

SENATE BILL NO. 321—SENATORS JONES, DENIS, SMITH,  
SEGERBLOM, FORD; BROWER, HAMMOND, HUTCHISON AND  
KIHUEN

MARCH 18, 2013

JOINT SPONSORS: ASSEMBLYMEN HEALEY,  
KIRKPATRICK AND FRIERSON

Referred to Committee on Judiciary

SUMMARY—Enacts a “Homeowner’s Bill of Rights.”  
(BDR 9-748)

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

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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 provisions governing the foreclosure of owner-occupied property securing a residential mortgage loan; providing civil remedies for failure to comply with certain provisions governing the foreclosure of owner-occupied property securing a residential mortgage loan; authorizing a defendant in a judicial foreclosure action to elect mediation; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Under existing law, the trustee under a deed of trust concerning owner-  
2 occupied housing has the power to sell the property to which the deed of trust  
3 applies, subject to certain restrictions. (NRS 107.080, 107.085, 107.086) Existing  
4 law also provides for a judicial foreclosure action under certain circumstances for  
5 the recovery of any debt or for the enforcement of any right secured by a mortgage  
6 or other lien upon real estate. (NRS 40.430) **Sections 2-16** of this bill establish  
7 additional restrictions on the exercise of the trustee’s power of sale and the judicial  
8 foreclosure which apply only to a residential mortgage loan secured by owner-  
9 occupied housing. Under **section 7.5** of this bill, these additional restrictions do not  
10 apply to a credit union that, during its immediately preceding annual reporting  
11 period, as established with its primary regulator, has foreclosed on 100 or fewer  
12 owner-occupied homes located in this State. Under **section 30** of this bill, these



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13 additional restrictions apply only to a notice of default and election to sell which is  
14 recorded on or after October 1, 2013.

15 **Section 10** of this bill provides that at least 30 days before recording a notice of  
16 default and election to sell or commencing a judicial foreclosure action and at least  
17 30 days after the borrower's default, the mortgage servicer, mortgagee or  
18 beneficiary of the deed of trust must provide to the borrower certain information  
19 concerning the borrower's account, the foreclosure prevention alternatives offered  
20 by the mortgage servicer, mortgagee or beneficiary and a statement of the facts  
21 supporting the right of the mortgagee or beneficiary to foreclose. **Section 11** of this  
22 bill prohibits the recording of a notice of default and election to sell or the  
23 commencement of a judicial foreclosure action until the mortgage servicer  
24 complies with certain requirements regarding contact with, or attempts to contact,  
25 the borrower. **Section 13** of this bill prohibits the practice commonly known as  
26 "dual-tracking" by prohibiting a mortgage servicer, trustee, mortgagee or  
27 beneficiary of a deed of trust from continuing the foreclosure process while an  
28 application for a foreclosure prevention alternative is pending or while the borrower  
29 is current on his or her obligation under a foreclosure prevention alternative.  
30 **Section 14** of this bill requires a mortgage servicer to provide a single point of  
31 contact for a borrower who requests a foreclosure prevention alternative. **Section**  
32 **15** of this bill requires that under certain circumstances, a mortgage servicer,  
33 mortgagee or beneficiary of a deed of trust must cause to be dismissed a judicial  
34 foreclosure action or cause to be withdrawn any recorded notice of default and  
35 election or notice of sale. **Section 16** of this bill provides for certain civil remedies  
36 for a material violation of the provisions of **sections 2-16**.

37 **Section 18** of this bill provides that a defendant in a judicial foreclosure action  
38 concerning owner-occupied property may elect to participate in the Foreclosure  
39 Mediation Program.

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1 WHEREAS, The State of Nevada has been severely affected by  
2 the mortgage foreclosure crisis and consistently ranks as one of the  
3 top states for underwater home mortgage loans, mortgage defaults  
4 and foreclosures; and

5 WHEREAS, The dramatic increase in foreclosures during the  
6 mortgage foreclosure crisis has led to predatory and illegal practices  
7 by mortgage servicers and outside firms hired by mortgage  
8 servicers; and

9 WHEREAS, The Nevada Attorney General investigated and sued  
10 certain large financial institutions for engaging in illegal practices  
11 relating to the servicing of mortgage loans in default and entered  
12 into consent agreements and settlements requiring certain large  
13 financial institutions to adopt certain practices when servicing a  
14 mortgage loan in default; and

15 WHEREAS, The consent agreements and settlements only apply  
16 to the large financial institutions and are not permanent; and

17 WHEREAS, All homeowners in the State of Nevada deserve  
18 better consumer protections and fair and honest treatment in the  
19 servicing of mortgage loans in default; now therefore,



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

1       **Section 1.** Chapter 107 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 16, inclusive, of this  
3 act.

4       **Sec. 2.** *As used in sections 2 to 16, inclusive, of this act,*  
5 *unless the context otherwise requires, the words and terms defined*  
6 *in sections 3 to 7, inclusive, of this act have the meanings ascribed*  
7 *to them in those sections.*

8       **Sec. 3.** *“Borrower” means a natural person who is a*  
9 *mortgagor or grantor of a deed of trust under a residential*  
10 *mortgage loan. The term does not include a natural person who:*

11       1. *Has surrendered the secured property as evidenced by a*  
12 *letter confirming the surrender or the delivery of the keys to the*  
13 *property to the mortgagee, trustee, beneficiary of the deed of trust*  
14 *or an authorized agent of such a person.*

15       2. *Has contracted with an organization, person or entity*  
16 *whose primary business is advising persons who have decided to*  
17 *leave their homes on how to extend the foreclosure process and*  
18 *avoid their contractual obligations to mortgagees or beneficiaries*  
19 *of deeds of trust.*

20       3. *Has filed a case under 11 U.S.C. Chapter 7, 11, 12 or 13*  
21 *and the bankruptcy court has not entered an order closing or*  
22 *dismissing the bankruptcy case, or granting relief from a stay of*  
23 *foreclosure or trustee’s sale.*

24       **Sec. 4.** *“Foreclosure prevention alternative” means a*  
25 *modification of a loan secured by the most senior mortgage or*  
26 *deed of trust on the property that is the subject of the notice of*  
27 *default and election to sell or any other loss mitigation option.*

28       **Sec. 5.** *“Foreclosure sale” means the exercise of the trustee’s*  
29 *power of sale pursuant to NRS 107.080 or a sale directed by a*  
30 *court pursuant to NRS 40.430.*

31       **Sec. 6.** *“Mortgage servicer” means a person or entity who*  
32 *directly services a residential mortgage loan, or who is responsible*  
33 *for interacting with a borrower, managing a loan account on a*  
34 *daily basis, including, without limitation, collecting and crediting*  
35 *periodic loan payments, managing any escrow account or*  
36 *enforcing the note and security instrument, either as the current*  
37 *owner of the promissory note or as the authorized agent of the*  
38 *current owner of the promissory note. The term includes a person*  
39 *or entity providing such services by contract as a subservicing*  
40 *agent to a master servicer by contract. The term does not include a*  
41 *trustee under a deed of trust, or the trustee’s authorized agent,*  
42 *acting under a power of sale pursuant to a deed of trust.*



1       **Sec. 7.** *“Residential mortgage loan” means a loan which is*  
2 *primarily for personal, family or household use and which is*  
3 *secured by a mortgage, deed of trust or other equivalent,*  
4 *consensual security interest on owner-occupied housing as*  
5 *defined in NRS 107.086.*

