Sasser and Mr. Uffelman expressed support for 11.a. and 11.b. and stated that the combination of recommendations did address recommendations previously discussed by the Subcommittee.

- The Subcommittee **APPROVED THE FOLLOWING ACTION**:

  SENATOR HARDY MOVED FOR APPROVAL OF RECOMMENDATIONS 11.A. THROUGH 11.E., AND AMENDING ITEMS 11.A. AND 11.B. TO INCLUDE THE FAILURE TO POST AND DISCLOSE MUST BE DETERMINED TO BE "WILLFUL" UNDER THE DECEPTIVE TRADE PRACTICES STATUTES IN CHAPTER 598 OF NRS. THE MOTION WAS SECONDED BY ASSEMBLYMAN GRADY, WHICH PASSED UNANIMOUSLY.

***RECOMMENDATION NO. 12.A.* — Include a statement in the final report 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.)

***RECOMMENDATION NO. 12.B.* — Include a statement in the final report 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.)

Recommendation Nos. 12.a. and 12.b. were addressed after consideration of Recommendation No. 16.

After the Foreclosure Sale ("Post-Foreclosure")

***RECOMMENDATION NO. 13.A.* — Draft legislation to 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 Uffelman, President and Chief Executive Officer, NBA, Las Vegas.)

<u>RECOMMENDATION NO. 13.B.</u> — Draft legislation to 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 in a post-foreclosure eviction action. (Suggested by Chairman Marcus L. Conklin, Clark County Assembly District No. 37.)

- Chairman Conklin stated that Recommendation No. 13.b. could be included with Recommendation No. 13.a., the intent being to ensure that the occupant receives adequate notification.

- George Ross, previously identified, expressed support for Recommendation No. 13.a. including the additional detailed language suggested by Mr. Uffelman.

- Senator Hardy commented on situations where the tenant would like to remain in the property and make payments to the new owner, which, in his view, would be the optimum resolution. He added the tenant should have the right to peacefully surrender the property without having a record of eviction placed in his credit file and have the option to terminate the contract.

- Mr. Ross also expressed support for Recommendation No. 13.a. and Senator Hardy's comments.

- Chairman Conklin explained that under common law, there is a relationship between an owner and an occupant with the understanding that when the rent is paid the mortgage is also paid. If the unit goes into foreclosure, it is perceived that the lease agreement would become null and void.

- Daniel Yu, previously identified, verified that there is a contractual obligation in such a situation.

- Senator Hardy expressed support for the codification of the right to terminate a lease.
- Jon Sasser agreed with the additional language in Recommendation 13.a. as suggested by Mr. Uffelman, but questioned if the 60-day notice should apply to week-to-week or month-to-month tenancies. He preferred the 60-day notice for all; however, for shorter tenancies at least a one-week notice for week-to-week tenancies and a one-month notice for month-to-month tenancies and less than a 60-day notice if the lease expires in less than 60 days. He referred to Recommendation No. 11.e. and noted that the notice to tenant is included in the language which tells the tenant that the lease can be broken. He suggested for Recommendation No. 13.b., in situations where the bank does not know there is an occupant and before a default judgment is issued in court cases, that service of the notice to the occupant is verified.

- Mr. Uffelman clarified his intention for notification to occupants was that a week-to-week tenancy would have notice of a week and a month-to-month tenancy would have notice of a month. He stated support for the right to break a lease for certain situations and said the goal was to provide adequate disclosure to the occupant.

- The Subcommittee **APPROVED THE FOLLOWING ACTION**:

  ASSEMBLYMAN GRADY MOVED FOR APPROVAL OF RECOMMENDATION NO. 13.A. AND INCLUSION OF THE TEXT AFTER THE WORD "OR" AND RECOMMENDATION NO. 13.B. WITH RECOMMENDED REVISIONS. THE MOTION WAS SECONDED BY ASSEMBLYWOMAN KIRKPATRICK.

- Senator Hardy discussed posting of notice and notification for current tenants in Recommendation No. 13.b. and stated debate on the issue would occur during the 2009 Legislative Session.

- Chairman Conklin stated that A.B. 440 added requirements on the borrower to be sure information on loan applications was truthful. In his view, banks often accepted the owner as the occupant and in some instances that was not the case.

  UPON THE CALL OF THE CHAIR, THE MOTION PASSED UNANIMOUSLY.

