

MINUTES OF THE MEETING  
OF THE  
LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO  
INVESTIGATE REGULATION OF MORTGAGE INVESTMENTS

December 12, 1998

Las Vegas, Nevada

The fourth meeting of the Legislative Commission's Subcommittee to Investigate Regulation of Mortgage Investments for the 1997-1998 interim was held on Saturday, December 12, 1998, at 10 a.m., in Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. This meeting was video conferenced to Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Pages 2 and 3 contain the "Meeting Notice and Agenda."

SUBCOMMITTEE MEMBERS PRESENT:

Assemblyman David E. Goldwater, Chairman

Senator Bill R. O'Donnell

Senator Raymond C. Shaffer

Assemblywoman Barbara K. Cegavske

Assemblyman Tom Collins

SUBCOMMITTEE MEMBER ABSENT:

Senator Randolph J. Townsend

LEGISLATIVE COUNSEL BUREAU (LCB) STAFF PRESENT:

Vance A. Hughey, Principal Research Analyst

Kimberly A. Morgan, Chief Deputy Legislative Counsel

Kevin C. Powers, Senior Deputy Legislative Counsel

Nenita Wasserman, Senior Research Secretary

**MEETING NOTICE AND AGENDA**

Name of Organization: Legislative Commission's Subcommittee to Investigate Regulation of Mortgage Investments

Date and Time of Meeting: Saturday, December 12, 1998

10 a.m.

Place of Meeting: Grant Sawyer State Office Building

Room 4412

555 East Washington Avenue

Las Vegas, Nevada

Note: Some members of the subcommittee may be attending the meeting, and other persons may observe the meeting and provide testimony, through a simultaneous video conference conducted at the following location:

Legislative Building

Room 4100

401 South Carson Street

Carson City, Nevada

## **A G E N D A**

### **I. Opening Remarks and Introductions by the Chairman**

Assemblyman David E. Goldwater

### **\*II. Discussion of Recommendation Regarding Registration of Certain Mortgage Company Transactions with the Securities Division of the Office of the Secretary of State**

Dean Heller, Secretary of State

### **\*III. Discussion of Preliminary Bill Draft Regarding Fines, Penalties, and Criminal Actions**

Kevin C. Powers, Deputy Legislative Counsel (See Attached Preliminary Bill Draft Regarding Fines, Penalties, and Criminal Actions)

### **IV. Public Testimony**

## **WORK SESSION**

### **\*V. Discussion and Subcommittee Action on Recommendations to the Seventieth Session of the Nevada Legislature (See Attached "Work Session Document" for a Summary of Proposals Compiled from Previous Subcommittee Meetings)**

A. Registration of Certain Mortgage Company Transactions with the Securities Division of the Office of the Secretary of State

B. Preliminary Bill Draft Regarding Fines, Penalties, and Criminal Actions

C. Handling of Investors' Funds

D. Reporting

- E. Powers of Attorney
- F. Disclosure Forms
- G. Advisory Committee
- H. Licensing and Capital Requirements
- I. Advertising Disclosure
- J. Staffing of the Division of Financial Institutions
- K. Yield Spread Premiums
- L. Regulation of Check-Cashing Services and Deferred Deposit Services

## VI. Adjournment

\*Denotes items on which the subcommittee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Nenita Wasserman, at 684-6825, as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; Carson City Courthouse, 198 North Carson Street; Legislative Building, Room 1214, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue.

### **OPENING REMARKS AND INTRODUCTIONS BY THE CHAIRMAN**

Assemblyman David E. Goldwater called the meeting to order at 10 a.m. He explained the subcommittee would review the "Work Session Document" and preliminary bill draft request (BDR), which is Exhibit A.

### **DISCUSSION OF RECOMMENDATION REGARDING REGISTRATION OF CERTAIN MORTGAGE COMPANY TRANSACTIONS WITH THE**

### **SECURITIES DIVISION OF THE OFFICE OF THE SECRETARY OF STATE**

#### **Dean Heller**

Dean Heller, Nevada's Secretary of State, introduced himself and Donald J. Reis, Chief Deputy Secretary of State. He noted that he had presented to this subcommittee on December 2, 1998, proposed legislation deleting subsection 21 of *Nevada Revised Statutes* (NRS) 90.530 "exempt transactions," which exempts from the Securities Act, registration of a promissory note or fractional interests in such note if the note is secured by a lien on real estate and is issued by a mortgage company licensed by the Division of Financial Institutions, Nevada's Department of Business and Industry. In his written statement, which is Exhibit A, he covered the following topics:

- If this exemption is removed, such notes and fractional interests will be required to be registered and the persons selling them licensed with the Securities Division.
- Subection 21 is a provision not found in the Uniform Securities Act, nor in the statutes of most other states.
- Revoking the subsection 21 exemption and requiring that securities of a mortgage company be registered is a necessary step to provide the needed protection to the citizens of Nevada.