6       **Sec. 7.5.** *The provisions of sections 2 to 16, inclusive, of this*  
7 *act do not apply to a credit union, as defined in NRS 678.070, that,*  
8 *during its immediately preceding annual reporting period, as*  
9 *established with its primary regulator, has foreclosed on 100 or*  
10 *fewer real properties located in this State which constitute owner-*  
11 *occupied housing, as defined in NRS 107.086.*

12       **Sec. 8. 1.** *In addition to the requirements of NRS 107.085*  
13 *and 107.086, the exercise of a trustee’s power of sale pursuant to*  
14 *NRS 107.080 with respect to a deed of trust securing a residential*  
15 *mortgage loan is subject to the provisions of sections 2 to 16,*  
16 *inclusive, of this act.*

17       **2.** *In addition to the requirements of NRS 40.430 to 40.4639,*  
18 *inclusive, an action for the recovery of any debt, or for the*  
19 *enforcement of any right, under a residential mortgage loan*  
20 *secured by a mortgage or other lien upon real estate that is not*  
21 *barred by NRS 40.430 is subject to the requirements of sections 2*  
22 *to 16, inclusive, of this act.*

23       **Sec. 9. 1.** *Any duty of a mortgage servicer to maximize net*  
24 *present value under a pooling and servicing agreement is owed to*  
25 *all parties in a loan pool, or to all investors under a pooling and*  
26 *servicing agreement, not to any particular party in the loan pool or*  
27 *investor under a pooling and servicing agreement.*

28       **2.** *A mortgage servicer acts in the best interests of all parties*  
29 *to the loan pool or investors in the pooling and servicing*  
30 *agreement if the mortgage servicer agrees to or implements a*  
31 *foreclosure prevention alternative for which both of the following*  
32 *apply:*

33       **(a)** *The residential mortgage loan is in default or default is*  
34 *reasonably foreseeable.*

35       **(b)** *Anticipated recovery under the foreclosure prevention*  
36 *alternative exceeds the anticipated recovery through foreclosure*  
37 *on a net present value basis.*

38       **Sec. 10. 1.** *At least 30 days before recording a notice of*  
39 *default and election to sell pursuant to subsection 2 of NRS*  
40 *107.080 or commencing a civil action for the recovery of any debt,*  
41 *or for the enforcement of any right, under a residential mortgage*  
42 *loan that is not barred by NRS 40.430 and at least 30 days after*  
43 *the borrower’s default, the mortgage servicer, mortgagee or*  
44 *beneficiary of the deed of trust shall mail, by first-class mail, a*  
45 *notice addressed to the borrower at the borrower’s primary*



1 address as indicated in the records of the mortgage servicer,  
2 mortgagee or beneficiary of the deed of trust, which contains:

3 (a) A statement that if the borrower is a servicemember or a  
4 dependent of a servicemember, he or she may be entitled to certain  
5 protections under the federal Servicemembers Civil Relief Act, 50  
6 U.S.C. §§ 501 et seq., regarding the servicemember's interest rate  
7 and the risk of foreclosure, and counseling for covered  
8 servicemembers that is available from Military OneSource and the  
9 United States Armed Forces Legal Assistance or any other similar  
10 agency.

11 (b) A summary of the borrower's account which sets forth:

12 (1) The total amount of payment necessary to cure the  
13 default and reinstate the residential mortgage loan or to bring the  
14 residential mortgage loan into current status;

15 (2) The amount of the principal obligation under the  
16 residential mortgage loan;

17 (3) The date through which the borrower's obligation  
18 under the residential mortgage loan is paid;

19 (4) The date of the last full payment by the borrower;

20 (5) The current interest rate in effect for the residential  
21 mortgage loan, if the rate is effective for at least 30 days;

22 (6) The date on which the interest rate for the residential  
23 mortgage loan may next reset or adjust, unless the rate changes  
24 more frequently than once every 30 days;

25 (7) The amount of the prepayment fee charged under the  
26 residential mortgage loan, if any;

27 (8) A description of any late payment fee charged under the  
28 residential mortgage loan;

29 (9) A telephone number or electronic mail address that the  
30 borrower may use to obtain information concerning the residential  
31 mortgage loan; and

32 (10) The names, addresses, telephone numbers and Internet  
33 website addresses of one or more counseling agencies or programs  
34 approved by the United States Department of Housing and Urban  
35 Development.

36 (c) A statement of the facts establishing the right of the  
37 mortgage servicer, mortgagee or beneficiary of the deed of trust to  
38 cause the trustee to exercise the trustee's power of sale pursuant to  
39 NRS 107.080 or to commence a civil action for the recovery of any  
40 debt, or for the enforcement of any right, under a residential  
41 mortgage loan that is not barred by NRS 40.430.

42 (d) A statement of the foreclosure prevention alternatives  
43 offered by, or through, the mortgage servicer, mortgagee or  
44 beneficiary of the deed of trust.

45 (e) A statement that the borrower may request:



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1       (1) *A copy of the borrower's promissory note or other*  
2 *evidence of indebtedness;*

3       (2) *A copy of the borrower's mortgage or deed of trust;*

4       (3) *A copy of any assignment, if applicable, of the*  
5 *borrower's mortgage or deed of trust required to demonstrate*  
6 *the right of the mortgage servicer, mortgagee or beneficiary of the*  
7 *deed of trust to cause the trustee to exercise the trustee's power of*  
8 *sale pursuant to NRS 107.080 or to commence a civil action for*  
9 *the recovery of any debt, or for the enforcement of any right,*  
10 *under a residential mortgage loan that is not barred by NRS*  
11 *40.430; and*

12       (4) *A copy of the borrower's payment history since the*  
13 *borrower was last less than 60 days past due.*

14       2. *Unless a borrower has exhausted the process described in*  
15 *sections 12 and 13 of this act for applying for a foreclosure*  
16 *prevention alternative offered by, or through, the mortgage*  
17 *servicer, mortgagee or beneficiary of the deed of the trust, not*  
18 *later than 5 business days after a notice of default and election to*  
19 *sell is recorded pursuant to subsection 2 of NRS 107.080 or a civil*  
20 *action for the recovery of any debt, or for the enforcement of any*  
21 *right, under a residential mortgage loan that is not barred by NRS*  
22 *40.430 is commenced, the mortgage servicer, mortgagee or*  
23 *beneficiary of the deed of trust that offers one or more foreclosure*  
24 *prevention alternatives must send to the borrower a written*  
25 *statement:*

26       (a) *That the borrower may be evaluated for a foreclosure*  
27 *prevention alternative or, if applicable, foreclosure prevention*  
28 *alternatives;*

29       (b) *Whether an application is required to be submitted by the*  
30 *borrower if the borrower wants to be considered for a foreclosure*  
31 *prevention alternative; and*

32       (c) *Of the means and process by which a borrower may obtain*  
33 *an application for a foreclosure prevention alternative.*

34       **Sec. 11. 1.** *A mortgage servicer, mortgagee, trustee,*  
35 *beneficiary of a deed of trust or an authorized agent of such a*  
36 *person may not record a notice of default and election to sell*  
37 *pursuant to subsection 2 of NRS 107.080 or commence a civil*  
38 *action for the recovery of any debt, or for the enforcement of any*  
39 *right, under a residential mortgage loan that is not barred by NRS*  
40 *40.430 until:*

