



**NEVADA LEGISLATURE**  
**LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY**  
**MORTGAGE LENDING AND HOUSING ISSUES**  
*(Nevada Revised Statutes 218.682)*

**SUMMARY MINUTES AND ACTION REPORT**

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The fourth meeting of the Nevada Legislative Commission's Subcommittee to Study Mortgage Lending and Housing Issues was held on April 22, 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](http://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](mailto: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  
Assemblywoman Marilyn Kirkpatrick

**SUBCOMMITTEE MEMBER PRESENT IN CARSON CITY:**

Assemblyman Tom Grady

**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, welcomed members, presenters, and the public to the fourth meeting of the 2007-2008 Interim.

## **APPROVAL OF THE “SUMMARY MINUTES AND ACTION REPORT” OF THE MEETINGS HELD ON DECEMBER 3, 2007, AND JANUARY 28, 2008, IN LAS VEGAS**

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

SENATOR HARDY MOVED TO APPROVE THE MINUTES OF THE DECEMBER 3, 2007, AND JANUARY 28, 2008, MEETINGS IN LAS VEGAS, NEVADA. THE MOTION, WHICH WAS SECONDED BY ASSEMBLYWOMAN KIRKPATRICK, PASSED UNANIMOUSLY.

## **REVIEW OF ACTIVITIES OF THE SUBCOMMITTEE TO STUDY MORTGAGE LENDING AND HOUSING ISSUES**

### *Update on Testimony Regarding Consumer Counseling Services Related to Mortgage Lending and Foreclosure Activity*

- Michele Johnson, President and Chief Executive Officer, Consumer Credit Counseling Services (CCCS) of Southern Nevada, explained that the Mortgage Bankers Association has documented that delinquent loans and foreclosure starts have increased in the fourth quarter of 2007. Subprime loans have even more dismal statistics. Of the 101,528 subprime loans serviced in Nevada, 16.85 percent were past due and foreclosure starts were up 43 percent in the fourth quarter of 2007. She stated Nevada has been hit the hardest by the housing crisis and explained that the CCCS of Southern Nevada clients are experiencing up to a two-week wait for counseling services because the demand has increased, despite the hiring of three additional staff positions. Ms. Johnson provided statistics on the average income of foreclosure prevention and loss mitigation clients, fixed-rate loans, interest-only loans, and negative-amortization loans, which statistics have remained constant since January 2008. Please see [Exhibit B](#).

Continuing, Ms. Johnson stated that being the only United States Department of Housing and Urban Development (HUD) approved counseling agency serving all of Nevada, CCCS of Southern Nevada has received federal funds; however, she estimated the funds would be depleted by August 2008. She informed the Subcommittee that the funds authorized by the Interim Finance Committee (IFC) have not been dispersed by the Mortgage Lending Division, Department of Business and Industry. Additional funds were designated for outreach activities in northern Nevada and the public service announcement prepared by United States Senator Harry Reid and Assembly Speaker Barbara E. Buckley (Clark County Assembly District No. 8) started

airing on April 21, 2008. Funds are anticipated soon to begin outreach in southern Nevada. In conclusion, Ms. Johnson stated renters are also receiving notices to vacate properties that are in foreclosure status.

Ms. Johnson responded to Chairman Conklin's question regarding borrowers being qualified for better loans and then accepting a bad loan product. She explained how difficult it was to determine whether a borrower chose the lending product or was enticed by the lender to use another more creative product.

Responding to questions from Subcommittee members, Ms. Johnson explained the federal allocation to the CCCS of Southern Nevada for counseling services was based on a \$200 fee per case on the high end and a \$150 fee per case on the lower end, with a maximum of \$350 per household, which totaled over \$600,000 in federal funding. She also stated that of those borrowers who are having difficulty and who have a second mortgage, 99 percent took the second mortgage as part of the original loan package. Their 20 percent down payment was paid with the second mortgage. As a result, these borrowers now owe more than the house is currently worth; consequently, they are finding it difficult to refinance their loan. Ms. Johnson added using second mortgage loans for down payments is not traditional practice in the lending market.

