



# NEVADA FAIR HOUSING CENTER, INC.

*paving the way to a world of resources*

**Testimony of  
Gail Burks, President & CEO**

**On behalf of  
Nevada Fair Housing Center, Inc**

**Before the U.S. Financial Crisis Inquiry Commission**

**On the topic of  
“Financial and Economic Crisis and Impact on the Real Estate Market of the  
State of Nevada”**

**Hearing On  
Wednesday, September 8, 2010**

## **I. Introduction**

To the distinguished Chair and other members of the Financial Crisis Inquiry Commission, my name is Gail Burks. I am the President & CEO of Nevada Fair Housing Center. Thank you for the opportunity to present testimony on this important topic, from the view of those working within the Community on a day to day basis.

Nevada Fair Housing Center is a Qualified Fair Housing Organization formed in 1993. Our mission is to provide, for the communities we serve, education, legal advice and representation, technical assistance, policy research and financial services, related to housing and consumer issues. The agency, since October 1999, has provided assistance around mortgaged related and consumer protection issues

I have been asked to address the Financial Economic Crisis and the impact on the Nevada real estate market from the perspective of a practitioner providing services to consumers suffering daily as a result of the market. Real estate and economic markets are cyclical. To gain an understanding of issues facing Nevada, it's important to understand the four seasons of the crisis. From 1999 – 2001 the seeds of predatory lending germinated in this state. The market, from 2001 – 2004 planted the crop of subprime lending. The community continued to reap the diseased crop of this harvest through 2008. Now, we are seeking to prune and salvage portions of harvest. The goal is to prevent another dismal year of production. Each of these periods will be addressed separately.

## **II. Causes of Financial & Economic Crisis – View From the Field**

### **A. Germination: Lending Practices 2001 -2004**

Nevada consumers initially complained about predatory lending practices in 1999. By 2001, NFHC, through the Consumer Assistance program began to see an average of over four hundred clients per month with predatory lending issues. Clients presented cases that included such loan practices as appraisal fraud, flipping, high interest rate loan products, excessive prepayment penalties and violations of Federal law in the servicing of these loans.

A review of mortgage documents showed that a core group of sophisticated lenders often offered products with loan terms that fell just under the required HOEPA or Section 32 reporting limits<sup>1</sup>. Many high rate lenders for example, utilized servicing companies that failed to properly maintain impound accounts (monies collected for taxes and insurance), or properly credit payments. When consumers complained about their mortgage accounts, some lenders initiated abusive collection practices. Initially, consumers complaining were viewed with skepticism. Some did not maintain good records or the factual account sounded impossible.

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<sup>1</sup> Lenders included, but were not limited to Long Beach Mortgage, First Franklin, Silver State Mortgage, New Century, Ameriquest, Countrywide, Ocwen, Fair Banks Capital, Taylor Bean & Whitacker, Home EQ, EMC and many others.

However, detailed document analysis supported consumer claims. In Nevada, NFHC addressed this issue both from a preventive and enforcement approach. In conjunction with Freddie Mac and other local municipalities, we launched the first state Don't Borrow Trouble campaign to educate the public about abusive and illegal lending practices. We developed a target list of abusers and sought to enforce consumer protection laws, filing such cases on EMC vs. and Serrano vs. Fair Banks.

From a public policy perspective, we participated in meetings with the Federal Reserve to plead for regulatory enforcement of existing law against unscrupulous practices perpetrated by fringe lenders. The first wave of the crisis was in effect caused by a lack of enforcement of existing consumer protection laws, illegal servicing practices and a failure to regulate the diverse mortgage and servicing industry.

## **B. Planting**

No one can debate the need for legitimate non-prime (subprime) lending products. The subprime market served individuals with little or no credit, along with those recovering from a financial setback. Contrary to revisionist history and media hype, a traditional non-prime borrower had the following characteristics:

- Less than three trade lines
- Credit score between 586 – 600
- Debt to income of 45%
- Consistent employment of two years in the same profession or
- No established credit

Traditional equity enhancements allowed a non-prime borrower to obtain credit. These often included verification of non-traditional credit (i.e. rental payments, utility bills, etc), proof of one month's reserve, establishment of an impound account and PMI on the mortgage. While the non-prime borrower might pay more for the cost of credit, that cost was directly related to lender risk.

However from approximately 2004 – 2007, the purpose and role of non-prime became lost in the zest to create profit driven securitized products. Non-prime mortgages mutated into fantasy financing. Out of this mutation grew a new breed of mortgage product, fueled by:

- No underwriting
- Lender failure to determine the ability to repay the loan
- Failure to fully amortize the payment
- Failure to establish impounds for insurance and property taxes

The removal of credit enhancements, safeguards and sound underwriting resulted in the origination of mortgages to anybody with a pulse. Many consumers received products that we

not suitable based on their credit and income. When payments on Option ARMs and pick-a-payment mortgages began to adjust, many consumers experienced payment shock.

No document loans also fueled the crisis. Traditionally, this standard product was only offered to self employed individuals with twenty percent down. However, brokers began offering the product to consumers on fixed incomes such as seniors and working families.