41       (a) *The mortgage servicer, mortgagee or beneficiary of the*  
42 *deed of trust has satisfied the requirements of section 10 of this*  
43 *act;*



1 (b) *Thirty days after initial contact is made with the borrower*  
2 *as required by subsection 2 or 30 days after satisfying the*  
3 *requirements of subsection 5; and*

4 (c) *The mortgage servicer complies with sections 12 and 13 of*  
5 *this act, if the borrower submits an application for a foreclosure*  
6 *prevention alternative offered by, or through, the mortgage*  
7 *servicer, mortgagee or beneficiary of the deed of trust.*

8 2. *The mortgage servicer shall contact the borrower in person*  
9 *or by telephone to assess the borrower's financial situation and to*  
10 *explore options for the borrower to avoid a foreclosure sale.*  
11 *During the initial contact, the mortgage servicer shall advise the*  
12 *borrower that he or she has the right to request a subsequent*  
13 *meeting and, if requested, the mortgage servicer must schedule the*  
14 *meeting to occur within 14 days after the request. The assessment*  
15 *of the borrower's financial situation and discussion of the options*  
16 *to avoid a foreclosure sale may occur during the initial contact or*  
17 *at the subsequent meeting scheduled for that purpose. In either*  
18 *case, the borrower must be provided the toll-free telephone*  
19 *number made available by the United States Department of*  
20 *Housing and Urban Development to find a housing counseling*  
21 *agency certified by that Department. Any meeting pursuant to this*  
22 *subsection may occur by telephone.*

23 3. *The loss mitigation personnel of a mortgage servicer may*  
24 *participate by telephone during any contact with a borrower*  
25 *required by this section.*

26 4. *A borrower may designate, with consent given in writing, a*  
27 *housing counseling agency certified by the United States*  
28 *Department of Housing and Urban Development, an attorney or*  
29 *any other adviser to discuss with the mortgage servicer, on the*  
30 *borrower's behalf, the borrower's financial situation and options*  
31 *for the borrower to avoid a foreclosure sale. Contact with a person*  
32 *or agency designated by a borrower pursuant to this subsection*  
33 *satisfies the requirements of subsection 2. A foreclosure*  
34 *prevention alternative offered during any contact with a person or*  
35 *agency designated by a borrower pursuant to this subsection is*  
36 *subject to the approval of the borrower.*

37 5. *If a mortgage servicer has not contacted a borrower as*  
38 *required by subsection 2, a notice of default and election to sell*  
39 *may be recorded pursuant to subsection 2 of NRS 107.080 or a*  
40 *civil action for the recovery of any debt, or for the enforcement of*  
41 *any right, under a residential mortgage loan that is not barred by*  
42 *NRS 40.430 may be commenced, if the mortgage servicer has*  
43 *taken all the following actions:*

44 (a) *The mortgage servicer attempts to contact the borrower by*  
45 *mailing by first-class mail to the borrower a letter informing the*



1 *borrower of his or her right to discuss foreclosure prevention*  
2 *alternatives and providing the toll-free telephone number made*  
3 *available by the United States Department of Housing and Urban*  
4 *Development to find a housing counseling agency approved by*  
5 *that Department.*

6 *(b) After mailing the letter required by paragraph (a), the*  
7 *mortgage servicer attempts to contact the borrower by telephone at*  
8 *least 3 times at different hours on different days. Telephone calls*  
9 *made pursuant to this paragraph must be made to the primary*  
10 *telephone number of the borrower which is on file with the*  
11 *mortgage servicer. A mortgage servicer may attempt to contact a*  
12 *borrower pursuant to this paragraph by using an automated*  
13 *system to dial borrowers if, when the telephone call is answered,*  
14 *the call is connected to a live representative of the mortgage*  
15 *servicer. A mortgage servicer satisfies the requirements of this*  
16 *paragraph if it determines, after attempting to contact a borrower*  
17 *pursuant to this paragraph, that the primary telephone number of*  
18 *the borrower which is on file with the mortgage servicer and any*  
19 *secondary telephone numbers on file with the mortgage servicer*  
20 *have been disconnected.*

21 *(c) If the borrower does not respond within 2 weeks after the*  
22 *mortgage servicer satisfies the requirements of paragraph (b), the*  
23 *mortgage servicer mails by certified mail, return receipt requested,*  
24 *a letter that includes the information required by paragraph (a).*

25 *(d) The mortgage servicer provides a means for the borrower*  
26 *to contact the mortgage servicer in a timely manner, including,*  
27 *without limitation, a toll-free telephone number that will provide*  
28 *access to a live representative during business hours.*

29 *(e) The mortgage servicer posts on the homepage of its*  
30 *Internet website, if any, a prominent link to the following*  
31 *information:*

32 *(1) Options that may be available to borrowers who are*  
33 *unable to afford payments under a residential mortgage loan and*  
34 *who wish to avoid a foreclosure sale, and instructions to such*  
35 *borrowers advising them on steps to take to explore those options.*

36 *(2) A list of financial documents the borrower should*  
37 *collect and be prepared to present to the mortgage servicer when*  
38 *discussing options to avoid a foreclosure sale.*

39 *(3) A toll-free telephone number for borrowers who wish to*  
40 *discuss with the mortgage servicer options for avoiding a*  
41 *foreclosure sale.*

42 *(4) The toll-free telephone number made available by the*  
43 *United States Department of Housing and Urban Development to*  
44 *find a housing counseling agency certified by that Department.*



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1       6. *If the property is subject to the requirements of sections 2*  
2 *to 16, inclusive, of this act, a notice of default and election to sell*  
3 *recorded pursuant to subsection 2 of NRS 107.080 or a complaint*  
4 *commencing a civil action for the recovery of any debt, or for the*  
5 *enforcement of any right, under a residential mortgage loan that*  
6 *is not barred by NRS 40.430, must contain a declaration that the*  
7 *mortgage servicer has contacted the borrower as required by*  
8 *subsection 2, has attempted to contact the grantor or the person*  
9 *who holds title of record as required by subsection 5 of this act or*  
10 *that no contact was required.*

11       **Sec. 12.** *1. Not later than 5 days after receiving an*  
12 *application for a foreclosure prevention alternative or any*  
13 *document in connection with such an application, a mortgage*  
14 *servicer, mortgagee or beneficiary of the deed of trust shall send to*  
15 *the borrower written acknowledgment of the receipt of the*  
16 *application or document.*

17       *2. The mortgage servicer, mortgagee or beneficiary of the*  
18 *deed of trust shall include in the initial acknowledgment of receipt*  
19 *of an application for a foreclosure prevention alternative:*

20       *(a) A description of the process for considering the*  
21 *application, including, without limitation, an estimate of when a*  
22 *decision on the application will be made and the length of time the*  
23 *borrower will have to consider an offer for a foreclosure*  
24 *prevention alternative;*

25       *(b) A statement of any deadlines that affect the processing of*  
26 *an application for a foreclosure prevention alternative, including,*  
27 *without limitation, the deadline for submitting any missing*  
28 *documentation; and*

29       *(c) A statement of the expiration dates for any documents*  
30 *submitted by the borrower.*