***RECOMMENDATION NO. 14.A.* — Include a statement in the final report 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.)

***RECOMMENDATION NO. 14.B.* — Include a statement in the final report 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.)

Recommendation Nos. 14.a. and 14.b. were addressed after consideration of Recommendation No. 16.

Regarding Renters and Tenants, Generally

***RECOMMENDATION NO. 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.)

Recommendation No. 15 was addressed after consideration of Recommendation No. 16.

MORTGAGE LENDING AND HOUSING ISSUES, GENERALLY

***RECOMMENDATION NO. 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.**

- Chairman Conklin explained that the Legislative Commission's Subcommittee to Study the Availability and Inventory of Affordable Housing (Assembly Concurrent Resolution No. 11, File No. 97, *Statutes of Nevada 2005*) for the 2005–2006 Interim made the recommendation for a bill draft request to create a repository for Nevada housing data utilizing an available grant so additional funding would not be required. The compilation of information would be performed by the Center for Business and Economic Research, University of Nevada, Las Vegas, and the Small Business Development Center, University of Nevada, Reno.

- Assemblywoman Kirkpatrick stated support for Recommendation No. 16 and referred to a federal program that assists local governments to purchase homes that create blight and allow for the development of affordable housing. She stressed the need and importance of having a thorough inventory of houses, creating a database of available housing that would be available to the public, and performing the task utilizing programs located at Nevada's universities.

- The Subcommittee **APPROVED THE FOLLOWING ACTION**:

  ASSEMBLYWOMAN KIRKPATRICK MOVED FOR APPROVAL OF RECOMMENDATION NO. 16 TO DRAFT LEGISLATION TO CREATE A CENTRAL REPOSITORY FOR NEVADA HOUSING DATA AND RELATED DATA, WITH FUNDING FROM THE ACCOUNT FOR LOW-INCOME HOUSING. THE MOTION WAS SECONDED BY SENATOR SCHNEIDER, WHICH PASSED UNANIMOUSLY.

***RECOMMENDATION NO. 17.A.* — Include a statement in the final report 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.)

***RECOMMENDATION NO. 17.B.* — Include a statement in the final report 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.)

- Dave Ziegler, previously identified, read into the record the recommendations for statements to be included in the final report, consisting of Recommendation Nos. 2.a., 2.b., 2.c., 4.a., 4.b., 6.a., 6.b., 6.c., 10, 12.a., 12.b., 14.a., 14.b., 15, 17.a., and 17.b. Mr. Ziegler also described new Recommendation 6.d., 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.

- The Subcommittee **APPROVED THE FOLLOWING ACTION**:

  SENATOR SCHNIEDER MOVED FOR APPROVAL OF RECOMMENDATION NOS. 2.A., 2.B., 2.C., 4.A., 4.B., 6.A., 6.B., 6.C., 6.D., 10, 12.A., 12.B., 14.A., 14.B., 15, 17.A., AND 17.B. TO BE INCLUDED AS STATEMENTS IN THE SUBCOMMITTEE'S FINAL REPORT. THE MOTION WAS SECONDED BY ASSEMBLYMAN GRADY, WHICH PASSED UNANIMOUSLY.

- Chairman Conklin complimented staff for their work during the interim and on the "Work Session Document." He also thanked the Subcommittee members for their participation.

- Senator Schneider requested that the Subcommittee send a letter to President George W. Bush and Nevada's Congressional Delegation expressing the need to investigate, conduct hearings, and regulate economic markets. He also discussed how mortgages were aggressively marketed, so they could be pooled and sold at a tremendous profit.

- Chairman Conklin directed staff to prepare a letter as recommended by Senator Schneider.

DISCUSSION OF SCHEDULE—ABSTRACT AND SUMMARY OF RECOMMENDATIONS AND FINAL BULLETIN

No discussion was held on this agenda item.

PUBLIC COMMENT

- Rená E. Starks, Advocate, International Association of Mortgage Brokers, Las Vegas, Nevada, supported the investigation as suggested by Senator Schneider and requested a letter from the Subcommittee be sent to Nevada's Attorney General requesting an investigation of Nevada's mortgage lending industry. In her view, banks are bypassing state-licensed mortgage bankers, mortgage brokers, and appraisers, and using their own broker's price opinion, which is creating a false market. She discussed interest-only loans that push the problem into the future and disguise true property values. In Ms. Starks' opinion foreclosure consultants are not being utilized because lenders are dealing directly with consumers. She urged support to protect mortgage bankers, brokers, and agents licensed by the Division of Mortgage Lending, DBI.