- Gail Burks, President and Chief Executive Officer, Nevada Fair Housing Center (NFHC), Incorporated, discussed the makeup of the NFHC caseload, the client profile, and how the NFHC services have changed. Ms. Burks explained that there is more outreach occurring but in her view it is not focused. The NFHC has participated in resource center events, which typically have had more than 400 clients attend; however, the amount of resources for clients has declined on a per-client basis. Ms. Burks said more consumers are walking away from properties and described the NFHC clients as those who are in default on loans by 60 days or more, those with a resale date, or clients that have received a visit from the constable asking that they vacate the property, also called "high-touch" clients. On average, 33 percent of the NFHC clients earn more than the Average Median Income (AMI).

Continuing, Ms. Burks said that the program the NFHC utilizes to assist clients acquire refinancing requires the NFHC to be Housing Quality Standards (HQS) certified. She said many properties have been severely damaged by the homeowner while in Real Estate Owned (REO) inventory; the property then becomes more difficult to appraise and to secure refinancing. Ms. Burks explained that more lenders who have second mortgages on houses are entering the foreclosure process. She said the caseload has increased from 200 reported in October 2007 to 607 cases; currently, on average, 99 percent are "high-touch" cases. According to Ms. Burks, approximately 292 negotiations are handled each month that include: (1) contacting the lender on behalf of the client; (2) examining what the client can afford if they were allowed to remain on the property; (3) examining language that could be used to modify the loan; and (4) processing documents between the servicer and the client to obtain signatures and fees. She said the number one barrier for approval of refinancing applications is

the fact that Nevada has been labeled a high-risk market for loans, which results in any property appraisal being decreased by 10 percent automatically.

Commenting on client profiles, Ms. Burks stated there is a large increase in clientele among Culinary Union workers whose average credit scores exceed the 680 to 750 level. She added there is also an increase in clientele who were in their homes for a long period of time and refinanced from a good lender to a bad lender. Ms. Burks indicated the number of renter evictions, with an average family size of three persons, has increased to 35 per month. There is also an increase in seniors who initially desired to refinance their homes using a legitimate HUD reverse mortgage, but received another type of product. She said that NFHC has seen violations of Assembly Bill (A.B.) 440 (Chapter 492, *Statutes of Nevada 2007*), and that some of these cases have been reported to the Division of Mortgage Lending, DBI.

Ms. Burks also informed the Subcommittee that as of April 19, 2008, the NFHC is no longer participating in new outreach activities or accepting referrals from other agencies due to the increased caseload. She stated the NFHC reports to regulators those lenders and investors who say they are willing to work with clients to modify loans, but are not.

In conclusion, Ms. Burks recommended investigating methods to notify renters of foreclosure on a property, to restore market confidence, and to increase resources to serve the community.

Ms. Burks explained, in response to a question from Assemblyman Grady, cases where a client obtained a “piggyback” loan, which is an 80 percent first mortgage plus a 20 percent second mortgage. Borrowers who have a “piggyback” loan have no equity in their property. Ms. Burks clarified that the majority of the NFHC clients do not have these types of loans and added there is a loss of confidence by borrowers at large. Ms. Burks provided information about rental clients whose income is over the AMI, who do not qualify for affordable rentals and cannot retrieve their deposits.

- Chairman Conklin clarified the problem as: (1) the NFHC clients who want to stay in the home and seek assistance to do so; and (2) individuals who have not sought assistance and who walk away but destroy the property before leaving, which makes refinancing much more difficult for those that want to remain in their homes.
- Ms. Burks responded to a question from Assemblywoman Kirkpatrick regarding borrowers being told they must be 60 days late on their payments before they can receive assistance. She explained that there are clients who are struggling but making their payments on time, and the NFHC is attempting to negotiate with servicers to modify loans. She also mentioned that NFHC is having difficulty working with servicers and has increased reporting to regulatory agencies on lenders that say they are willing to modify loans but do not. She further stated there are two guidelines that specify, in order to qualify, that clients with certain loans must be 60 days late on

payments. She noted the regulation is not practical because modification of the loan needs to take place before the borrower becomes late on payments. She added the Standard and Poor's guidelines also state that a borrower must be late on payments but could not have been late before the reset of the loan to a higher rate occurred. As a result, she emphasized the need for focused outreach and clarification of the qualifications required to receive assistance.

