

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Thayer, on March 1, 1989, at
10:00 a.m., Room 410

ROLL CALL

Members Present: Chairman Thayer Vice Chairman Meyer,
Senator Boylan, Senator Noble, Senator Williams,
Senator Hager, Senator McLane, Senator Weeding,
Senator Lynch

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 341

Presentation and Opening Statement by Sponsor:

Representative McCormick, House District 38, said HB 341 was to amend the Small Tract Financing Act to extend the real property acreage to thirty acres. He said the present limitation was fifteen acres. He stated he had someone present to explain the bill, and he would reserve the right to close.

List of Testifying Proponents and What Group They Represent:

Jerry Loendorf - Montana Consumer Finance Association
Tom Hopgood - Montana Association of Realtors
William Spilker - Self/Realtor, Helena, Montana

List of Testifying Opponents and What Group They Represent:

None

Testimony: Jerry Loendorf said HB 341 amended the Small Tract Financing Act of 1963, which intended to encourage lenders to make more loans for residential and business purposes. He said it provided a lender the ability to use a trust indenture to secure a loan,

as opposed to a mortgage. He said the last acreage increase legislature had made, was in 1974, when people began to acquire larger tracts of land. He stated a continued trend to larger tracts of land, had led to HB 341, and its proposal of thirty acres. He said lenders were more likely to make loans when they could take a trust indenture as security.

Mr. Loendorf said a lender preferred a trust indenture because foreclosure could be done through a one hundred and twenty day newspaper notice, while a mortgage foreclosure required a court procedure. Mr. Loendorf stated that either process became important, only when payments were in default. He said a borrower with a trust indenture could be reinstated by merely paying the payments in default, plus limited attorneys fees. He stated that with a mortgage, a borrowere could be required to pay the entire amount owing.

Mr. Loendorf said the second comparison was whether or not a deficiency judgment could be taken. He said, a trust indenture allowed a lender to take the property back if there was default of payment, and notice of delinquency did not render payment. However, he could not get a deficiency judgment against the buyer, without the use of a court proceeding. He said a mortgage allowed a deficiency judgment, and other securities could be affected.

He said a foreclosure by notice, with a trust indenture closed the matter. He stated that a mortgage varied, in that it allowed a one year redemption period after foreclosure notice was given.

Tom Hopgood said his group supported HB 341, and he echoed Mr. Loendorf's remarks, that it did make the transfer of property easier. He said they believed the trust indenture financing allowed an efficient and speedy method of financing realty purchases. He said they urged passage of the bill because they thought it was good for business and economic development.

William Spilker said he believed the legislation was consistent with what had gone on in the Montana Subdivision and Platting Act. He said the definition of a Montana subdivision was the division of land under twenty acres, and consequently there had been a lot of parcels of land divided at twenty acres or greater. He said that made it impossible for a bank to secure a loan with a trust indenture, because trust indentures were limited to fifteen acres.

Mr. Spilker cited an example of an actual sale affected by the present limitations within the law. He said HB 341's extended acreage would solve their whole problem. He said he thought HB 341 was a method to employ the proper instruments for securities, and was in the best interests of consumers.

Questions From Committee Members: Senator Lynch said the language on page 2, line 8 referred to thirty acres of land. He asked what else it could have meant, other than land? Mr. Loendorf said the definition had always been in the law, and he didn't know what else it could refer to.

Senator Boylan asked why the limit of thirty, why any specific amount? Mr. Loendorf said a lot of states had removed the acreage amount. He said he didn't remove the amount, because legislature's history had revealed a tendency to keep the limit lower.

Closing by Sponsor: Representative McCormick said he would ask the committee to pass HB 341, and thanked them for the hearing.

DISPOSITION OF HOUSE BILL 341

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch move HB 341 BE CONCURRED IN. Senator Meyer seconded the motion. The motion Carried Unanimously. Senator Noble carried HB 341 on the Senate floor.

HEARING ON HOUSE BILL 209

Presentation and Opening Statement by Sponsor:

Representative Hannah, House District 86, said HB 209 would require a lending institution to act as an intermediary with the secondary market. He said the borrower would then have a contact person if there were any questions or problems with the loan. He said the contact person would handle communications between those under a mortgage or trust indenture, and the purchaser of that mortgage or trust indenture. He said that most buyers of the secondary market were out of

state, and this created a problem of contact. He related the problems involved with the impersonal approach often used for contacting the secondary buyer. He said this was a real problem, and he felt it must be dealt with.