31       *3. If a borrower submits an application for a foreclosure*  
32 *prevention alternative but does not initially submit all the*  
33 *documents or information required to complete the application,*  
34 *the mortgage servicer must:*

35       *(a) Include in the initial acknowledgment of receipt of the*  
36 *application required by subsection 2 a statement of any*  
37 *deficiencies in the borrower's application; and*

38       *(b) Allow the borrower not less than 30 calendar days to*  
39 *submit any documents or information required to complete the*  
40 *application.*

41       **Sec. 13.** *1. If a borrower submits an application for a*  
42 *foreclosure prevention alternative offered by, or through, the*  
43 *borrower's mortgage servicer or mortgagee or the beneficiary of*  
44 *the deed of trust, then the mortgage servicer, mortgagee, trustee,*  
45 *beneficiary of the deed of trust or an authorized agent of such a*



1 *person may not commence a civil action for the recovery of any*  
2 *debt, or for the enforcement of any right, under a residential*  
3 *mortgage loan that is not barred by NRS 40.430, record a notice of*  
4 *default and election to sell pursuant to subsection 2 of NRS*  
5 *107.080 or a notice of sale pursuant to subsection 4 of NRS*  
6 *107.080, or conduct a foreclosure sale until one of the following*  
7 *has occurred:*

8 *(a) The borrower fails to submit all the documents or*  
9 *information required to complete the application within 30*  
10 *calendar days after the date of the initial acknowledgment of*  
11 *receipt of the application sent to the borrower pursuant to section*  
12 *12 of this act.*

13 *(b) The mortgage servicer or beneficiary of the deed of trust*  
14 *makes a written determination that the borrower is not eligible for*  
15 *a foreclosure prevention alternative, and any appeal period*  
16 *pursuant to subsection 4 has expired.*

17 *(c) The borrower does not accept a written offer for a*  
18 *foreclosure prevention alternative within 14 days after the date of*  
19 *the offer.*

20 *(d) The borrower accepts a written offer for a foreclosure*  
21 *prevention alternative, but defaults on, or otherwise breaches the*  
22 *borrower's obligations under, the foreclosure prevention*  
23 *alternative.*

24 *2. If a borrower accepts an offer for a foreclosure prevention*  
25 *alternative, the mortgage servicer must provide the borrower with*  
26 *a copy of the complete agreement evidencing the foreclosure*  
27 *prevention alternative, signed by the mortgagee or beneficiary of*  
28 *the deed of trust or an agent or authorized representative of the*  
29 *mortgagee or beneficiary.*

30 *3. If a borrower submits a complete application for a*  
31 *foreclosure prevention alternative and the borrower's application*  
32 *is denied, the mortgage servicer must send to the borrower a*  
33 *written statement of:*

34 *(a) The reason or reasons for the denial;*

35 *(b) The amount of time the borrower has to request an appeal*  
36 *of the denial, which must be not less than 30 days; and*

37 *(c) Instructions regarding how to appeal the denial, including,*  
38 *without limitation, how to provide evidence that the denial was in*  
39 *error.*

40 *4. If a borrower submits a complete application for a*  
41 *foreclosure prevention alternative and the borrower's application*  
42 *is denied, the mortgage servicer, mortgagee, trustee, beneficiary of*  
43 *the deed of trust, or an authorized agent of such a person may not*  
44 *commence a civil action for the recovery of any debt, or for the*  
45 *enforcement of any right, under a residential mortgage loan that*



1 *is not barred by NRS 40.430, record a notice of default and*  
2 *election to sell pursuant to subsection 2 of NRS 107.080 or a*  
3 *notice of sale pursuant to subsection 4 of NRS 107.080, or conduct*  
4 *a foreclosure sale until the later of:*

5 *(a) Thirty-one days after the borrower is sent the written*  
6 *statement required by subsection 3; and*

7 *(b) If the borrower appeals the denial, the later of:*

8 *(1) Fifteen days after the denial of the appeal;*

9 *(2) If the appeal is successful, 14 days after a first lien loan*  
10 *modification or another foreclosure prevention alternative offered*  
11 *after appeal is declined by the borrower; and*

12 *(3) If the appeal is successful and a first lien loan*  
13 *modification or another foreclosure prevention alternative is*  
14 *offered and accepted, the date on which the borrower fails to*  
15 *timely submit the first payment or otherwise breaches the terms of*  
16 *the offer.*

17 *5. A mortgage servicer shall not charge or collect any:*

18 *(a) Application, processing or other fee for a foreclosure*  
19 *prevention alternative; or*

20 *(b) Late fees for periods during which:*

21 *(1) A foreclosure prevention alternative is under*  
22 *consideration or a denial is being appealed;*

23 *(2) The borrower is making timely payments under a*  
24 *foreclosure prevention alternative; or*

25 *(3) A foreclosure prevention alternative is being evaluated*  
26 *or exercised.*

27 *6. A mortgage servicer is not required to evaluate an*  
28 *application from a borrower who has already been evaluated or*  
29 *afforded a fair opportunity to be evaluated for a foreclosure*  
30 *prevention alternative before October 1, 2013, or who has been*  
31 *evaluated or afforded a fair opportunity to be evaluated consistent*  
32 *with the requirements of this section, unless:*

33 *(a) There has been a material change in the borrower's*  
34 *financial circumstances since the date of the borrower's previous*  
35 *application; and*

36 *(b) That change is documented by the borrower and submitted*  
37 *to the mortgage servicer.*

38 *7. For purposes of this section, an application is complete*  
39 *when a borrower has supplied the mortgage servicer with all*  
40 *documents required by the mortgage servicer within the*  
41 *reasonable timeframes specified by the mortgage servicer.*

42 **Sec. 14. 1. If a borrower requests a foreclosure prevention**  
43 **alternative, the mortgage servicer must promptly establish a single**  
44 **point of contact and provide to the borrower one or more direct**  
45 **means of communication with the single point of contact.**



1       2. *A single point of contact is responsible for:*

2       (a) *Communicating the process by which a borrower may*  
3 *apply for an available foreclosure prevention alternative and the*  
4 *deadline for any required submissions to be considered for the*  
5 *foreclosure prevention alternatives.*

6       (b) *Coordinating receipt of all documents associated with the*  
7 *available foreclosure prevention alternatives and notifying the*  
8 *borrower of any missing documents necessary to complete an*  
9 *application for a foreclosure prevention alternative.*

10       (c) *Having access to current information and personnel*  
11 *sufficient to timely, accurately and adequately inform the*  
12 *borrower of the current status of the foreclosure prevention*  
13 *alternative.*

14       (d) *Ensuring that the borrower is considered for all*  
15 *foreclosure prevention alternatives offered by, or through, the*  
16 *mortgage servicer and for which the borrower is or may be*  
17 *eligible.*

18       (e) *Having access to a person or persons with the ability and*  
19 *authority to stop the foreclosure process when necessary.*

20       3. *A single point of contact must remain assigned to the*  
21 *borrower's account until the mortgage servicer determines that all*  
22 *foreclosure prevention alternatives offered by, or through, the*  
23 *mortgage servicer have been exhausted or the borrower's account*  
24 *becomes current.*

25       4. *The mortgage servicer shall ensure that a single point of*  
26 *contact refers and transfers a borrower to an appropriate*  
27 *supervisor upon request of the borrower, if the single point of*  
28 *contact has a supervisor.*