Discussion was held on the national initiatives that offer assistance, criteria to qualify for assistance, and the pool of lenders that the NFHC is working with to modify loans. Ms. Burks offered to submit further information to the Subcommittee.

- Ms. Burks indicated modification of loans would be easier if the HUD 60-day guideline were relaxed because credit is not as important for FHA loans as compared to a traditional loan product, though the debt-to-income ratio is examined carefully. She added having incentives for lenders to use the FHASecure Initiative would also be helpful.

*Report on Activities of the Division of Mortgage Lending, Department of Business and Industry (DBI), Regarding November 14, 2007, Action of Interim Finance Committee Authorizing Contract with Nonprofit Organization for Foreclosure Hotline*

- Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, DBI, stated there is a lack of regulation of loan servicers in Nevada. Mr. Waltuch responded to a comment by Senator Beers regarding borrowers whose intention is to purchase and rent a house, referred to the Fannie Mae Form 1003 "Uniform Residential Loan Application," stated that the form is signed under penalty of perjury, and said making false statements would be a violation of the provisions of Title 18, *United States Code*, Section 1001, *et seq.* He said the borrower must indicate on the application form the intended use of the house. Mr. Waltuch said as a matter of practicality lenders would find it difficult to monitor how a house was used once the loan was completed due to the high volume of loans.

Mr. Waltuch added the Division regulates escrow agencies and escrow agents but only if they are located in Nevada and conduct business in the State. He noted for out-of-state loan servicers, there is an exemption in *Nevada Revised Statutes* (NRS) 80.015, "Activities not constituting transaction of business," which states the collection of a mortgage debt is not deemed to be doing business within the State; therefore, the Division does not regulate those companies.

In response to a question from Assemblywoman Kirkpatrick, Mr. Waltuch clarified that the provision in Chapter 80 of NRS applies to escrow agencies, not mortgage brokers. He said there are approximately 14 escrow agencies licensed to do business in Nevada, but most of the major servicers not related to a bank or savings and loan are outside of the jurisdiction of the State.

Mr. Waltuch also provided an update on the \$100,000 contract with the CCCS of Southern Nevada that has not been signed. He said a waiver was requested by the CCCS of Southern Nevada for a provision of the draft contract, which Mr. Waltuch could not approve. Consequently, the contract was submitted to the State Board of Examiners (BOE), and no decision had been made as of the time of the meeting. He said the Division requested the IFC to change the contract to a grant at its January 24, 2008 meeting, but the IFC denied the request. Consequently, a contract was drafted. He noted contracts require performance measures and the CCCS of Southern Nevada requested a waiver of specific measures in the draft contract, which must be approved by the State BOE. He commented that receiving the funds as a grant rather than a contract would have expedited the program.

Mr. Waltuch responded to a question from Chairman Conklin and explained that the funds were based on approximately \$32.50 per call or contact through a 211-telephone referral, with a maximum of \$100,000 for the entire contract. He said approximately 75 calls per month are received.

- Chairman Conklin expressed disappointment that the funds have not yet been utilized and said additional private funds are also available and waiting to be infused into the service programs. He explained the program approved by the IFC was not a program to bail out individuals but to help individuals stay in their homes. He expressed disappointment that the State has not begun to provide any assistance. In his view, the foreclosure crisis will become worse and needs to be addressed as quickly as possible to curtail the circular, downward dynamic between foreclosure and decreasing property values, which contributes to increased foreclosures. The Chairman noted the federal funds that have been allocated will run out in August 2008 and asked that the State start addressing the foreclosure crisis as soon as possible.
- Mr. Waltuch updated the Subcommittee on six draft regulations pertaining to A.B. 375 (Chapter 266, *Statutes of Nevada 2007*) that were submitted to the Legislative Counsel Bureau (LCB) which include: (1) broker preclicensing education requirements; (2) financial statements for trust accounting; and (3) investor standards for loans and loans to insiders. He stated that regulations that are not part of A.B. 375 include:
  - Nontraditional mortgage product risks;
  - Procedures for license denial hearings; and
  - General cleanup of regulations pertaining to mortgage bankers and lenders.