This second cycle of the crisis fueled the next cycle and resulted in the joining of strange bed fellows. Providers of services – brokers, correspondent lenders, title companies, appraisers, real estate agents – formed alliances to make money. Sadly, some consumers sought to grab the brass ring and become ‘investors’ and share in the new get rich craze.

### **III. Impact on the Nevada Real Estate Market**

By 2005, unregulated consumer practices were deeply rooted in the Nevada market. The result, a bitter harvest which included – overpriced homes, a 9:1 ratio of consumers with unsuitable mortgage products, and portfolios of mortgaged backed securities based on the fallacy that the market would never decline.

#### **A. Reaping the Bitter Harvest – 2005 - 2008**

When the economic wind changed, many Nevadans were faced with unsustainable debt levels. Job opportunities, previously a main reason for moving to this state, declined. Today, a recent poll found that 34% of Nevadans “would leave Las Vegas if they could find a job in another state or were not underwater on their home”.<sup>2</sup> The financial crisis is also believed to be the largest ‘trigger event’ behind an increase in murder-suicides in Las Vegas, four of which occurred in August 2010<sup>3</sup>

From a consumer case perspective, requests for assistance in the foreclosure crisis alone average two thousand inquiries per month. This includes individuals who may be renting a home in foreclosure. Many who played by the rules became tainted by those who did not. Like a board of dominos, everyone is affected.

#### **B. Pruning the Vineyard**

The long term impact on Nevada is evident by the state’s rank as number one in foreclosures for the third straight year. Depending on which day you check the statistics, the Mortgage Bankers Association estimates that 24.3% of Nevada mortgages are in trouble<sup>4</sup>. The State has a backlog of 124,000 foreclosures. The picture is grim when viewed in light of the unemployment rate, which hit a record 14.3% in July<sup>5</sup>.

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<sup>2</sup> Robinson, J. (2010, August 29). Leaving Las Vegas in Cards for Some. *Las Vegas Review Journal*, p. 22A.

<sup>3</sup> Blasky, M. (2010, August 29). Economic Worries Taking Toll. *Las Vegas Review Journal*, p. 1B.

<sup>4</sup> Smith, H. (2010, August 23). Las Vegas New Home Sales Slip in July. *Las Vegas Review Journal*.

<sup>5</sup> Robinson, J. (2010, August 20). Nevada Unemployment Grows in July. *Las Vegas Review Journal*.

In order to overcome these issues, four main areas must be addressed. First, foreclosure modifications efforts must be effective. HAMP does not work for consumers. There is also growing trend of FHA foreclosures (up 33%). Absent real solutions, consumers will continue to engage in strategic defaults. Second, the issue of the role of credit rating agencies in the mortgage crisis has not yet been addressed. Third, Nevada and many other states must address the impact of foreclosure scams and other fraudulent activity perpetrated against consumers. Fourth, mortgage lenders must offer reasonable terms to qualified consumers.

#### **IV. Conclusion**

I must confess that when our office initially received the call to testify today, my first reaction was not positive when the question - what caused the financial crisis – was posed. In fact, my initial response was that we know the answer.

What happened? A million tiny choices by millions of individuals, lead to disastrous consequences for millions of innocent people.

What caused the crisis?

- Individuals within regulatory government agencies that failed, using existing law, to enforce a standard of conduct that was required;
- Individual elected officials who ignored the principles of basic math and economics;
- Individuals within lending corporations who placed their profit motive ahead of sound underwriting principles;
- Individual experts who created thousands of investment vehicles designed to bet against the market;
- Individual consumers who ignored the principles of economics and were lured by the illusion of wealth to purchase what basic math principles showed they could not afford;
- Individuals who, through tacit silence agreed to be co-conspirators in a game of financial spin the bottle; and
- Individuals within lending institutions that ignored consumers who, before there was a crisis, attempted to be proactive and obtain assistance

What caused the crisis - the consequences of millions of choices reached a crescendo, colliding into one great Shakespearean like tragedy.

It wasn't a collective group of corporations or one entity of government or one group of professionals and bad consumers. Unlike theft by gunpoint, there is no one person holding the gun that we can arrest and prosecute.

Some years ago, there was a great movie called the Devil's Advocate starring Al Pacino and Keanu Reeves. In the movie, Reeves learns that the head of the law firm is really Satan, his father. As they are negotiating for his soul, Reeves asks him 'why the law'. Pacino responds, "it puts us into everything". But the best line is uttered by Pacino at the end when Reeves thinks that he has out smarted the devil by making a different choice. Pacino turns to the camera and says "vanity is definitely my favorite sin". The catch is that even though Reeves made a different choice, it was for the wrong reason<sup>6</sup>.

Today, it would appear that individuals within our country are making different choices. The evidence however indicates that the choices we are now making to resolve the crisis are being made not because they are effective but for the appearance of a solution.

Now, the timely question is not what caused the crisis but what will prevent the next one.

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<sup>6</sup> Rall, T. (2010, August 29). The Banksters Strike Again. *Las Vegas Review Journal*, p. 1D