- On December 2, 1998, he had informed the subcommittee that the Securities Division would issue a Cease and Desist Order against Consolidated Mortgage in Las Vegas. Since that date, the Securities Division has been able to complete a consent Agreement with Consolidated Mortgage that will assure that future transactions by this company will comply with the State's securities laws.

Mr. Heller highlighted answers to key questions regarding the proposal to delete subsection 21 of NRS 90.530 (see Exhibit A for details) as follows:

- To register securities under the NRS requires the issuer to file a registration statement with the Securities Division. The statement will include a consent to service of process, and a prospectus that discloses all material facts about the investment, including the amount of money to be raised, the use of the funds, the risks of the enterprise, the form of the security, the identity and background (including criminal records) of all the principals in the venture, any recent or pending litigation, the amount of compensation paid to any party, and independently audited financial statements. With this information, investors can avoid investments in risky ventures that are inappropriate for their financial circumstances.
- The Securities Division will not monitor the day-to-day operations of the company.
- The Nevada securities law is a disclosure statute and does not allow the Securities Division to impose conditions on an applicant beyond full and fair disclosure of all material facts.
- The Securities Administrator of the Securities Division has broad administrative, civil, and criminal authority in dealing with violations of the Act.
- The consequences for the persons selling the securities would be to take an exam, pay a fee, and become licensed. Applicants may qualify for exclusion from licensing by order of the Securities Administrator if they can show adequate knowledge of the regulatory requirements through education or experience.
- There are no guarantees that the public would be informed of problems in the operation of mortgage companies more quickly if this proposal is adopted. If facts are developed that indicate that potential investors are being put in jeopardy, the Administrator issues a Cease and Desist Order that becomes public information; and
- It is difficult to estimate the fiscal impact to the Securities Division if this proposal is adopted.

Mr. Reis, previously identified, stated a suitability standard could be proposed by order or rule and would put that in draft form and present it back to the subcommittee.

#### Kevin C. Powers

Kevin C. Powers, Senior Deputy Legislative Counsel, Legal Division, LCB, stated that NRS 90.540, "Additional exemptions, fee," currently provides that the Administrator, by regulation or order, may exempt any other security or action or class of securities from the registration requirements of NRS 90.460, "Registration requirement."

ASSEMBLYWOMAN CEGAVSKE MOVED TO REPEAL THE EXEMPTIONS WITH THE PROVISIO THAT THE SECRETARY OF STATE'S OFFICE OUTLINE SPECIFIC EXEMPT TRANSACTIONS THAT WOULD BE UNIQUE TO THIS PARTICULAR INDUSTRY. SENATOR SHAFFER SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

### **PUBLIC TESTIMONY**

#### David Farandino

David Farandino, Interstate Mortgage, Las Vegas, stated that Tobin Investment Company is not a licensed mortgage company.

Mr. Powers explained that:

- The BDR would involve deleting subsection 21 and it could include a statement of legislative intent reflecting the purpose and intent of the bill and all administrative actions are subject to review by the Legislative Commission so that it complies with legislative intent; and
- Suggestions for regulations that would be adopted will be part of the legislative hearing process on the bill during the 1999 Legislative Session.

#### Kimberly A. Morgan

Kimberly A. Morgan, Chief Deputy Legislative Counsel, Legal Division, LCB, suggested a transitory section at the end of the bill that sets out a requirement that the Secretary of State adopt regulations which limit in whatever regard the subcommittee recommends.

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### DISCUSSION OF PRELIMINARY BILL DRAFT REGARDING FINES,

#### PENALTIES, AND CRIMINAL ACTIONS

#### Kevin C. Powers

Kevin C. Powers, previously identified, summarized the provisions of the preliminary BDR relating to suspension and revocation of the licenses of certain mortgage companies and administrative sanctions and criminal penalties against certain mortgage companies which is part of Exhibit A. He also noted that:

- Some of the recommendations relating to administrative sanctions and criminal penalties were adopted by the subcommittee at its last meeting held on December 2, 1998.

In response to Mr. Collins' questions, Mr. Powers stated that this preliminary BDR does not:

- Change anything involved in NRS 645B.225, "Penalties for violations relating to escrows or impound trust accounts," which provides for graduated penalties for someone who violates criminal penalties or for someone who violates the trust account provisions that are provided for in the chapter that is based upon on the monetary amount of the violation; and
- Address anything as to the actions of a receiver, how a receiver is appointed, or the timeliness that actions are taken once a receiver is appointed.