In addition, Mr. Waltuch discussed disciplinary remedies for all licensees including fines up to \$10,000 per violation, license suspension or revocation, investigation, and subpoena authority. Under the escrow agency law, he explained that a fine on an escrow agency or individual up to \$500 per violation can be assessed; however, under the mortgage broker license law a fine can be assessed up to \$10,000.

He recommended the maximum fine on an escrow agency or agent be increased to \$10,000 to be on par with other license laws. Additionally, Mr. Waltuch referred to A.B. 440 and discussed the mortgage foreclosure consultant statutes. Although the Division has authority to impose a fine up to \$10,000 per violation, the statute does not include investigation or subpoena authority for the Division. He made the following recommendations:

1. Increase the fine limits under the escrow law from \$500 to \$10,000 per violation;
2. Authorize the Division to order restitution to an aggrieved consumer for all license categories;
3. Provide the Mortgage Lending Division with the same enforcement authority against foreclosure consultants as the Division has against mortgage brokers, mortgage bankers, and escrow companies; and
4. Authorize the Division to adopt regulations governing foreclosure consultants.

Mr. Waltuch responded to a question from Assemblyman Grady and stated on average eight final orders per month are issued by the Division and said the procedural requirements for a hearing and the appeal process are quite lengthy. He clarified individuals or companies are fined \$10,000 per violation on average; however, collection is a different issue. When fines are 60-days overdue, the case is turned over to the Office of the State Controller for collection and no follow-up report is given to the DBI. He added for stipulated settlement agreements, the DBI collects the fines, costs, and fees, and he would verify that no reports are received from the State Controller.

Responding to questions from Subcommittee members, Mr. Waltuch reiterated the Division's statutory authority to investigate and subpoena licensees and stated mortgage foreclosure consultants are not licensed in Nevada. Mr. Waltuch said that licensing foreclosure consultants would be easier and suggested that the Legislature provide the Division with the same remedies for foreclosure consultants as for other licensees.

Discussion ensued about A.B. 440 and Chairman Conklin asked Mr. Waltuch to return to the next Subcommittee meeting to provide more information to the members and to work with staff on this issue.

*Review of Previous Testimony on Problems and Conceptual Solutions and Procedures for Soliciting Recommendations from the Subcommittee and the Public*

- Dave Ziegler, Principal Research Analyst, Research Division, LCB, referred to his memorandum dated April 17, 2008, to Chairman Conklin, which presented a recap of the testimony given at the first three meetings of the Subcommittee regarding problems and conceptual solutions. Mr. Ziegler also presented information on scheduling a

future meeting, the work session to be held in July 2008, and the Subcommittee's bulletin schedule. Please see [Exhibit C](#).

- Chairman Conklin referred to the eight mortgage lending-related problems listed in Mr. Ziegler's memorandum and said input from the public would be requested for potential solutions. He said the issues not addressed at the April meeting would be put on the agenda for the next Subcommittee meeting.

## **REPORT ON SUGGESTED POLICIES AND PROCEDURES TO ALLEVIATE EFFECTS OF MORTGAGE LENDING PROBLEMS ON RENTERS OF RESIDENTIAL PROPERTY**

- Senator Hardy II, representing the working group on renters, stated no recommendations would be offered at this time and indicated that additional research would be needed. He requested that this topic be placed on the agenda for the next Subcommittee's meeting when specific recommendations would be presented. He provided the following comments from the seven stakeholder organizations that responded to a request for information:
  1. Tenants should be given notice of a pending foreclosure sale at the same time notice is given to the borrower;
  2. Lenders stated most institutions would voluntarily comply; and
  3. Tenants should have the option to break the lease or stay in the home subject to eviction, according to Nevada Legal Services. Please see [Exhibit D](#).

Senator Hardy stated the primary question of the stakeholders was whether requirements should be established by statute or by voluntary agreement.

Discussion was held on possible State legislation, U.S. House of Representatives Bill H.R. 3915, "Mortgage Reform and Anti-Predatory Lending Act of 2007 (110th United States Congress 2007)," and nonlegislative actions. Senator Hardy explained the foreclosure process handled by the Eighth Judicial District Court of Nevada and the role of the Las Vegas Constable's Office. He stated the Constable's Office and local credit unions mentioned utilizing new rental agreements or purchase agreements with tenants.