29       5. *If the responsibilities of a single point of contact are*  
30 *performed by a team of personnel, the mortgage servicer must*  
31 *ensure that each member of the team is knowledgeable about the*  
32 *borrower's situation and current status in the process of seeking a*  
33 *foreclosure prevention alternative.*

34       6. *As used in this section, "single point of contact" means a*  
35 *person or team of personnel each of whom has the ability and*  
36 *authority to perform the responsibilities described in this section.*

37       **Sec. 15. 1.** *The mortgage servicer, mortgagee or*  
38 *beneficiary of the deed of trust shall cause to be dismissed with*  
39 *prejudice a civil action commenced for the recovery of any debt, or*  
40 *for the enforcement of any right, under a residential mortgage*  
41 *loan that is not barred by NRS 40.430, or cause to be withdrawn*  
42 *any notice of default and election to sell recorded pursuant to*  
43 *subsection 2 of NRS 107.080 or any notice of sale recorded*  
44 *pursuant to subsection 4 of NRS 107.080, and shall cancel any*  
45 *pending foreclosure sale, if:*



1       (a) *The borrower accepts a permanent foreclosure prevention*  
2 *alternative;*

3       (b) *A notice of sale is not recorded within 9 months after the*  
4 *notice of default and election to sell is recorded pursuant to*  
5 *subsection 2 of NRS 107.080; or*

6       (c) *A foreclosure sale is not conducted within 90 days after a*  
7 *notice of sale is recorded pursuant to subsection 4 of*  
8 *NRS 107.080.*

9       2. *If, pursuant to subsection 1, a civil action is dismissed, a*  
10 *notice of default and election to sell recorded pursuant to*  
11 *subsection 2 of NRS 107.080 or any notice of sale recorded*  
12 *pursuant to subsection 4 of NRS 107.080 is withdrawn, or any*  
13 *pending foreclosure sale is cancelled, the mortgagee or*  
14 *beneficiary of the deed of trust is thereupon restored to its former*  
15 *position and has the same rights as though an action for a judicial*  
16 *foreclosure had not been commenced or a notice of default and*  
17 *election to sell had not been recorded.*

18       **Sec. 16.** 1. *If a trustee's deed upon sale has not been*  
19 *recorded pursuant to subsection 9 of NRS 107.080, a borrower*  
20 *may bring an action for injunctive relief to enjoin a material*  
21 *violation of sections 2 to 16, inclusive, of this act. If a sheriff has*  
22 *not recorded the sale of the property pursuant to subsection 5 of*  
23 *NRS 40.430, a borrower may obtain an injunction to enjoin a*  
24 *material violation of sections 2 to 16, inclusive, of this act. An*  
25 *injunction issued pursuant to this subsection remains in place and*  
26 *any foreclosure sale must be enjoined until the court determines*  
27 *that the mortgage servicer, mortgagee, beneficiary of the deed of*  
28 *trust or an authorized agent of such a person has corrected and*  
29 *remedied the violation giving rise to the action for injunctive*  
30 *relief. An enjoined entity may move to dissolve an injunction*  
31 *based on a showing that the material violation has been corrected*  
32 *and remedied.*

33       2. *After a trustee's deed upon sale has been recorded*  
34 *pursuant to subsection 9 of NRS 107.080 or after a sheriff has*  
35 *recorded the sale of the property pursuant to subsection 5 of NRS*  
36 *40.430, a borrower may bring a civil action in the district court in*  
37 *the county in which the property is located to recover his or her*  
38 *actual economic damages resulting from a material violation of*  
39 *sections 2 to 16, inclusive, of this act by the mortgage servicer,*  
40 *mortgagee, beneficiary of the deed of trust or an authorized agent*  
41 *of such a person, if the material violation was not corrected and*  
42 *remedied before the recording of the trustee's deed upon sale*  
43 *pursuant to subsection 9 of NRS 107.080 or the recording of the*  
44 *sale of the property pursuant to subsection 5 of NRS 40.430. If the*  
45 *court finds that the material violation was intentional or reckless,*



1 *or resulted from willful misconduct by a mortgage servicer,*  
2 *mortgagee, beneficiary of the deed of trust or an authorized agent*  
3 *of such a person, the court may award the borrower the greater of*  
4 *treble actual damages or statutory damages of \$50,000.*

5 *3. A mortgage servicer, mortgagee, beneficiary of the deed of*  
6 *trust or an authorized agent of such a person is not liable for any*  
7 *violation of sections 2 to 16, inclusive, of this act that it has*  
8 *corrected and remedied, or that has been corrected and remedied*  
9 *on its behalf by a third party, before the recording of the trustee's*  
10 *deed upon sale pursuant to subsection 9 of NRS 107.080 or the*  
11 *recording of the sale of the property pursuant to subsection 5 of*  
12 *NRS 40.430.*

13 *4. A violation of sections 2 to 16, inclusive, of this act does*  
14 *not affect the validity of a sale to a bona fide purchaser for value*  
15 *and any of its encumbrancers for value without notice.*

16 *5. A signatory to a consent judgment entered in the case*  
17 *entitled United States of America et al. v. Bank of America*  
18 *Corporation et al., filed in the United States District Court for the*  
19 *District of Columbia, case number 1:12-cv-00361 RMC, that is in*  
20 *compliance with the relevant terms of the Settlement Term Sheet*  
21 *of that consent judgment with respect to the borrower who brought*  
22 *an action pursuant to this section while the consent judgment is in*  
23 *effect is not liable for a violation of sections 2 to 16, inclusive, of*  
24 *this act.*

25 *6. A court may award a prevailing borrower costs and*  
26 *reasonable attorney's fees in an action brought pursuant to this*  
27 *section.*

28 *7. The rights, remedies and procedures provided by this*  
29 *section are in addition to and independent of any other rights,*  
30 *remedies or procedures provided by law.*

31 **Sec. 17.** NRS 107.080 is hereby amended to read as follows:

32 107.080 1. Except as otherwise provided in NRS 106.210,  
33 107.085 and 107.086, if any transfer in trust of any estate in real  
34 property is made after March 29, 1927, to secure the performance of  
35 an obligation or the payment of any debt, a power of sale is hereby  
36 conferred upon the trustee to be exercised after a breach of the  
37 obligation for which the transfer is security.

38 2. The power of sale must not be exercised, however, until:

39 (a) Except as otherwise provided in paragraph (b), in the case of  
40 any trust agreement coming into force:

41 (1) On or after July 1, 1949, and before July 1, 1957, the  
42 grantor, the person who holds the title of record, a beneficiary under  
43 a subordinate deed of trust or any other person who has a  
44 subordinate lien or encumbrance of record on the property has, for a



1 period of 15 days, computed as prescribed in subsection 3, failed to  
2 make good the deficiency in performance or payment; or

3 (2) On or after July 1, 1957, the grantor, the person who  
4 holds the title of record, a beneficiary under a subordinate deed of  
5 trust or any other person who has a subordinate lien or encumbrance  
6 of record on the property has, for a period of 35 days, computed as  
7 prescribed in subsection 3, failed to make good the deficiency in  
8 performance or payment.

