

ASSEMBLY BILL NO. 445—ASSEMBLYMEN BROOKS;
ANDERSON AND DIAZ

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing mediation in certain actions for foreclosures. (BDR 9-707)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to real property; revising the provisions governing mediation in certain actions for foreclosures; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law concerning the foreclosures of real property upon default requires
2 the trustee under a deed of trust with respect to owner-occupied housing who has
3 the power to sell the property to which the deed of trust applies to attend mediation,
4 if requested by the grantor of a deed of trust or the person who holds the title of
5 record, for the purpose of obtaining a modification in the terms of the loan. The
6 Nevada Supreme Court is authorized to adopt rules providing for the conduct of the
7 mediation. (NRS 107.086) This bill requires the Court to include in its rules
8 authority for a mediator who determines that the beneficiary of the deed of trust or
9 the representative in attendance at a mediation is acting in bad faith to order that the
10 mediation be continued, establish a new date and time for its resumption and
11 require the beneficiary to pay the full amount of any additional mediation costs
12 incurred as a result of the continuance.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 107.086 is hereby amended to read as follows:
2 107.086 1. In addition to the requirements of NRS 107.085,
3 the exercise of the power of sale pursuant to NRS 107.080 with
4 respect to any trust agreement which concerns owner-occupied
5 housing is subject to the provisions of this section.



1 2. The trustee shall not exercise a power of sale pursuant to
2 NRS 107.080 unless the trustee:

3 (a) Includes with the notice of default and election to sell which
4 is mailed to the grantor or the person who holds the title of record as
5 required by subsection 3 of NRS 107.080:

6 (1) Contact information which the grantor or the person who
7 holds the title of record may use to reach a person with authority to
8 negotiate a loan modification on behalf of the beneficiary of the
9 deed of trust;

10 (2) Contact information for at least one local housing
11 counseling agency approved by the United States Department of
12 Housing and Urban Development; and

13 (3) A form upon which the grantor or the person who holds
14 the title of record may indicate an election to enter into mediation or
15 to waive mediation and one envelope addressed to the trustee and
16 one envelope addressed to the Mediation Administrator, which the
17 grantor or the person who holds the title of record may use to
18 comply with the provisions of subsection 3;

19 (b) Serves a copy of the notice upon the Mediation
20 Administrator; and

21 (c) Causes to be recorded in the office of the recorder of the
22 county in which the trust property, or some part thereof, is situated:

23 (1) The certificate provided to the trustee by the Mediation
24 Administrator pursuant to subsection 3 or 6 which provides that no
25 mediation is required in the matter; or

26 (2) The certificate provided to the trustee by the Mediation
27 Administrator pursuant to subsection 7 which provides that
28 mediation has been completed in the matter.

29 3. The grantor or the person who holds the title of record shall,
30 not later than 30 days after service of the notice in the manner
31 required by NRS 107.080, complete the form required by
32 subparagraph (3) of paragraph (a) of subsection 2 and return the
33 form to the trustee by certified mail, return receipt requested. If the
34 grantor or the person who holds the title of record indicates on
35 the form an election to enter into mediation, the trustee shall notify
36 the beneficiary of the deed of trust and every other person with an
37 interest as defined in NRS 107.090, by certified mail, return receipt
38 requested, of the election of the grantor or the person who holds the
39 title of record to enter into mediation and file the form with the
40 Mediation Administrator, who shall assign the matter to a senior
41 justice, judge, hearing master or other designee and schedule the
42 matter for mediation. No further action may be taken to exercise the
43 power of sale until the completion of the mediation. If the grantor or
44 the person who holds the title of record indicates on the form an
45 election to waive mediation or fails to return the form to the trustee



1 as required by this subsection, the trustee shall execute an affidavit
2 attesting to that fact under penalty of perjury and serve a copy of
3 the affidavit, together with the waiver of mediation by the grantor or
4 the person who holds the title of record, or proof of service on the
5 grantor or the person who holds the title of record of the notice
6 required by subsection 2 of this section and subsection 3 of NRS
7 107.080, upon the Mediation Administrator. Upon receipt of the
8 affidavit and the waiver or proof of service, the Mediation
9 Administrator shall provide to the trustee a certificate which
10 provides that no mediation is required in the matter.

11 4. Each mediation required by this section must be conducted
12 by a senior justice, judge, hearing master or other designee pursuant
13 to the rules adopted pursuant to subsection 8. The beneficiary of the
14 deed of trust or a representative shall attend the mediation. The
15 grantor or a representative shall attend the mediation if the grantor
16 elected to enter into mediation, or the person who holds the title of
17 record or a representative shall attend the mediation if the person
18 who holds the title of record elected to enter into mediation. The
19 beneficiary of the deed of trust shall bring to the mediation the
20 original or a certified copy of the deed of trust, the mortgage note
21 and each assignment of the deed of trust or mortgage note. If the
22 beneficiary of the deed of trust is represented at the mediation by
23 another person, that person must have authority to negotiate a loan
24 modification on behalf of the beneficiary of the deed of trust or have
25 access at all times during the mediation to a person with such
26 authority.