There was further discussion on an outreach campaign cautioning renters of foreclosures, encouraging dialog between lenders and property managers, and encouraging lenders to comply with existing laws regarding security deposits. In conclusion, Senator Hardy suggested briefings on the following items be placed on the agenda for the next Subcommittee meeting:

- The eviction process from representatives of the State's constables' offices;



- The current eviction laws in Nevada and applicability, or lack thereof, to tenants to be presented by the LCB; and
- U.S. House of Representatives Bill H.R. 3915 concerning eviction rights of tenants.
- Assemblywoman Marilyn Kirkpatrick, representing the working group on renters, discussed assessing penalties on landlords who knowingly rent a home that is in foreclosure. She said a teacher was notified that the house she had rented was in foreclosure, and she had to move four different times in six months.
- Senator Schneider discussed homeowners' associations and how defaulted loans adversely effect the associations. He said that when lenders take possession of homes the vacant homes deteriorate quickly and homeowners' association dues are generally not paid. He suggested that lending institutions be required to maintain the properties and pay the association fees as required. Senator Schneider said some properties have seriously deteriorated after utilities were turned off. In his view, the lender has a responsibility to the neighborhood as the owner of the house.
- Assemblywoman Kirkpatrick requested a report from the Las Vegas Constable's Office on the number of incidents where problems were created when utilities were not turned off and people move into houses illegally. She indicated the situation creates a different set of problems involving squatter's rights in the eviction process.

## **OVERVIEW OF STATUTES AND LEGISLATION REGARDING LICENSING OF MORTGAGE LENDING PROFESSIONALS IN NEVADA AND OTHER STATES**

- Joseph L. Waltuch, previously identified, informed the Subcommittee that the Division of Mortgage Lending requires licensing under NRS 645A, "Escrow Agencies and Agents;" NRS 645B, "Mortgage Brokers and Mortgage Agents," and NRS 645E, "Mortgage Bankers," with corresponding regulations for each category. He stated the Division is not requesting new legislation for licensing requirements; however, he noted that A.B. 375 requires a qualified employee be defined under the mortgage broker statute. Consequently, draft regulations have been submitted to the LCB for review. Mr. Waltuch said a qualified employee is defined as someone who manages a branch office for a mortgage broker and has all the same rights of a mortgage agent. Unless a qualified employee is licensed as a mortgage broker or agent, there is no requirement to possess a license. Mr. Waltuch explained that if an unlicensed qualified employee commits an offense under NRS the only action that can be taken is against the employing mortgage broker. There is no disciplinary record kept on the offending qualified employee; therefore, the employee can work for another broker or banker. Mr. Waltuch said the draft regulations would redefine a qualified employee and require them to be licensed as mortgage agents subject to the same pre-licensing education requirements as of July 1, 2008.

Mr. Waltuch responded to Assemblywoman Kirkpatrick and stated NRS 645A governs escrow agents and agencies and requires a bond depending on the amount of trust fund activity up to a maximum of \$250,000. He explained there is no bonding requirement for mortgage agents, mortgage bankers, or mortgage brokers and provided bonding information requirements in other states.

Discussion was held on bonds and claims against bonds. In Mr. Waltuch's view, the main question would be the efficacy of the bond. He discussed the steps to make a claim on a bond and stated the legal system and appeal process is quite lengthy and was of the opinion that it may not be an adequate remedy.

- Assemblywoman Kirkpatrick stated that bonding requirements may not solve the entire problem, but when comparing Nevada licensing and bonding requirements with other states, those states with the strictest requirements are experiencing the lowest number of foreclosures.
- Mr. Waltuch was of the opinion that given what has occurred in the mortgage lending market over the past few years with mortgage fraud, bonding requirements would be very high, which would equate to higher premiums. Consequently, at some point the smaller businesses would not be able to afford the bond to stay in business. He suggested examining liability insurance as an alternative, but did not know the cost factors involved.
- George E. Burns, Commissioner, Division of Financial Institutions, DBI, stated banks, savings and loans, thrifts, industrial loan corporations, credit unions, and trust companies are permitted by law to engage in mortgage lending under Title 55 and 56 of the NRS. He added all other lenders licensed by the Division are prohibited from making loans secured by real estate, unless they are also licensed under NRS 645B. Mr. Burns stated chartered depository institutions are licensed with applicable federal regulators, the Federal Deposit Insurance Corporation (FDIC) or the Federal Reserve Bank. National banks and federal credit unions are chartered unilaterally without the state's involvement by the Office of the Comptroller of the Currency and the National Credit Union Association. Trust companies are examined unilaterally by the Division, and there is no federal oversight. Continuing, Mr. Burns explained the Division does not license individuals who engage in mortgage lending, most state-chartered depository institutions do real estate lending mainly as an accommodation to their customers, and the loans are sold in the secondary market and not held in their portfolios.