9 (b) In the case of any trust agreement which concerns owner-  
10 occupied housing as defined in NRS 107.086, the grantor, the  
11 person who holds the title of record, a beneficiary under a  
12 subordinate deed of trust or any other person who has a subordinate  
13 lien or encumbrance of record on the property has, for a period that  
14 commences in the manner and subject to the requirements described  
15 in subsection 3 and expires 5 days before the date of sale, failed to  
16 make good the deficiency in performance or payment.

17 (c) The beneficiary, the successor in interest of the beneficiary  
18 or the trustee first executes and causes to be recorded in the office of  
19 the recorder of the county wherein the trust property, or some part  
20 thereof, is situated a notice of the breach and of the election to sell  
21 or cause to be sold the property to satisfy the obligation which,  
22 except as otherwise provided in this paragraph, includes a notarized  
23 affidavit of authority to exercise the power of sale stating, based on  
24 personal knowledge and under the penalty of perjury:

25 (1) The full name and business address of the trustee or the  
26 trustee's personal representative or assignee, the current holder of  
27 the note secured by the deed of trust, the current beneficiary of  
28 record and the servicers of the obligation or debt secured by the  
29 deed of trust;

30 (2) The full name and last known business address of every  
31 prior known beneficiary of the deed of trust;

32 (3) That the beneficiary under the deed of trust, the successor  
33 in interest of the beneficiary or the trustee is in actual or  
34 constructive possession of the note secured by the deed of trust;

35 (4) That the trustee has the authority to exercise the power of  
36 sale with respect to the property pursuant to the instruction of the  
37 beneficiary of record and the current holder of the note secured by  
38 the deed of trust;

39 (5) The amount in default, the principal amount of the  
40 obligation or debt secured by the deed of trust, a good faith estimate  
41 of all fees imposed and to be imposed because of the default and the  
42 costs and fees charged to the debtor in connection with the exercise  
43 of the power of sale; and

44 (6) The date, recordation number or other unique designation  
45 of the instrument that conveyed the interest of each beneficiary and



1 a description of the instrument that conveyed the interest of each  
2 beneficiary.

3 ➔ The affidavit described in this paragraph is not required for the  
4 exercise of the trustee's power of sale with respect to any trust  
5 agreement which concerns a time share within a time share plan  
6 created pursuant to chapter 119A of NRS if the power of sale is  
7 being exercised for the initial beneficiary under the deed of trust or  
8 an affiliate of the initial beneficiary.

9 (d) Not less than 3 months have elapsed after the recording of  
10 the notice.

11 3. The 15- or 35-day period provided in paragraph (a) of  
12 subsection 2, or the period provided in paragraph (b) of subsection  
13 2, commences on the first day following the day upon which the  
14 notice of default and election to sell is recorded in the office of the  
15 county recorder of the county in which the property is located and a  
16 copy of the notice of default and election to sell is mailed by  
17 registered or certified mail, return receipt requested and with  
18 postage prepaid to the grantor or, to the person who holds the title of  
19 record on the date the notice of default and election to sell is  
20 recorded, and, if the property is operated as a facility licensed under  
21 chapter 449 of NRS, to the State Board of Health, at their respective  
22 addresses, if known, otherwise to the address of the trust property.  
23 The notice of default and election to sell must:

24 (a) Describe the deficiency in performance or payment and may  
25 contain a notice of intent to declare the entire unpaid balance due if  
26 acceleration is permitted by the obligation secured by the deed of  
27 trust, but acceleration must not occur if the deficiency in  
28 performance or payment is made good and any costs, fees and  
29 expenses incident to the preparation or recordation of the notice and  
30 incident to the making good of the deficiency in performance or  
31 payment are paid within the time specified in subsection 2; ~~and~~

32 (b) *If the property is subject to the requirements of sections 2*  
33 *to 16, inclusive, of this act, the declaration required by subsection*  
34 *6 of section 11 of this act; and*

35 (c) If the property is a residential foreclosure, comply with the  
36 provisions of NRS 107.087.

37 4. The trustee, or other person authorized to make the sale  
38 under the terms of the trust deed or transfer in trust, shall, after  
39 expiration of the 3-month period following the recording of the  
40 notice of breach and election to sell, and before the making of the  
41 sale, give notice of the time and place thereof by recording  
42 the notice of sale and by:

43 (a) Providing the notice to each trustor, any other person entitled  
44 to notice pursuant to this section and, if the property is operated as a  
45 facility licensed under chapter 449 of NRS, the State Board of





1 Health, by personal service or by mailing the notice by registered or  
2 certified mail to the last known address of the trustor and any other  
3 person entitled to such notice pursuant to this section;

4 (b) Posting a similar notice particularly describing the property,  
5 for 20 days successively, in a public place in the county where the  
6 property is situated;

7 (c) Publishing a copy of the notice three times, once each week  
8 for 3 consecutive weeks, in a newspaper of general circulation in the  
9 county where the property is situated or, if the property is a time  
10 share, by posting a copy of the notice on an Internet website and  
11 publishing a statement in a newspaper in the manner required by  
12 subsection 3 of NRS 119A.560; and

13 (d) If the property is a residential foreclosure, complying with  
14 the provisions of NRS 107.087.

15 5. Every sale made under the provisions of this section and  
16 other sections of this chapter vests in the purchaser the title of the  
17 grantor and any successors in interest without equity or right of  
18 redemption. A sale made pursuant to this section must be declared  
19 void by any court of competent jurisdiction in the county where the  
20 sale took place if:

21 (a) The trustee or other person authorized to make the sale does  
22 not substantially comply with the provisions of this section or any  
23 applicable provision of NRS 107.086 and 107.087;

24 (b) Except as otherwise provided in subsection 6, an action is  
25 commenced in the county where the sale took place within 90 days  
26 after the date of the sale; and

27 (c) A notice of lis pendens providing notice of the pendency of  
28 the action is recorded in the office of the county recorder of the  
29 county where the sale took place within 30 days after  
30 commencement of the action.

31 6. If proper notice is not provided pursuant to subsection 3 or  
32 paragraph (a) of subsection 4 to the grantor, to the person who holds  
33 the title of record on the date the notice of default and election to  
34 sell is recorded, to each trustor or to any other person entitled to  
35 such notice, the person who did not receive such proper notice may  
36 commence an action pursuant to subsection 5 within 120 days after  
37 the date on which the person received actual notice of the sale.

38 7. If, in an action brought by the grantor or the person who  
39 holds title of record in the district court in and for the county in  
40 which the real property is located, the court finds that the  
41 beneficiary, the successor in interest of the beneficiary or the trustee  
42 did not comply with any requirement of subsection 2, 3 or 4, the  
43 court must award to the grantor or the person who holds title of  
44 record:



1 (a) Damages of \$5,000 or treble the amount of actual damages,  
2 whichever is greater;

3 (b) An injunction enjoining the exercise of the power of sale  
4 until the beneficiary, the successor in interest of the beneficiary or  
5 the trustee complies with the requirements of subsections 2, 3 and 4;  
6 and

7 (c) Reasonable attorney's fees and costs,  
8 ↪ unless the court finds good cause for a different award. The  
9 remedy provided in this subsection is in addition to the remedy  
10 provided in subsection 5.

11 8. The sale of a lease of a dwelling unit of a cooperative  
12 housing corporation vests in the purchaser title to the shares in the  
13 corporation which accompany the lease.