#### Dan Grey

Responding to Ms. Cegavske's question, Dan Grey, a citizen of Las Vegas, stated that he supported the Secretary of State's proposals.

Senator Shaffer noted for the record that although he voted to support this motion, it does not make him committed to support it during the legislative process.

ASSEMBLYWOMAN CEGAVSKE MOVED TO APPROVE THE PRELIMINARY BILL DRAFT REQUEST REGARDING FINES, PENALTIES, AND CRIMINAL ACTIONS, AS PRESENTED. THE MOTION WAS SECONDED BY ASSEMBLYMAN COLLINS AND CARRIED UNANIMOUSLY.

### WORK SESSION

#### DISCUSSION AND SUBCOMMITTEE ACTION ON RECOMMENDATIONS TO THE SEVENTIETH SESSION OF THE NEVADA LEGISLATURE

Chairman Goldwater referred to the subcommittee's "Work Session Document," which appears as Exhibit A. The

recommendations contained in the "Work Session Document" are listed below in italics and precede the actions of the subcommittee.

### WORK SESSION DOCUMENT

*Legislative Commission's Subcommittee to*

*Investigate Regulation of Mortgage Investments*

*December 12, 1998*

*This "Work Session Document" has been prepared by staff of the Legislative Commission's Subcommittee to Investigate Regulation of Mortgage Investments. Organized by topic, it is designed as a working document to assist members of the subcommittee in making decisions during its work session. Enumerated below are recommendations presented to the subcommittee as well as recommendations received by staff.*

#### *Registration of Certain Mortgage Company Transactions with the Securities Division of the Office of the Secretary of State*

*1. Repeal subsection 21 of Nevada Revised Statutes (NRS) 90.530. This section exempts from registration with the Securities Division of the Office of the Secretary of State transactions involving promissory notes or fractional interests in such notes that are secured by a lien on real estate if the issuer is a mortgage company licensed by the Division of Financial Institutions, Department of Business and Industry.*

This item was discussed on page 4 of these minutes.

#### *Preliminary Bill Draft Regarding Fines, Penalties, and Criminal Actions*

*2. Revises the provisions relating to the suspension and revocation of licenses of certain mortgage companies and provides for administrative sanctions and criminal penalties against certain mortgage companies.*

This item was discussed on page 6 of these minutes.

#### *Handling of Investors' Funds*

*3. Amend Chapter 645B of NRS to prohibit mortgage companies from handling funds received for investment in mortgage loans, funds held for disbursement to borrowers, and funds received in payment of loans.*

No action was taken on this item by the subcommittee.

#### *Reporting*

*4. Amend Chapter 645B of NRS to require a mortgage company that maintains trust accounts for the payment of investors to:*

*a. Identify each nonperforming loan that mortgage company is administering when the mortgage company submits its monthly report to the Commissioner of Financial Institutions pursuant to NRS 645B.080; and*

*b. Report the status of each such nonperforming loan, on a monthly basis, to each investor who owns a beneficial interest in the loan.*

A MOTION BY SENATOR O'DONNELL WAS MADE TO APPROVED RECOMMENDATION NOS. 4A AND 4B. THE MOTION WAS SECONDED BY

ASSEMBLYWOMAN CEGAVSKE AND PASSED UNANIMOUSLY.

Powers of Attorney

5. Amend Chapter 645B of NRS to permit a mortgage company to act on behalf of an investor pursuant to a power of attorney only if:

a. The power of attorney is executed for the sole purpose of servicing a single note in which the investor owns a beneficial interest; and

b. The provisions of the power of attorney:

(1) Have been approved by the Commissioner of Financial Institutions; and

(2) Expressly prohibit the mortgage company from using money that the investor has loaned to or is entitled to receive from the borrower pursuant to the terms of the note for any purpose which is not directly related to servicing the note.

ASSEMBLYWOMAN CEGAVSKE MOVED FOR APPROVAL OF RECOMMENDATION NO. 5. THE MOTION WAS SECONDED BY SENATOR SHAFFER AND CARRIED UNANIMOUSLY.

Disclosure Forms

6. Amend NRS 645B.185 to add the following provisions:

a. The Commissioner of Financial Institutions shall adopt by regulation standardized disclosure forms for investors.

b. The mortgage company must give the disclosure form to each investor before each investment, and the investor may not waive receipt of the disclosure form.

c. The disclosure form must be signed by the investor, and a copy of the signed disclosure form must be retained by the mortgage company.

d. The disclosure form must include a statement explaining the risks of investing through the mortgage company, including, without limitation:

(1) The possibility that the borrower may default on the loan;

(2) The nature of the losses that may result through foreclosure;

(3) The fact that payments of principal and interest are not guaranteed and that the investor may lose the entire amount of principal that he has invested;

(4) The fact that the mortgage company is not a depository financial institution and that the investment is not insured by any depository insurance; and

(5) Any other information required by the Commissioner of Financial Institutions.

e. The disclosure form must inform the investor whether the mortgage company has any direct or indirect interest in the borrower.

f. The disclosure form must inform the investor of whether the mortgage company is currently being investigated for any alleged violation of the provisions of Chapter 645B of NRS and must include a statement of the nature of any disciplinary action that has been taken against the mortgage company within the preceding 12 months.