He said HB 209 was designed to draw the communications together, for dealing with a loan. He said the bill required the lender to offer the borrower the option to request the lender to be the intermediary with the secondary market. He stated the lender could charge the borrower a reasonable fee for the service. He said he thought it would improve the relationship between lenders and local borrowers, would improve the repossession and problem solving process, and would develop a better system for the consumer to acquire help.

List of Testifying Proponents and What Group They Represent:

Tom Hopgood - Montana Realtors Association
William Spilker - Self/Realtor, Helena, Montana

List of Testifying Opponents and What Group They Represent:

George Bennett - Montana Bankers Association
Julie Begler - Owner, Pacific Bancorp Mortgage, Helena, Montana
Bob Pyfer - Vice President, Montana Credit Unions League
John McLaughlin - Valley Bank, Helena, Montana
Brian Taylor - Real Estate Loan Officer, Norwest Bank, Helena, Montana
Charles Erdman - Montana League of Savings Institutions

Testimony: Tom Hopgood said his group supported HB 209. He said that when something went wrong with a loan, borrowers often went to the local lending institution and were told there was nothing which could be done locally. He said consumers who called secondary market people quite often did not get the help needed either. He stated the next step was to go to the realtor, and sometimes the realtor got help, and sometimes they didn't. He said the final alternative was to seek an attorney, and that didn't always yield results either. He asked the committee to pass HB 209.

William Spilker said Representative Hannah's testimony was accurate, concerning telephone dealings with mortgage companies. He said he had many similar experiences himself, and any type of contact was difficult. He said there had been a dramatic shift in how real estate

loans were made, and presently a majority of those loans were serviced by a secondary market outside of the state. He said there was a present shortage of local mortgage brokers to act as an intermediary. He said he felt HB 209 was a reasonable proposal, as it gave lending institutions the authority to charge a fee, and act as an intermediary. He stated that many times a lending institution could be influential because they understood the loan process, and they often had an ongoing relationship with the mortgage company. He said he felt the legislation would be helpful to the homeowners in Montana, and urged passage.

George Bennett said they appeared in opposition to HB 209. He said there was a problem, and the stories were quite accurate, but this was an isolated problem rather than a prevalent situation. He said the secondary market was a very important source of capital in Montana, and the added option for local servicing was going to cost substantially more. He said the problem was actually a national one, and couldn't be remedied on a local basis. He submitted written testimony. (See Exhibit #1)

Julie Begler said she congratulated Representative Hannah for trying to address a very serious problem, but she felt HB 209 would just cause additional problems. She said HB 209 required the lender to be a serving agent, but did not specify whether it was the original lender, or the lender the borrower chose to go to. She said that by appointing the lender as an agent, you were giving a contractual obligation to the borrower, but no authority with the secondary markets, for lenders to fulfill that obligation.

She asked if the specified fee was going to be paid in the form of a lump sum at closing, or at the time the borrower requested the services? She said there was a request for the fee to be reasonable, but there was no criteria to protect the borrower from unreasonable fees.

She asked what would happen if the original lender went out of business, and who would assume the responsibility of acting in his behalf?

Ms. Begler said that if the fee was charged at closing, you were pricing first time home buyers out of a service they may really need. She said first time buyers normally could not afford any additional costs.

She said there would be a requirement for borrowers to pay a fee for a service that should be provided for him, by virtue of the fact that he was taking out a loan in the first place. She said, as the original lender, the borrower should have the right to come back at any time and ask questions regarding his loan. She said she saw this as a chance for companies to charge fees for services they may never provide.

She said the problem existed on the national level, and state regulations were in conflict, on what was allowed to be charged in an escrow account. She said she would like to see a committee of lenders, secondary markets, and lawmakers formed, to address the situation.

Bob Pyfer said they only had a few credit unions doing mortgage lending, but the service demand was growing. He said those credit unions involved, were doing local servicing, and were not using a secondary market involvement. He said the concept of HB 209 was not of an immediate concern to credit unions, but the national trend was that regulators were applying pressure for credit unions to gear toward selling on the secondary market. He said their long range concern was that if the secondary market was impaired, credit unions would be unable to provide the fixed rate mortgage option, which they believed many consumers preferred.

He stated the amended form of HB 209 would not require local servicing, but would require the lender to be intermediary between the borrower and the secondary market purchaser. He said his group didn't clearly understand what liability the lender may have to the secondary market purchaser, in the event of default. He said they were also unsure of the borrower's liability because of an error made by the secondary market servicer. He said, because of the uncertainty, and initial liability, he was afraid credit unions would be dissuaded from using the secondary market. Because the regulator's pressure was of the opposite persuasion, it could ultimately lose the consumers choice of having the fixed rate mortgage.