14 9. After a sale of property is conducted pursuant to this section,  
15 the trustee shall:

16 (a) Within 30 days after the date of the sale, record the trustee's  
17 deed upon sale in the office of the county recorder of the county in  
18 which the property is located; or

19 (b) Within 20 days after the date of the sale, deliver the trustee's  
20 deed upon sale to the successful bidder. Within 10 days after the  
21 date of delivery of the deed by the trustee, the successful bidder  
22 shall record the trustee's deed upon sale in the office of the county  
23 recorder of the county in which the property is located.

24 10. If the successful bidder fails to record the trustee's deed  
25 upon sale pursuant to paragraph (b) of subsection 9, the successful  
26 bidder:

27 (a) Is liable in a civil action to any party that is a senior  
28 lienholder against the property that is the subject of the sale in a sum  
29 of up to \$500 and for reasonable attorney's fees and the costs of  
30 bringing the action; and

31 (b) Is liable in a civil action for any actual damages caused by  
32 the failure to comply with the provisions of subsection 9 and for  
33 reasonable attorney's fees and the costs of bringing the action.

34 11. The county recorder shall, in addition to any other fee, at  
35 the time of recording a notice of default and election to sell collect:

36 (a) A fee of \$150 for deposit in the State General Fund.

37 (b) A fee of \$45 for deposit in the Account for Foreclosure  
38 Mediation, which is hereby created in the State General Fund. The  
39 Account must be administered by the Court Administrator, and the  
40 money in the Account may be expended only for the purpose of  
41 supporting a program of foreclosure mediation established by  
42 Supreme Court Rule.

43 (c) A fee of \$5 to be paid over to the county treasurer on or  
44 before the fifth day of each month for the preceding calendar month.  
45 The county recorder may direct that 1.5 percent of the fees collected



\* S B 3 2 1 R 1 \*

1 by the county recorder pursuant to this paragraph be transferred into  
2 a special account for use by the office of the county recorder. The  
3 county treasurer shall remit quarterly to the organization operating  
4 the program for legal services that receives the fees charged  
5 pursuant to NRS 19.031 for the operation of programs for the  
6 indigent all the money received from the county recorder pursuant  
7 to this paragraph.

8 12. The fees collected pursuant to paragraphs (a) and (b) of  
9 subsection 11 must be paid over to the county treasurer by the  
10 county recorder on or before the fifth day of each month for the  
11 preceding calendar month, and, except as otherwise provided in this  
12 subsection, must be placed to the credit of the State General Fund or  
13 the Account for Foreclosure Mediation as prescribed pursuant to  
14 subsection 11. The county recorder may direct that 1.5 percent of  
15 the fees collected by the county recorder be transferred into a special  
16 account for use by the office of the county recorder. The county  
17 treasurer shall, on or before the 15th day of each month, remit the  
18 fees deposited by the county recorder pursuant to this subsection to  
19 the State Controller for credit to the State General Fund or the  
20 Account as prescribed in subsection 11.

21 13. The beneficiary, the successor in interest of the beneficiary  
22 or the trustee who causes to be recorded the notice of default and  
23 election to sell shall not charge the grantor or the successor in  
24 interest of the grantor any portion of any fee required to be paid  
25 pursuant to subsection 11.

26 14. As used in this section:

27 (a) "Residential foreclosure" means the sale of a single family  
28 residence under a power of sale granted by this section. As used in  
29 this paragraph, "single family residence":

30 (1) Means a structure that is comprised of not more than four  
31 units.

32 (2) Does not include vacant land or any time share or other  
33 property regulated under chapter 119A of NRS.

34 (b) "Trustee" means the trustee of record.

35 **Sec. 18.** Chapter 40 of NRS is hereby amended by adding  
36 thereto a new section to read as follows:

37 *1. If an action for the recovery of any debt, or for the*  
38 *enforcement of any right secured by a mortgage or other lien upon*  
39 *real estate that is not barred by NRS 40.430 is commenced in a*  
40 *court of competent jurisdiction:*

41 *(a) The copy of the complaint served on the defendant must*  
42 *include a separate document containing:*

43 *(1) Contact information which the defendant may use to*  
44 *reach a person with authority to negotiate a loan modification on*  
45 *behalf of the plaintiff;*



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

4           (3) *A notice provided by the Mediation Administrator*  
5 *indicating that the plaintiff has the right to seek mediation*  
6 *pursuant to this section; and*

7           (4) *A form upon which the defendant may indicate an*  
8 *election to enter into mediation or to waive mediation pursuant to*  
9 *this section and one envelope addressed to the plaintiff and one*  
10 *envelope addressed to the Mediation Administrator, which the*  
11 *grantor or the person who holds the title of record may use to*  
12 *comply with the provisions of subsection 2; and*

13           (b) *The plaintiff must submit a copy of the complaint to the*  
14 *Mediation Administrator.*

15           2. *The defendant shall, not later than the date on which an*  
16 *answer to the complaint is due, complete the form required by*  
17 *subparagraph (4) of paragraph (a) of subsection 1 and file the*  
18 *form with the court and return a copy of the form to the plaintiff*  
19 *by certified mail, return receipt requested. If the plaintiff indicates*  
20 *on the form an election to enter into mediation, the plaintiff shall*  
21 *notify any person with an interest as defined in NRS 107.090, by*  
22 *certified mail, return receipt requested, of the election of the*  
23 *defendant to enter into mediation and file the form with the*  
24 *Mediation Administrator, who shall assign the matter to a senior*  
25 *justice, judge, hearing master or other designee and schedule the*  
26 *matter for mediation. The judicial foreclosure action must be*  
27 *stayed until the completion of the mediation. If the defendant*  
28 *indicates on the form an election to waive mediation or fails to file*  
29 *the form with the court and return a copy of the form to the*  
30 *plaintiff as required by this subsection, no mediation is required in*  
31 *the action.*

32           3. *Each mediation required by this section must be conducted*  
33 *by a senior justice, judge, hearing master or other designee*  
34 *pursuant to the rules adopted pursuant to subsection 8 of NRS*  
35 *107.086. The plaintiff or a representative, and the defendant or his*  
36 *or her representative, shall attend the mediation. The plaintiff*  
37 *shall bring to the mediation the original or a certified copy of the*  
38 *mortgage or deed of trust, the mortgage note and each assignment*  
39 *of the mortgage or deed of trust or mortgage note. If the plaintiff*  
40 *is represented at the mediation by another person, that person*  
41 *must have authority to negotiate a loan modification on behalf of*  
42 *the plaintiff or have access at all times during the mediation to a*  
43 *person with such authority.*

44           4. *If the plaintiff or the representative fails to attend the*  
45 *mediation, fails to participate in the mediation in good faith or*



1 *does not bring to the mediation each document required by*  
2 *subsection 3 or does not have the authority or access to a person*  
3 *with the authority required by subsection 3, the mediator shall*  
4 *prepare and submit to the Mediation Administrator and the court*  
5 *a petition and recommendation concerning the imposition of*  
6 *sanctions against the beneficiary of the deed of trust or the*  
7 *representative. The court may issue an order imposing such*  
8 *sanctions against the plaintiff or the representative as the court*  
9 *determines appropriate, including, without limitation, requiring a*  
10 *loan modification in the manner determined proper by the court.*

11 5. *If the defendant elected to enter into mediation and fails to*  
12 *attend the mediation, no mediation is required and the judicial*  
13 *foreclosure action must proceed as if the plaintiff had not elected*  
14 *to enter into mediation.*