Loretta Eichelberger

Loretta Eichelberger, private citizen, Las Vegas, suggested that any disclosure form that is signed by the investor should also have the signature of the mortgage company officer or representative. A copy of suggested wording for a preliminary bill draft for fines, penalties and criminal actions was handed out to the committee which is Exhibit D.

ASSEMBLYMAN COLLINS MOVED TO APPROVE RECOMMENDATION NO. 6 AND TO INCLUDE SUGGESTED LANGUAGE BY LORETTA EICHELBERGER, OF LAS VEGAS, NEVADA, TO REQUIRE SIGNATURE OF THE INVESTOR AND A REPRESENTATIVE OF THE MORTGAGE COMPANY, AND A COPY OF THE SIGNED DISCLOSURE FORM MUST BE RETAINED BY THE MORTGAGE COMPANY. THE MOTION WAS SECONDED BY SENATOR O'DONNELL AND CARRIED UNANIMOUSLY.

7. Amend NRS 645B.090 to:

*a. Require the Commissioner of Financial Institutions to disclose any information concerning a pending investigation against a mortgage company to any person who requests such information, unless the Commissioner determines that the release of such information would impede or otherwise interfere with the investigation.*

*b. Require the Commissioner of Financial Institutions to disclose the results of any completed investigations that have ever been taken against a mortgage company and to disclose the nature of any disciplinary action that has ever been taken against a mortgage company to any person who requests such information.*

Mr. Collins suggested adding language to Recommendation No. 7 which would require the Commissioner of Financial Institutions "to disclose any information concerning a pending investigation against a mortgage company to any person who requests such information for the preceding five years."

ASSEMBLYMAN COLLINS MOVED TO APPROVE RECOMMENDATION NO. 7 WITH THE SUGGESTED LANGUAGE NOTED ABOVE. THE MOTION DID NOT RECEIVE A SECOND AND, THEREFORE, DID NOT CARRY.

After a short discussion among subcommittee members, Mr. Powers restated that disciplinary action would be limited to the preceding five years according to the motion. For a completed investigation, he suggested that the subcommittee consider language to the affect that "the Commissioner of Financial Institutions be required to disclose the results of any completed investigation unless the Commissioner of Division of Financial Institutions determines that the information in his judgment would negatively affect the public welfare of any mortgage company."

ASSEMBLYMAN COLLINS AMENDED HIS MOTION TO INCLUDE LANGUAGE TO REQUIRE THE COMMISSIONER OF FINANCIAL INSITUTIONS "TO DISCLOSE ANY INFORMATION CONCERNING A PENDING INVESTIGATION AGAINST A MORTGAGE COMPANY TO ANY PERSON WHO REQUESTS SUCH INFORMATION FOR THE PRECEDING FIVE YEARS." FURTHER, THAT HIS MOTION INCLUDE LANGUAGE TO THE AFFECT THAT THE COMMISSIONER OF FINANCIAL INSTITUTIONS BE REQUIRED TO "DISCLOSE THE RESULTS OF ANY COMPLETED INVESTIGATION UNLESS THE COMMISSIONER DETERMINES THAT THE INFORMATION IN HIS JUDGMENT WOULD NEGATIVELY AFFECT THE PUBLIC WELFARE OF ANY MORTGAGE COMPANY." THE MOTION WAS SECONDED BY SENATOR O'DONNELL AND CARRIED UNANIMOUSLY.

Advisory Committee

8. Establish a statutory committee to advise the Division of Financial Institutions in matters related to regulation of mortgage investment companies including but not limited to licensing, continuing education requirements, consumer complaints, and actions against mortgage companies.



The subcommittee took no action on this item.