27 5. If the beneficiary of the deed of trust or the representative
28 fails to attend the mediation, fails to participate in the mediation in
29 good faith or does not bring to the mediation each document
30 required by subsection 4 or does not have the authority or access to
31 a person with the authority required by subsection 4, the mediator
32 shall prepare and submit to the Mediation Administrator a petition
33 and recommendation concerning the imposition of sanctions against
34 the beneficiary of the deed of trust or the representative. The court
35 may issue an order imposing such sanctions against the beneficiary
36 of the deed of trust or the representative as the court determines
37 appropriate, including, without limitation, requiring a loan
38 modification in the manner determined proper by the court.

39 6. If the grantor or the person who holds the title of record
40 elected to enter into mediation and fails to attend the mediation, the
41 Mediation Administrator shall provide to the trustee a certificate
42 which states that no mediation is required in the matter.

43 7. If the mediator determines that the parties, while acting in
44 good faith, are not able to agree to a loan modification, the mediator
45 shall prepare and submit to the Mediation Administrator a



1 recommendation that the matter be terminated. The Mediation
2 Administrator shall provide to the trustee a certificate which
3 provides that the mediation required by this section has been
4 completed in the matter.

5 8. The Supreme Court shall adopt rules necessary to carry out
6 the provisions of this section. The rules must, without limitation,
7 include provisions:

8 (a) Designating an entity to serve as the Mediation
9 Administrator pursuant to this section. The entities that may be so
10 designated include, without limitation, the Administrative Office of
11 the Courts, the district court of the county in which the property is
12 situated or any other judicial entity.

13 (b) Ensuring that mediations occur in an orderly and timely
14 manner.

15 (c) Requiring each party to a mediation to provide such
16 information as the mediator determines necessary.

17 (d) Establishing procedures to protect the mediation process
18 from abuse and to ensure that each party to the mediation acts in
19 good faith.

20 (e) Establishing a total fee of not more than \$400 that may be
21 charged and collected by the Mediation Administrator for mediation
22 services pursuant to this section and , *except as otherwise provided*
23 *in paragraph (f)*, providing that the responsibility for payment of
24 the fee must be shared equally by the parties to the mediation.

25 *(f) Authorizing a mediator who determines that the beneficiary*
26 *of the deed of trust or the representative in attendance at a*
27 *mediation is acting in bad faith to order that the mediation be*
28 *continued, establish a new date and time for its resumption and*
29 *require the beneficiary to pay the full amount of any additional*
30 *mediation costs incurred as a result of the continuance. The*
31 *mediator may elect to retain jurisdiction over the resumed*
32 *mediation. If the housing secured by the deed of trust belongs to a*
33 *common-interest community that assesses regular or periodic*
34 *dues, the grantor or the person who holds the title of record must*
35 *continue to pay the dues during the continuance of the mediation.*
36 *For the purposes of this paragraph, "bad faith" means conduct*
37 *that the mediator determines is intended to harass another party to*
38 *the mediation or delay or disrupt the mediation. The term*
39 *includes, without limitation, the failure to participate in the*
40 *mediation in good faith, bring to the mediation each document*
41 *required by subsection 4, or have the authority or access to a*
42 *person with the authority required by subsection 4.*

43 9. Except as otherwise provided in subsection 11, the
44 provisions of this section do not apply if:



1 (a) The grantor or the person who holds the title of record has
2 surrendered the property, as evidenced by a letter confirming the
3 surrender or delivery of the keys to the property to the trustee, the
4 beneficiary of the deed of trust or the mortgagee, or an authorized
5 agent thereof; or

6 (b) A petition in bankruptcy has been filed with respect to the
7 grantor or the person who holds the title of record under chapter 7,
8 11, 12 or 13 of Title 11 of the United States Code and the
9 bankruptcy court has not entered an order closing or dismissing the
10 case or granting relief from a stay of foreclosure.

11 10. A noncommercial lender is not excluded from the
12 application of this section.

13 11. The Mediation Administrator and each mediator who acts
14 pursuant to this section in good faith and without gross negligence
15 are immune from civil liability for those acts.

16 12. As used in this section:

17 (a) "Mediation Administrator" means the entity so designated
18 pursuant to subsection 8.

19 (b) "Noncommercial lender" means a lender which makes a loan
20 secured by a deed of trust on owner-occupied housing and which is
21 not a bank, financial institution or other entity regulated pursuant to
22 title 55 or 56 of NRS.

23 (c) "Owner-occupied housing" means housing that is occupied
24 by an owner as the owner's primary residence. The term does not
25 include any time share or other property regulated under chapter
26 119A of NRS.

27 **Sec. 2.** This act becomes effective on July 1, 2011.