He said they realized HB 209 was attempting to address a real problem, and understood there were instances needing improved service. He said they felt the problem was actually a national one, and needed to be looked at on an overall basis of identification, rather than in the manner proposed.

John McLaughlin said he didn't feel an intermediary would help any of the problems their firm experienced during a delinquency. He said he realized there was a problem, but retention of local service required a higher interest rate. He said the local service averaged from one quarter to one half of a percent higher than the national secondary market rate. He said they did have that option available, but people quite often did not want to pay extra for it. He said they did their best to help borrowers remedy problems with secondary market buyers, but they ran into the same problems as the borrowers. He said he didn't feel HB 209 would help the situation.

Brian Taylor reiterated the fact that the legislation did not identify the lending institution, what an intermediary was, or if the originating lender was the same as a local lender. He asked what would be considered a reasonable fee, and when the fee was to be paid? He presented written testimony. (See Exhibit #5) He said HB 209 was too vaguely written, and felt it would lead to litigation.

Charles Erdman's written testimony was read for the record by Chairman Thayer. (See Exhibit #3)

Questions From Committee Members: Representative Hannah told Senator Lynch most of the opponents had arisen since the House hearing of HB 209.

Senator Lynch asked if the requirements could be obtained now, and this was to make it mandatory? Representative Hannah said yes, at the option of the borrower, not the lender.

Representative Hannah told Senator Hager he didn't know of any other states who charged this fee? He said he thought this was a beginning at trying to solve an existing problem.

Senator Weeding asked what leverage the lending institution would have, that the borrower wouldn't have? Representative Hannah said the lending institutions dealt with the secondary markets every day, and knew people on a first name basis. He said they were in a position of dealing on a continued basis.

Senator Weeding asked about the additional resale of a loan, and wondered what leverage would exist then?

Representative Hannah said that was legitimate, and he didn't think that would make any difference.

Chairman Thayer asked who was going to be held responsible, when loans had been resold several times?

Representative Hannah said he knew of a situation where the loan on one house had been sold four times in eighteen months. He said the clout didn't seem as important, as having someone available for the borrowers to talk to when these transactions took place. He said the bill was designed to require the lender to have an explanation of transactions available for the borrower. He said he didn't foresee any big change in how some of the secondary markets operated, but he thought it was a good business policy.

Julie Begler told Senator Lynch she opposed the bill in the House.

Senator Lynch asked if Mr. Pyfer had been aware of the bill in the House? Mr. Pyfer said he had been out of town during the House hearing, but their organization did someone go to the hearing. However the bill was amended to such an extent, that the representative had decided not to read Mr. Pyfer's written testimony.

Mr. Bennett told Senator Lynch the Bankers Association had opposed the bill in the House.

Senator Noble asked if the VA and FHA would approve the fee regulation? Representative Hannah said they had been making contacts to try determining that, and their basic answer had been that they allowed different states and areas to charge different fees. He said they were very tough on it, and it was an arbitrary thing, but they did try to allow the states to do some regulatory work on their own.

Chairman Thayer asked Representative Hannah to respond to the legal aspect that had been brought up. He stated that maybe he wanted to respond in his closing.

Closing by Sponsor: Representative Hannah said there was a definite problem with how secondary markets were handling consumers in the state of Montana. He reminded them every opponent had recognized that problem, but had labeled it a national problem. He said he would suggest all of the lenders were legally on the hook, as to their liability. He said he didn't believe there was ever a real sound discussion about secondary marketing, between the borrower and the

lender. He didn't feel borrowers were aware of the potential problems they could face, with the sale of their loan. He said most borrowers believed the person writing the loan, was who they would be dealing with. He said that when borrowers had questions, they approached their lenders, were given a number to contact, got no results, and ultimately ended up back talking to the realtor. He said he believed the liability already existed.

Representative Hannah said he had an amendment which would clarify the definition, as to who the lender was. (See Exhibit #4) He said that whoever wrote the original loan on behalf of the borrower, was the author.

He said he thought it was a good business policy to try remaining in contact with the consumer, and he did not understand the opposition to that policy. He said the lender did have leverage, because of his linkage to the loan buying and selling process. He said it would be to the lender's advantage to discontinue dealing with a secondary lender who did not treat his consumers well. He said he thought lenders would decide what the bill required of them, and clearly define the legal relationship of a lender and borrower. He said he did not see any reason why costs should be driven up, by offering the simple service outlined in HB 209.