- Leonardo Finkielsztein, Senior Loan Office, Mayflower Financial, Las Vegas, expressed support for the investigation suggested by Rená Starks.

- Chairman Conklin requested that Ms. Starks submit additional information to staff for the Chairman's consideration.

- Jan Porter, citizen, board member of a homeowners' association (HOA), Las Vegas, stated she volunteered to assist the Canyon Creek Homeowners' Association because they needed board members. She referred to Recommendation No. 5.b. and stated that HOA board members need to have a contact person or division designated at financial institutions as a point of contact for HOA staff. Ms. Porter explained in foreclosure situations some financial institutions do not take title to a property until the house is ready to be sold, so there is a period of approximately six months to one year where there is no point of contact to discuss HOA issues.

- Chairman Conklin suggested Ms. Porter contact Senator Schneider as a resource regarding HOA issues.

- Michael Mullin, President, Nevada Housing and Neighborhood Development, Las Vegas, discussed notification to occupants and to local governments of foreclosures and notices of default. He requested that a notice be sent to local governments in addition to posting on the property so that governments could exercise appropriate regulations and ordinances. Please see **Exhibit I**.

- Chairman Conklin reminded the public that the actions taken by the Subcommittee at the work session are recommendations that will be presented to the 2009 Legislature and urged individuals to participate in legislative hearings in person or by videoconference.

- Senator Hardy thanked Chairman Conklin and staff for their work on the issues brought before the Subcommittee.

ADJOURNMENT

There being no further business to come before the Subcommittee, the meeting was adjourned at 12:07 p.m.

Respectfully submitted,

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Lucinda Benjamin
Senior Research Secretary

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David Ziegler
Principal Research Analyst

APPROVED BY:

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Assemblyman Marcus L. Conklin, Chairman

Date: ___________________________

LIST OF EXHIBITS

Exhibit A is the "Meeting Notice and Agenda" provided by David Ziegler, Principal Research Analyst, Research Division, Legislative Counsel Bureau (LCB).

Exhibit B is a letter to Assemblyman Marcus L. Conklin, Chairman, Subcommittee to Study Mortgage Lending and Housing Issues, from Harry Reid, United States Senator, Washington, D.C., dated August 4, 2008, the Housing and Economic Recovery Act of 2008.

Exhibit C is a press release from the Board of Governors of the Federal Reserve System on Regulation Z (Truth in Lending) under the Home Ownership and Equity Protection Act of 1994 released on July 14, 2008.

Exhibit D is a document titled "Summary of the 'Housing and Economic Recovery Act of 2008'," submitted by David Ziegler, Principal Research Analyst, Research Division, LCB.

Exhibit E is a chart titled "Key Points of Housing and Economic Recovery Act of 2008 (H.R. 3221) and the Federal Reserve's Amended Regulation Z (Truth in Lending)," submitted by David Ziegler, Principal Research Analyst, Research Division, LCB, dated August 4, 2008.

Exhibit F is the "Work Session Document" provided by David Ziegler, Principal Research Analyst, Research Division, LCB, dated August 4, 2008.

Exhibit G is a memorandum titled "Community Land Trust Legislation," to David Ziegler, Principal Research Analyst, Research Division, LCB, from Ernest E. Adler, Attorney, Kilpatrick, Johnston, and Adler, Carson City, Nevada, dated April 8, 2008.

Exhibit H is a document titled "The Community Land Trust Model," prepared by the Institute for Community Economics, Springfield, Massachusetts, and submitted by David Ziegler, Principal Research Analyst, Research Division, LCB, dated July 30, 2008.

Exhibit I is a letter dated August, 2008, to the Legislative Commission's Subcommittee to Study Mortgage Lending and Housing Issues from Michael Mullin, President, Nevada Housing and Neighborhood Development, Las Vegas, Nevada, with attached California Senate Bill No. 1137, Chapter 69, approved by Governor Arnold Schwarzenegger on July 8, 2008, and Ordinance No. 3080 of the City of Chula Vista, California, which requires the registration of abandoned residential properties, dated August 7, 2007.