### Licensing and Capital Requirements

9. Amend Chapter 645B of NRS to create a new Mortgage Investment License for mortgage companies that solicit funds directly from the public.

a. Requirements for this license include the following provisions:

*(1) A mortgage company that does not handle trust account funds must maintain net worth in an amount at least equal to the total amount of the loan transactions which are secured by liens on real property that are handled by the mortgage company. In lieu of meeting this net worth requirement, the mortgage company may provide the Division of Financial Institutions with a cash deposit, a bond, or an irrevocable letter of credit in the required amount. If a mortgage company handles trust account funds, the mortgage company must secure and maintain a license bond of at least \$250,000 but not more than the total amount of the loan transactions which are secured by liens on real property that are handled by the mortgage company;*

David Farandino, previously identified, stated that it was his opinion to require a \$250,000 bond of a mortgage company if it handles trust accounts is a good suggestion. He noted that:

- There are many mortgage companies that do not have a lot of money to complete a deal.
- He suggested a \$100,000 minimum net worth be required of any mortgage company that does not handle trust accounts.
- It was his opinion that the net worth should be retroactive to any existing operation.

### Jeff Guinn

Jeff Guinn, Aspen Financial, Las Vegas, stated that many mortgage companies are in agreement that if a company handles trust accounts, it should be held to a higher licensing standard than organizations that do not handle trust accounts. He added that:

- A \$250,000 minimum net worth in order to handle other people's money or trust accounts is the same requirement as the United States Federal Housing Association and Department of Housing and Urban Development.
- Audited financial statements are submitted to the state Division of Financial Institutions.

Senator O'Donnell suggested that a \$250,000 bond be required of mortgage companies that handle trust accounts and a \$100,000 net worth requirement or letter of credit be required of mortgage companies that do not handle trust accounts.

Mr. Collins said that mortgage companies that are already licensed would be grandfathered in and, therefore, not be subject to the net worth requirement.

In response to Senator O'Donnell's question, Mr. Powers stated that this would not be retroactive and explained:

- The new bonding requirement could be instituted when a mortgage company renews its license.
- There could also be a phase-in period before the renewal date for a mortgage license.

### Jim Litner

Jim Litner, Nevada Association of Mortgage Brokers, Las Vegas, stated he had been a licensee in Illinois when net worth requirements were imposed and then retracted. He covered the following points in his testimony:

- It was his opinion, if this requirement is imposed, 300 out of 371 licensees will be put out of business.
- Morality cannot be regulated by a net worth requirement.

### Richard Kropp

Richard Kropp, USA Capital, Las Vegas, stated that his company agrees with the net worth provisions but there are some mortgage companies that do not handle trust accounts. He explained that:

- The minimum net worth for mortgage companies that do not handle trust accounts can be satisfied by requiring that if a company handles public funds, the money must be deposited in a bonded escrow account.
- Under no circumstances can a mortgage company that handles trust accounts, also handle investors money directly.

Senator Shaffer suggested an effective date of October 1999, which would give the affected companies from June to October to meet that net worth requirement.

SENATOR O'DONNELL MADE A MOTION FOR THOSE MORTGAGE COMPANIES NOT HANDLING TRUST ACCOUNTS, A MINIMUM OF \$100,000 NET WORTH TO BE PHASED IN OVER A PERIOD OF FOUR YEARS. FOR THOSE COMPANIES THAT DO HANDLE TRUST ACCOUNTS, A \$250,000 NET WORTH BE REQUIRED OR BOND BE POSTED TO BE PHASED IN OVER FOUR YEARS. THE MOTION WAS SECONDED BY SENATOR SHAFFER AND CARRIED UNANIMOUSLY.

A MOTION WAS MADE BY SENATOR O'DONNELL TO APPROVE RECOMMENDATION NO. 9A(1). THE MOTION WAS SECONDED BY SENATOR SHAFFER AND CARRIED UNANIMOUSLY.

Mr. Powers, previously identified, stated that this motion refers to trust accounts for subsections 1 and 3 of NRS 645B.175, "Money used to acquire or repay loans: Placement in and release from escrow or separate account; accounting; limitations." He explained that:

- If a mortgage company receives any money from an investor and is going to distribute that money to a borrower, that is one type of trust account, which is subsection 1 of NRS 645B.175.
- The other type of trust account provided for in subsection 3 of NRS 645b.175, which is used by a mortgage company that receives payments from the borrower and then returns those payments to the investor as part of the investor's investment.

*(2) All funds received by a mortgage company from investors must be deposited in specific trust accounts for each loan;*

No action was taken on this item by the subcommittee.

*(3) Amend Chapter 645B of NRS to provide that, for each loan, a mortgage company shall not release any amount of money to a borrower or his designee unless the amount of money released is equal to the total amount of money which is being loaned to the borrower for that loan less any amount of money that is due to the mortgage company for the payment of any fee or service charge;*

ASSEMBLYMAN COLLINS MOVED TO APPROVE RECOMMENDATION NO. 9A(3). THE MOTION WAS SECONDED BY SENATOR O'DONNELL AND CARRIED UNANIMOUSLY.