DISPOSITION OF HOUSE BILL 209

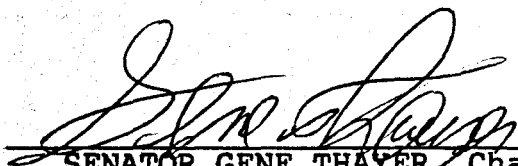
Discussion: A short discussion revealed a need to study HB 209 a little further, before taking executive action.

Amendments and Votes: None

Recommendation and Vote: None

ADJOURNMENT

Adjournment At: 11:21 a.m.



SENATOR GENE THAYER, Chairman

SENATE STANDING COMMITTEE REPORT

March 1, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 341 (third reading copy -- blue), respectfully report that HB 341 be concurred in.

Sponsor: McCormick (Noble)

BE CONCURRED IN

Signed: 

Gene Thayer, Chairman

4/1/89
3:30 p.m.

TESTIMONY OF MONTANA BANKERS ASSOCIATION

IN OPPOSITION TO HOUSE BILL 209

(George T. Bennett, Counsel MBA)

This bill would require a lender originating a loan secured by mortgage or trust indenture to act as an "intermediary" if a loan servicing problem arises after the loan has been sold "on the secondary market."

We recognize that there have been cases where borrowers have been adversely affected by the failure to properly service the loan by those responsible, after the sale into the secondary market.

However, we respectfully submit to this committee that to place the responsibility on the original lender to act as an "intermediary" will not solve the problem and will cause expense and difficulty to such lender out of all proportion to the problem. We would recommend that this bill not be concurred in by this committee on the following grounds:

1. The sale of loans into the secondary market is the major way by which capital is obtained for use in the Montana market. These loans for the most part are purchased by buyers outside of the state and, therefore, as to servicing problems this is a national problem which should be addressed by Congress and federal regulators since Congress can act on a nationwide basis.

ex. # 1
3/1/87

2. We were informed by the director of FHA in Helena that approximately 70% to 80% of the residential loans originating in Montana are insured by FHA (HUD); that there are presently 36,000 loans insured in Montana, and that about 90% of these have been sold to the secondary market. FHA receives approximately two servicing complaints a month. They have two persons in Helena assigned to handling mortgage servicing complaints. Most complaints are resolved in an expeditious manner. This is because HUD has a direct interest in servicing the loans since they are the guarantor and they have the means and influence nationally to obtain redress where there are servicing complaints.

3. We were further advised that Gennie Mae, a federal agency, can prohibit firms from purchasing in the secondary market if they have been remiss as to loan servicing. Thus the problem should be addressed by Congress and by federal regulatory agencies since they can control secondary market purchasers wherever they may be located.

4. Once the loan is sold the loan originator no longer has any control, file, information or contact. In fact where the original lender has attempted to aid borrowers in their disputes they have been met with claims that the information is confidential or have simply been ignored by the servicer of the loan.

5. The liability which will be imposed on the loan originator, if this bill passes, is of an unknown extent and nature. What is an "intermediary;" what is a "reasonable fee" to be charged by the lender to act as an intermediary in light of the liability exposure taken on by a lender in such capacity?

(This sheet to be used by those testifying on a bill.)

NAME: GEORGE T. BENNETT DATE: 3/1/89

ADDRESS: P.O. Box 1705 HELENA, MT. 59624

PHONE: 442-3691

REPRESENTING WHOM? MONTANA BANKERS ASS'N

APPEARING ON WHICH PROPOSAL: H.B. 209

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENT: See attached testimony
exhibit #1

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a

EXHIBIT NO. 2

DATE 3/1/89

BILL NO. HB 209

DATE: 3-1-89

NAME: Julie BEGLER

ADDRESS: 6250 Last Chance Gulch

PHONE: 443-7226

REPRESENTING WHOM? Pacific Business Mortgage

APPEARING ON WHICH PROPOSAL: House # 209

DO YOU: SUPPORT?

AMEND?

OPPOSE?

COMMENT:

Multiple horizontal lines for writing a comment.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MILSI

HB 209

February 27, 1989

Senator Gene Thayer, Chairman
Senate Business & Industry Committee
Room 410, State Capitol
Helena, MT 59620

RE: HB 209

Dear Senator Thayer:

I will be out of town on Wednesday, March 1 when HB 209 will be heard before the Senate Business & Industry Committee. The purpose of this letter is to express the strong opposition of the Montana League of Savings Institutions to HB 209.