In Mr. Burns' view, most state-chartered depository institutions engage primarily in commercial real estate lending, secondary mortgage lending, and consumer loans and are highly regulated. He clarified that examining authority can be shared by the state with the federal entity, or if not shared, the authority is unilateral. Mr. Burns explained the Capital Assets Management Earnings Liquidity and Sensitivity (CAMELS) rating for state-chartered depository institutions and described the examination process, which can trigger enforcement action or accelerated monitoring if

there are signs of a “troubled” institution. A poor examination rating could initiate an investigation of the risk profile as clarified by Mr. Burns.

Continuing, Mr. Burns said all of the state-chartered federally insured depository institutions are subject to regulatory guidance issued by the Federal Financial Institutions Examination Council (FFIEC), a conglomerate of federal and state examiners. He explained the interagency guidance on nontraditional mortgage products was issued by the FFIEC in November 2006 and the statement on subprime mortgage lending was issued in June 2007, though not in time to avoid the current mortgage lending situation. They were issued, however, to avoid repetition of problems in the future.

Further, Mr. Burns discussed regulatory oversight gaps that involve non-federally insured depository institutions in Nevada, which include eight privately insured credit unions, one thrift organization, and trust companies acting as a fiduciary conduit for originating residential real estate loans for the secondary market for brokers and agents located outside of Nevada; these entities are not subject to federal regulation. To address the gap, the Division used A.B. 329 (Chapter 91, *Statutes of Nevada 2007*), codified under NRS 658.190, “Regulations concerning nontraditional mortgage loan products and certain lending practices,” which applies the interagency guidance to all persons and financial institutions, including those under the purview of the Mortgage Lending Division and privately insured credit unions, thrifts, and trust companies. He added the statement on subprime lending has not yet been applied through legislation to those entities not covered by federal regulation.

In conclusion, Mr. Burns stated the vast majority of the mortgage-lending issues before the Subcommittee are not rooted in state-chartered depository institutions regulated by the Division of Financial Institutions, but in larger federally chartered institutions and Wall Street firms. The current regulatory focus of the Division is to monitor, identify, and manage the collateral risk and impacts generated from the mortgage crisis upon the state-chartered institutions that primarily engage in commercial real estate lending, secondary mortgage lending, and consumer lending.

- Bill Matthews, President and Chief Executive Officer, State Regulatory Registry LLC, Washington, D.C., discussed the history of the mortgage industry, the Conference of State Bank Supervisors (CSBS), the Nationwide Mortgage Licensing System (NMLS), and federal legislation. Please see [Exhibit E-1](#). Mr. Matthews’ Microsoft PowerPoint presentation provided information on the following:
  - Savings and loan era;
  - Mortgage bank/broker era;
  - Banks, Wall Street, and insurance firms;

- Mortgage loan originations;
- State regulatory trends;
- State regulatory framework;
- NMLS and primary goals;
- Entities involved in overview;
- NMLS state participation information;
- State enabling legislation;
- Federal legislation;
- Treasury proposal; and
- State Regulatory Registry.

Please see [Exhibit E-2](#).

- In Mr. Matthews' view, a recent United States Treasury proposal would devastate the current community banking industry by recommending in the short-, intermediate-, and long-term the following requirements:
  1. Minimum standards for mortgage participants;
  2. Phase out of Office of Thrift Supervision and Commodity Futures Trading Commission;
  3. Direct federal supervision of state-chartered banks;
  4. Placing the responsibility of all bank exams with the federal government or the FDIC;
  5. Creation of a federal charter for insurance; and
  6. Creation of several new federal agencies.

