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MEMORANDUM

TO: Senate Judiciary Committee
FROM: Tisha Black Chernine, Esq.
DATE: May 4, 2011
REGARDING: Bill 284

Good morning Madam Chair and members of the Senate Judiciary Committee.

I am Tisha Black Chernine. I am a real estate attorney in Nevada and a native Nevadan. I would like to thank Assemblyman Conklin for his keen interest in and support of 284. 284 will be instrumental in the recovery of the Nevada real estate market as it aims to create transparency in the foreclosure process and create mechanisms to enforce proper foreclosures. Ensuring that real property is foreclosed on properly – by the proper parties is essential to the recovery of Nevada.

It is critical to have laws that clearly define roles and obligations of foreclosing parties and, where absent, to enact laws that have defined consequences if a foreclosure occurs improperly or by an improper party. We must ensure that properties foreclosed upon in Nevada can be subsequently bought and sold without the threat of lawsuit and with a full title policy.

Title companies are beginning to carve out exceptions in their title policies where foreclosed properties are involved. This is due to the increasing threat of competing claims when the foreclosure has occurred due to faulty or improper documentation.

If these foreclosed properties cannot be purchased with a full title policy and absent the threat of future litigation, they will likely NOT be purchased or will be purchased at a sharp discount resulting in the continued decline of local real estate values.

I would briefly like to address Senator Roberson comments:

1. This Bill, 284, is not about dead-beat borrowers – it is about proper foreclosures.
2. We agree that what is best for the Nevada market is to have performing loans whether that is by effectuating a modification or selling the property to a new buyer. The 12 to 18 months it takes to foreclose is due largely to the lenders' inability to collect their paperwork; not delay or other impediments caused by the borrowers. Indeed, the banks are in charge of the foreclosure process NOT the borrowers.
3. Often, banks will create or engineer documents in order to accomplish a foreclosure.
4. Without this Bill, the paperwork required to foreclose will continue to be reverse-engineered by the lenders, services and their trustees.

5. When foreclosure documents are not correct or are manufactured, the foreclosure does not occur in proper fashion and the door is left open for claims that challenge title. This results in a further decline in property values.
6. Real estate values were at their peak during the Bubble. Presently, they are off from the “Bubble Value” by approximately 50% (“Fair Market Value or FMV”). The FMV can generally be captured by a buyer through a short sale. A foreclosed property (“REO”) fetches 30% less than a short sale. A property that would have to be litigated to clean the title due to an improper foreclosure (“Court Case Value”) would fetch even less than the REO value on the open market and would likely not be purchased until alternative inventory is consumed.
7. As stated:
Bubble value, is more than
The FMV value, which is more than
The REO value, which is still more than
Court Case Value (an unknown).
8. The continuing devaluation will lead to continuing defaults by those who bought at higher values.
9. Ensuring that foreclosures are done properly, will assist in the stabilization of market values by eliminating, or sharply reducing, those properties that cannot obtain clear title or must be litigated to ascertain whether the foreclosing party was the proper party and foreclosed properly.

I would also like to address Madam Chair Weiner’s comment as to the “tools” we have available in Nevada. Presently, if a property is foreclosed upon improperly, there are no “tools” (other than complicated and costly legal process) to correct the statutory defect or the fraud. This was importantly noted by Ms. Weiner.

Most borrowers will not litigate these cases because of the high cost of legal fees which they often cannot afford due to loss of income. Moreover, most property owners will not protect a property from improper foreclosure, regardless of their rights, when the property significantly underwater. It would be throwing good money after a bad investment.

Because the owner will not protect the title from an improper foreclosure, the title is ultimately “victim.” The new owner is, therefore, left to pay the cost and to push the property through litigation to clean the title or to purchase the property without adequate title insurance. In the event that no one cares to purchase these properties, regardless of the discount, they may be vacant for years and may ultimately be a burden to the state.

Finally, and to reiterate, AB 284 is not designed to keep non-paying borrowers in their homes but to promote transparency in the foreclosure process and to ensure proper and clear chains of title so that the property can be resold at a stabilized value. People will not be enticed to purchase property when the title and the value cannot be relied upon.

AB 284, if passed, will aid in the recovery of our real estate market and therefore, our state.

I thank you for the opportunity to testify.