HB 209 requires a lending institution to act as an "intermediary" between a mortgage borrower and the purchaser of a mortgage on the secondary market if the borrower so chooses. While the bill is much improved from its original version, it still would place Montana lending institutions in an untenable legal position.

The bill attempts to address the problem that Montana borrowers occasionally have when their loans are sold to the secondary market. The majority of loans that are made by lending institutions are sold to the secondary market and most of the secondary market purchasers require that the servicing be sold with the loan. This bill would keep the local lending institution legally entwined in the relationship between the borrower and the holder of the mortgage on the secondary market.

Under the bill the lending institution must act as the "intermediary" between the borrower and the secondary market. This creates a new legal relationship for the lending institutions. For instance, if the borrower defaulted on the loan the secondary market mortgage holder would be required to sue both the defaulting borrower and the financial institution that originally wrote the loan. This would be required under the bill since the local lending institution have to stand between the secondary market and the borrower in any situation.

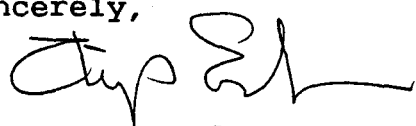
ex. #3
3/1/89

Senator Gene Thayer
February 27, 1989
Page 2

This exposes the lending institution to an area of legal liability not contemplated when the loan was made and subsequently sold to the secondary market. It is difficult, if not impossible, to determine the projected costs to financial institutions for this involvement.

While Rep. Hannah cites "horror stories" concerning servicing on the secondary market, these situations are more the exception than the rule given the number of mortgages that are sold on the secondary market. This bill simply fails to address the problem it is designed to remedy. It places a new level of legal liability on Montana lending institutions without solving any of the problems that exist with secondary market servicing.

It is not a good bill for the lending industry in Montana and ultimately it is not a good bill for the consumer.

Sincerely,

Charles E. Erdmann

/jal
cc: Committee Members

*Hannah*Amendments to House Bill No. 209
Third Reading CopyRequested by Rep. Tom Hannah
For the Committee on Business and IndustryPrepared by Mary McCue
March 1, 19891. Page 1, line 14.
Strike: "LOCAL"2. Page 1, line 15.
Strike: "A"
Insert: "The"
Following: "institution"
Insert: "originating the loan"

(This sheet to be used by those testifying on a bill.)

EXHIBIT NO. 5

DATE 3/1/89

BILL NO. HB209

NAME: Brian Taylor DATE: 3-1-89

ADDRESS: 5890 Canyon Ferry Rd., Helena MT

PHONE: 475-3513

REPRESENTING WHOM? Norwest Bank Helena, N.A

APPEARING ON WHICH PROPOSAL: H.B. 209

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: See attached

Exhibit 5

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

HOUSE BILL 209
Opponent Outline

3/1/89

Brian Taylor
Norwest Bank Helena, N. A.

I. Lack of Clarification

A. Line 15 (a Lending Institution).

1. Must this be the originating lender or can a borrower solicit any lending institutions to act as an intermediary?
2. What is the definition of a lending institution?
 - a. Does this include mortgage companies?

B. Line 15 (Intermediary)

1. To what length must the lending agency intervene?

C. Line 25 (Reasonable Fee)

1. What would be considered a reasonable fee?
2. Is this fee paid at the time of closing or is this fee charged on a per incident basis?

II. Assumption That the Secondary Market Will Cooperate.

- A. Are out-of-state markets bound by the provisions of this bill to release information to Montana lending institutions?
- B. What if loan is subsequently sold by one secondary investor to another?

III. VA and FHA Approval of Fee

- A. Will VA and FHA allow a fee to be charged to the borrower for intermediary service?

SUMMARY

I feel that any reputable lending institution is going to make every reasonable effort to resolve a customer's problems with a secondary investor. This, of course, is a matter of good business. Most financial institutions do not exist solely by making real estate loans. A successful institution exists by servicing as many of their customer needs as possible. A failure to make a reasonable attempt to assist a customer with his or her real estate servicing problems would lead to a disgruntled customer and quite possibly a loss of that customer's business relationship.

I don't feel that enacting this loosely defined legislation will result in better customer relations. I do feel that enactment of House Bill 209 will serve only to further burden the resources of our already strained court system. Its vague wording will almost certainly lead to judicial definition as a result of litigation between borrower and lending institution.