Discussion ensued regarding the states that have joined the NMLS and those with low foreclosure rates. Mr. Matthews said states that choose not to participate in the NMLS may be more attractive to fraudsters. He said Nevada is rated one of the top five states in a national ranking for mortgage fraud, which he added typically occurs during “boom-bust” cycles of growth. He referred to the chart titled “State Mortgage

Licensing Standards for Mortgage Companies and Professionals,” that indicates most states regulate companies and 38 states regulate loan officers as well. Please see [Exhibit E-3](#).

- In response to questions from Assemblywoman Kirkpatrick, Mr. Matthews explained that each state has mortgage fraud issues, and membership in the NMLS increases communication and enhances supervision in order to prevent problems. He said the system could benefit Nevada in regulating the mortgage industry by providing regulators with better tools and information to prevent fraud in the industry. He explained that states that have experienced “boom-bust” economic cycles also have high rates of foreclosures and, in his view, mortgage fraud has been woefully underestimated. He said regulator tools are very important; at this point in time, 40 states have signed on to join the NMLS. In conclusion, Mr. Matthews reiterated the benefits of membership and explained that the system creates a single record for all companies and states; therefore, a company, owner, or loan officer would have one record from state to state, which would make regulation much easier for tracking an individual or company’s affiliates nationwide. Please see [Exhibit E-4](#).
- George E. Burns, previously identified, responded to questions from Assemblywoman Kirkpatrick on the criteria used to qualify borrowers and said underwriting criteria vary from lender to lender. He explained some companies use creative financing by utilizing a subsidiary or affiliate to layer the loan risk by using a second mortgage to qualify for the first mortgage loan, so the names appear differently on the documentation. Unfortunately, Mr. Burns said this type of financing results in 100 to 110 percent of loan-to-value on the house, and the borrower who buys a home and makes interest-only payments then becomes adversely affected when the loan resets a number of years later.

Mr. Burns stated that training for lending officers varies from institution to institution. He said he would provide copies to the Subcommittee of the interagency guidance statements on subprime lending and the criteria that a financial institution should follow when making subprime loans, which answers the questions:

1. What is a subprime loan?
  2. How is a subprime loan identified?
  3. What method is used to inform the consumer of loan risks?
- Chairman Conklin discussed the connection between the originator of the loan (broker, agent, or loan officer) and the consumer; the conflict of interest between what the lender and consumer want; and the type of education or lack of education originators receive in order to protect the consumer’s interest.

- Mr. Burns stated most of the subprime lending and creative financing in the industry does not appear to have occurred within the depository institutions. He described the process of originating, packaging, and selling the loans to depository institutions using the secondary market.
- Joseph L. Waltuch, previously identified, discussed whether an originator should have a fiduciary responsibility to the client and whether the fiduciary duty is extended to a broker or the actual lender. In his view, history treats the lending relationship as a commercial transaction subject to contract law rather than a fiduciary relationship subject to trust law with a much higher duty. A fiduciary duty would not solve the problem. He agreed with having the Legislature impose a fiduciary duty on a broker who is not lending.
- Chairman Conklin discussed the concept of how to assist the consumer to make better, informed decisions and to reduce the asymmetry of information between the loan originators, lenders, and borrowers.
- Senator Beers questioned the lender's motive in dealing with brokers when marketing loans and asked about the relationship between the broker and the consumer.
- Mr. Matthews, previously identified, said the NMLS is working with Fannie Mae, Freddie Mac, and the FHA to have a unique identifier added to the consumer application. Therefore, when a loan is originated, the company and loan officer can be identified and a performance score would be generated. The industry would then be able to regulate itself using the performance score, which would provide more accountability. In his view, Mr. Matthews felt bringing accountability back into the industry is very important.

Continuing, Mr. Matthews explained that state-licensed brokers and agents now originate a very large percentage of loans because they can do it cheaper and faster than banks and lenders. However, if there is no policing, then quality control is lost; consequently, mortgage loan pools receive unjustified higher ratings due to the lack of accountability. Mr. Matthews said there is essentially no secondary market at this time as a result of the subprime loan crisis. He said the biggest problems occurred in the east- and west-coast states and in Nevada, which had the fast growing population, rapid building, and high appreciation of home values.