*(4) Amend NRS to provide that:*

*(a) A person may not be licensed as or, if exempt from licensing, may not*

*conduct business as a construction control company, an escrow agency, a mortgage company or a title insurer if the person, the person's spouse or any other person related to him within the second degree by blood or marriage owns or controls a majority of the voting stock or a controlling interest, directly or indirectly, in:*

*(i) A construction control company, an escrow agency, a mortgage company or a title insurer; or*

*(ii) Any company that owns or controls a majority of the voting stock or a controlling interest, directly or indirectly, in a construction control company, an escrow agency, a mortgage company or a title insurer.*

*(b) The provisions of this section do not prohibit a person, the person's spouse or any other person related to him within the second degree by blood or marriage from being licensed as, conducting business as, owning or controlling the same construction control company, escrow agency, mortgage company or title insurer, so long as such joint licensing, operation, ownership or control extends to only one of these types of businesses.*

ASSEMBLYMAN COLLINS MOVED TO APPROVE RECOMMENDATION NO. 9(4A). THE MOTION WAS SECONDED BY ASSEMBLYWOMAN CEGAVSKE AND CARRIED UNANIMOUSLY.

*b. Amend Chapter 645B of NRS to expand the application process for a mortgage company license to include a basic business plan, a company policy and procedure manual, a collection policy, loan servicing procedures and restrictions, and underwriting standards.*

ASSEMBLYWOMAN CEGAVSKE MOVED TO APPROVE RECOMMENDATION NO. 9(4B). THE MOTION WAS SECONDED BY SENATOR O'DONNELL AND CARRIED UNANIMOUSLY.

*10. Require that a mortgage company provide the lender at the time of closing of a loan an insured closing letter which guarantees that an underwriter will insure the lender against loss incurred in connection with a loan closing.*

ASSEMBLYMAN COLLINS MOVED TO APPROVE RECOMMENDATION NO. 10 TO READ "REQUIRE THAT AN ESCROW COMPANY OR TITLE COMPANY PROVIDE THE LENDER AT THE TIME OF CLOSING OF A LOAN AN INSURED-CLOSING LETTER, WHICH GUARANTEES THAT TITLE INSURANCE HAS BEEN OBTAINED." THE MOTION WAS SECONDED BY ASSEMBLYWOMAN CEGAVSKE AND CARRIED UNANIMOUSLY.

*11. Amend Chapter 645B of NRS to provide that:*

*a. A mortgage company shall not charge a person a late fee, an additional amount of interest, or any other penalty if the payment is personally delivered to the mortgage company before 5 p.m. on the day that the payment is due;*

*b. If no offices of the mortgage company are open to customers on the day that the payment is due, the mortgage company shall not charge a person a late fee, an additional amount of interest or any other penalty if the payment is personally delivered to the mortgage company before 5 p.m. on the next day that an office of the mortgage company is open to customers;*

*c. A mortgage company or a person may not agree to alter the foregoing provisions by contract or other agreement, unless the contract or other agreement:*

*(1) Is executed before the effective date of the bill;*

(2) *Is in writing; and*

(3) *Includes a provision that expressly establishes a specific time of day before which a person must deliver a payment to the mortgage company to avoid a late fee, an additional amount of interest or any other penalty.*

ASSEMBLYWOMAN CEGAVSKE MOVED TO APPROVE RECOMMENDATION NO. 11. THE MOTION WAS SECONDED BY ASSEMBLYMAN COLLINS AND CARRIED UNANIMOUSLY.

*12. Amend Chapter 645B of NRS to require that a mortgage company must provide a written disclosure which must be signed by the lender of the exact priority of each loan. Further, every trust deed must clearly indicate the priority of the loan in which the investor's funds must be placed. In the event a mortgage company might want to subordinate an investor's priority, the mortgage company must obtain the lender's written approval and provide a copy of that approval to the investor and the Division of Financial Institutions.*

David Cabral

David Cabral, America Commonwealth Mortgage, Las Vegas, stated that preparing and copying letters as outlined in Recommendation No. 12 may be burdensome for escrow companies.

Jeff Guinn, previously identified, stated the title companies would have a problem providing the letters, and if the responsibility to provide the letters were put on the mortgage company it should be a written disclosure, provided prior to closing and signed by the lender.

SENATOR O'DONNELL MOVED TO AMEND CHAPTER 645B OF *NEVADA REVISED STATUTES* TO REQUIRE THAT AN ESCROW COMPANY MUST PROVIDE, PRIOR TO CLOSING, A WRITTEN DISCLOSURE, WHICH MUST BE SIGNED BY THE LENDER, OF THE EXACT PRIORITY OF EACH LOAN. THERE BEING NO SECOND, THE MOTION DIED.