- Chairman Conklin referred the Subcommittee to the [www.marisolutions.com](http://www.marisolutions.com) website and stated that Nevada is ranked number two in the fraud index for 2007. The Chairman noted the Mortgage Asset Research Institute (MARI) has a new MARI Loan Fraud Alert Service and a mortgage industry-contributed loan-process database that enables lenders and investors to identify potential application risk, patterns of fraud; and hidden relationships among transaction parties.

- Chairman Conklin stated a letter would be posted on the Subcommittee's Web page requesting recommendations from presenters and the public.

## **DISCUSSION OF SCHEDULING FUTURE MEETINGS**

- Chairman Conklin requested information from the members on topics for the next agenda and said staff would schedule the meeting for early June 2008.

## **PUBLIC COMMENT**

- Jim Fitzgerald, licensed mortgage broker, Carson City, Nevada, commented, in his view, many of the problem brokers have left the industry and expressed support for fiduciary responsibility in the lending industry.
- John Sasser, Washoe Legal Services, Reno, Nevada, referred to the problems renters are facing and strongly supported the information gathered by Senator Hardy and Assemblywoman Kirkpatrick regarding renters' issues in the mortgage lending industry. He referred to the response from the Mortgage Bankers Association regarding the timing for notification to renters of a pending foreclosure. Mr. Sasser presented recommendations to the Subcommittee to clarify what must be included in the notice to tenants dealing with a pending foreclosure and to allow tenants the ability to opt out of a lease. He also supported placing the tenant eviction process on the agenda for a future Subcommittee meeting.

## ADJOURNMENT

There being no further business to come before the Subcommittee, the meeting was adjourned at 12:03 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 the written testimony of Michele Johnson, President and Chief Executive Officer, Consumer Credit Counseling Services of Southern Nevada, Las Vegas, Nevada.

[Exhibit C](#) is a memorandum dated April 17, 2008, to Assemblyman Marcus L. Conklin, Chairman, Legislative Commission’s Subcommittee to Study Mortgage Lending and Housing Issues, from Dave Ziegler, Principal Research Analyst, Research Division, LCB, titled “Mortgage Lending Problems, Conceptual Solutions, and Procedures for Soliciting Recommendations from the Subcommittee and the Public.”

[Exhibit D](#) is a Microsoft PowerPoint presentation titled “Working Group on Renters Report,” prepared by Senator Warren B. Hardy II, Clark County, Senatorial District No. 12, and Assemblywoman Marilyn Kirkpatrick, Clark County, Assembly District No. 1.

[Exhibit E-1](#) is a document titled “Conference of State Bank Supervisors (CSBS) and American Association of Residential Mortgage Regulators (AARMR) Nationwide Mortgage Licensing System,” which was submitted by Bill Matthews, President and Chief Executive Officer, State Regulatory Registry LLC, Washington, D.C.

[Exhibit E-2](#) is a Microsoft PowerPoint presentation titled “CSBS/AARMR Nationwide Mortgage Licensing System (NMLS),” prepared by Bill Matthews, President and Chief Executive Officer, State Regulatory Registry LLC, Washington, D.C.

[Exhibit E-3](#) is a chart titled “State Mortgage Licensing Standards for Mortgage Companies and Professionals,” prepared by Bill Matthews, President and Chief Executive Officer, State Regulatory Registry LLC, Washington, D.C.

[Exhibit E-4](#) is a map illustrating the nationwide mortgage licensing system titled “CSBS/AARMR Nationwide Mortgage Licensing System,” prepared by Bill Matthews, President and Chief Executive Officer, State Regulatory Registry LLC, Washington, D.C.

This set of “Summary Minutes and Action Report” is supplied as an informational service. Exhibits in electronic format may not be complete. Copies of the complete exhibits, other materials distributed at the meeting, and the audio record are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Library online at [www.leg.state.nv.us/lcb/research/library/feedbackmail.cfm](http://www.leg.state.nv.us/lcb/research/library/feedbackmail.cfm) or telephone: 775/684-6827.