ASSEMBLYMAN COLLINS MOVED TO AMEND THE MOTION TO AMEND CHAPTER 645B OF NRS TO REQUIRE THAT A MORTGAGE COMPANY MUST PROVIDE PRIOR TO CLOSING, A WRITTEN DISCLOSURE, WHICH MUST BE SIGNED BY THE LENDER, OF THE EXACT PRIORITY OF EACH LOAN. FURTHER, EVERY TRUST DEED MUST CLEARLY INDICATE THE PRIORITY OF THE LOAN IN WHICH THE INVESTOR'S FUNDS MUST BE PLACED. IN THE EVENT A MORTGAGE COMPANY MIGHT WANT TO SUBORDINATE AN INVESTOR'S PRIORITY, THE MORTGAGE COMPANY MUST OBTAIN THE LENDER'S WRITTEN APPROVAL AND PROVIDE A COPY OF THAT APPROVAL TO THE INVESTOR AND THE DIVISION OF FINANCIAL INSTITUTIONS. THE MOTION WAS SECONDED BY SENATOR SHAFFER AND CARRIED UNANIMOUSLY.

*13. Amend NRS to provide that a person who is subject to the provisions of Chapter 627 of NRS as a construction control company, Chapter 645A of NRS as an escrow agency, or Chapter 692A of NRS as a title insurer must file a bond of not less than \$250,000.*

Mr. Powers clarified that title insurers and title agents, in Nevada, currently do not have a bond requirement.

SENATOR O'DONNELL MOVED FOR APPROVAL OF RECOMMENDATION NO. 13. ASSEMBLYWOMAN CEGAVSKE SECONDED THE MOTION WHICH CARRIED UNANIMOUSLY.

Advertising Disclosure

*14. Amend Chapter 645B of NRS to prohibit a mortgage company from advertising for new investment*

*money when portfolio thresholds fall below a determined amount, when monetary difficulties arise, or when specific problem circumstances have occurred.*

Richard Kropp

Richard Kropp, USA Capitol Mortgage Company, Las Vegas, stated:

- This recommendation could be addressed by having funds directly deposited into escrow accounts and by fully funding the loans; and
- Stringent rules are necessary for advertising so that investigators on a case can understand that if there is a shortfall, that there is no advertising whatsoever which would include direct mail, newspaper advertising, television, et cetera.

Mr. Powers stated once the bill draft could state:

- That when the mortgage company's net worth requirements fall below that net worth requirement, then the Commissioner of Financial Institutions shall suspend the company's license, and during the period of suspension, the mortgage company could not advertise; and
- The length of the suspension could be set at until the net capital is recovered or until it is approved by the Commissioner of Financial Institutions.

Senator O'Donnell commented that the Division of Financial Institutions usually is not aware if a mortgage company is operating "above board," effectively, efficiently, legally, et cetera, until one of its investors reports a problem. He suggested that the language be kept and add "as defined by the Division of Financial Institutions" after the words "difficulties arise."

Mr. Powers, stated if a licensee has an active license, and not subject to any suspension or revocation, he has a first amendment right to engage in advertising, commercial speech, and is protected by the first amendment of the *United States Constitution*. Until an order of the Commissioner of Financial Institutions directs the company not to advertise based on that order, he would have concerns about any amendment to legislation.

Douglas E. Walther

Douglas E. Walther, Senior Deputy Attorney General, Commerce Section, Attorney General's Office, stated that the commercial speech doctrine does not regulate misleading speech. He noted that:

- If there were some authority to say that any advertising or solicitation had to include these specific relevant facts, that the company is under investigation, would accomplish the same purpose.
- His office suggested in the bill draft request (Exhibit C) to amend NRS 645B.189, "Administrator's approval of advertisement required to provide that (BDR 54-1204):

a. If a mortgage company maintains any accounts described in NRS 645B.175, the mortgage company shall include in each advertisement:

(1) The following statement: "Money invested through a mortgage company is not insured or guaranteed by the federal or state government. An investor is not guaranteed to recover or to be repaid any of the money he invests, an investor is not guaranteed to earn or to be paid any interest or other return on the money he invests, and an investor may lose some or all of the money he invests"; and

(2) Any other statement or information that is required by a regulation adopted pursuant to this chapter or an order of the Commissioner.

b. If conveyed in printed form, including, without limitation, if displayed in printed form on a television or any other video screen, monitor, or device, the statement or information

which is required pursuant to paragraph (1) must be printed in a size that is approved by the Commissioner; and (2) if displayed in printed form on a television or any other video screen, monitor, or device, displayed for a period that is approved by the Commissioner.

c. The Commissioner may adopt any other regulations that are necessary to carry out the provisions of this section.

Mr. Powers agreed with the Attorney General's Office, that it does not protect investors from misleading advertising but as he understood the recommendation, it prohibits all advertising for new money whether or not it is misleading.

SENATOR O'DONNELL MOVED TO ADOPT THE GUIDELINES FOR ADVERTISING AS OUTLINED IN SECTION 2 OF THE DIVISION OF FINANCIAL INSTITUTION'S BILL DRAFT REQUEST. THE MOTION WAS SECONDED BY ASSEMBLYWOMAN CEGAVSKE CARRIED UNANIMOUSLY.

*15. Amend NRS 645B.189 to provide that:*

*a. If a mortgage company maintains any accounts described in NRS 645B.175, the mortgage company shall include in each advertisement:*

*(1) The following statement: "Money invested through a mortgage company is not insured or guaranteed by the federal or state government. An investor is not guaranteed to recover or to be repaid any of the money he invests, an investor is not guaranteed to earn or to be paid any interest or other return on the money he invests, and an investor may lose some or all of the money he invests."*

*(2) Any other statement or information that is required by a regulation adopted pursuant to this chapter or an order of the commissioner.*

*b. If conveyed in printed form, including, without limitation, if displayed in printed form on a television or any other video screen, monitor or device, the statement or information which is required pursuant to paragraph (a) must be printed in a size that is approved by the commissioner and, if displayed in printed form on a television or any other video screen, monitor or device, displayed for a period that is approved by the commissioner.*

*c. The commissioner may adopt any other regulations that are necessary to carry out the provisions of this section.*

ASSEMBLYWOMAN CEGAVSKE MOVED FOR APPROVAL OF RECOMMENDATION NOS. 15A, B, AND C. THE MOTION WAS SECONDED SENATOR O'DONNELL AND WAS CARRIED UNANIMOUSLY.

#### Staffing of the Division of Financial Institutions

*16. Include in the subcommittee's final report a statement in support of additional funding for regulatory agencies of the mortgage investment industry for the purpose of increasing enforcement staff.*

SENATOR O'DONNELL MOVED TO APPROVE RECOMMENDATION NO. 16. THE MOTION WAS SECONDED BY SENATOR SHAFFER WHICH CARRIED UNANIMOUSLY.

#### Yield Spread Premiums

*17. Amend Chapter 645B of NRS to require that, before closing a loan, a mortgage company must disclose to the borrower the yield spread premium due to the mortgage broker.*

No action was taken on this item.

#### Regulation of Check-Cashing and Deferred Deposit Services

*18. Amend Chapter 604 of NRS, which provides for the regulation of check-cashing services and deferred deposit services (also known as "postdated check services") to: (a) establish a statutory cap on the fees and interest rates that may be charged by a check-cashing service or deferred deposit service for each check transaction with a customer; and (b) prohibit a deferred deposit service from accepting a customer's payment of the fee or interest that is owed from a previous postdated check transaction and then "rolling over" the amount that the customer owes on the cash advance portion of the previous transaction into another check transaction.*

No action was taken on this item.

### **PUBLIC TESTIMONY**

L. Scott Walshaw, Commissioner, Division of Financial Institutions, Department of Business and Industry, noted his opinion that:

- Some recommendations made by the subcommittee should apply not only to licensed mortgage companies; and
- Any changes in the division's budget will have a direct impact on the staffing levels and not just the Attorney General's office. Until the final form of any legislation that occurs is seen, that impact will not be known.

Chairman Goldwater directed staff to include Mr. Walshaw's concerns in the final report.

There being no further subcommittee business, the Chairman adjourned the meeting at 1 p.m.

Respectfully submitted,

Nenita Wasserman

Senior Research Secretary

APPROVED BY:

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Assemblyman David E. Goldwater, Chairman

Date: \_\_\_\_\_

### **LIST OF EXHIBITS**

Exhibit A is a copy of the "Work Session Document, Legislative Commission's Subcommittee to Investigate Regulation of Mortgage Investments," dated December 12, 1998, which was prepared by staff for use by the subcommittee.

Exhibit B is a statement dated December 12, 1998, by Nevada's Secretary of State Dean Heller.

Exhibit C is a bill draft request submitted to the Subcommittee to Investigate Regulation of Mortgage Investments by the Division of Financial Institutions, Nevada's Department of Business and Industry.

Exhibit D is a letter to David Goldwater, Chairman, Subcommittee to Investigate Regulation of Mortgage Investments, dated December 12, 1998, regarding suggested wording for a preliminary bill draft for fines, penalties and criminal actions, submitted by Loretta Eichelberger, private citizen, Las Vegas, Nevada.

Exhibit E is the Attendance Record for this meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. The library may be contacted at (775) 684-6827.