15 6. *If the mediator determines that the parties, while acting in*  
16 *good faith, are not able to agree to a loan modification, the*  
17 *mediator shall prepare and submit to the court and the Mediation*  
18 *Administrator a recommendation that the mediation be*  
19 *terminated. The court may terminate the mediation and proceed*  
20 *with the judicial foreclosure action.*

21 7. *The rules adopted by the Supreme Court pursuant to*  
22 *subsection 8 of NRS 107.086 apply to a mediation conducted*  
23 *pursuant to this section, and the Supreme Court may adopt any*  
24 *additional rules necessary to carry out the provisions of this*  
25 *section.*

26 8. *Except as otherwise provided in subsection 10, the*  
27 *provisions of this section do not apply if:*

28 (a) *The defendant has surrendered the property, as evidenced*  
29 *by a letter confirming the surrender or delivery of the keys to the*  
30 *property to the trustee, the beneficiary of the deed of trust or the*  
31 *mortgagee, or an authorized agent thereof; or*

32 (b) *A petition in bankruptcy has been filed with respect to the*  
33 *defendant under 11 U.S.C. Chapter 7, 11, 12 or 13 and the*  
34 *bankruptcy court has not entered an order closing or dismissing*  
35 *the case or granting relief from a stay of foreclosure.*

36 9. *A noncommercial lender is not excluded from the*  
37 *application of this section.*

38 10. *The Mediation Administrator and each mediator who acts*  
39 *pursuant to this section in good faith and without gross negligence*  
40 *are immune from civil liability for those acts.*

41 11. *As used in this section:*

42 (a) *“Mediation Administrator” has the meaning ascribed to it*  
43 *in NRS 107.086.*

44 (b) *“Noncommercial lender” has the meaning ascribed to it in*  
45 *NRS 107.086.*



1        ***(c) “Owner-occupied housing” has the meaning ascribed to it***  
2 ***in NRS 107.086.***

3        **Sec. 19.** NRS 40.430 is hereby amended to read as follows:

4        40.430 1. Except in cases where a person proceeds under  
5 subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, and  
6 except as otherwise provided in NRS 118C.220, there may be but  
7 one action for the recovery of any debt, or for the enforcement of  
8 any right secured by a mortgage or other lien upon real estate. That  
9 action must be in accordance with the provisions of NRS 40.430 to  
10 40.459, inclusive **H**, ***and section 18 of this act.*** In that action, the  
11 judgment must be rendered for the amount found due the plaintiff,  
12 and the court, by its decree or judgment, may direct a sale of the  
13 encumbered property, or such part thereof as is necessary, and apply  
14 the proceeds of the sale as provided in NRS 40.462.

15        2. This section must be construed to permit a secured creditor  
16 to realize upon the collateral for a debt or other obligation agreed  
17 upon by the debtor and creditor when the debt or other obligation  
18 was incurred.

19        3. At any time not later than 5 business days before the date of  
20 sale directed by the court, if the deficiency resulting in the action for  
21 the recovery of the debt has arisen by failure to make a payment  
22 required by the mortgage or other lien, the deficiency may be made  
23 good by payment of the deficient sum and by payment of any costs,  
24 fees and expenses incident to making the deficiency good. If a  
25 deficiency is made good pursuant to this subsection, the sale may  
26 not occur.

27        4. A sale directed by the court pursuant to subsection 1 must be  
28 conducted in the same manner as the sale of real property upon  
29 execution, by the sheriff of the county in which the encumbered  
30 land is situated, and if the encumbered land is situated in two or  
31 more counties, the court shall direct the sheriff of one of the  
32 counties to conduct the sale with like proceedings and effect as if  
33 the whole of the encumbered land were situated in that county.

34        5. Within 30 days after a sale of property is conducted pursuant  
35 to this section, the sheriff who conducted the sale shall record the  
36 sale of the property in the office of the county recorder of the county  
37 in which the property is located.

38        6. As used in this section, an “action” does not include any act  
39 or proceeding:

40        (a) To appoint a receiver for, or obtain possession of, any real or  
41 personal collateral for the debt or as provided in NRS 32.015.

42        (b) To enforce a security interest in, or the assignment of, any  
43 rents, issues, profits or other income of any real or personal  
44 property.



1 (c) To enforce a mortgage or other lien upon any real or  
2 personal collateral located outside of the State which does not,  
3 except as required under the laws of that jurisdiction, result in a  
4 personal judgment against the debtor.

5 (d) For the recovery of damages arising from the commission of  
6 a tort, including a recovery under NRS 40.750, or the recovery of  
7 any declaratory or equitable relief.

8 (e) For the exercise of a power of sale pursuant to NRS 107.080.

9 (f) For the exercise of any right or remedy authorized by chapter  
10 104 of NRS or by the Uniform Commercial Code as enacted in any  
11 other state.

12 (g) For the exercise of any right to set off, or to enforce a pledge  
13 in, a deposit account pursuant to a written agreement or pledge.

14 (h) To draw under a letter of credit.

15 (i) To enforce an agreement with a surety or guarantor if  
16 enforcement of the mortgage or other lien has been automatically  
17 stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a  
18 federal bankruptcy court under any other provision of the United  
19 States Bankruptcy Code for not less than 120 days following the  
20 mailing of notice to the surety or guarantor pursuant to subsection 1  
21 of NRS 107.095.

22 (j) To collect any debt, or enforce any right, secured by a  
23 mortgage or other lien on real property if the property has been sold  
24 to a person other than the creditor to satisfy, in whole or in part, a  
25 debt or other right secured by a senior mortgage or other senior lien  
26 on the property.

27 (k) Relating to any proceeding in bankruptcy, including the  
28 filing of a proof of claim, seeking relief from an automatic stay and  
29 any other action to determine the amount or validity of a debt.

30 (l) For filing a claim pursuant to chapter 147 of NRS or to  
31 enforce such a claim which has been disallowed.

32 (m) Which does not include the collection of the debt or  
33 realization of the collateral securing the debt.

34 (n) Pursuant to NRS 40.507 or 40.508.

35 (o) Which is exempted from the provisions of this section by  
36 specific statute.

37 (p) To recover costs of suit, costs and expenses of sale,  
38 attorneys' fees and other incidental relief in connection with any  
39 action authorized by this subsection.

40 **Sec. 20.** NRS 40.433 is hereby amended to read as follows:

41 40.433 As used in NRS 40.430 to 40.459, inclusive, *and*  
42 *section 18 of this act*, unless the context otherwise requires, a  
43 "mortgage or other lien" includes a deed of trust, but does not  
44 include a lien which arises pursuant to chapter 108 of NRS, pursuant  
45 to an assessment under chapter 116, 117, 119A or 278A of NRS or



- 1 pursuant to a judgment or decree of any court of competent  
2 jurisdiction.
- 3 **Sec. 21.** (Deleted by amendment.)  
4 **Sec. 22.** (Deleted by amendment.)  
5 **Sec. 23.** (Deleted by amendment.)  
6 **Sec. 24.** (Deleted by amendment.)  
7 **Sec. 25.** (Deleted by amendment.)  
8 **Sec. 26.** (Deleted by amendment.)  
9 **Sec. 27.** (Deleted by amendment.)  
10 **Sec. 28.** (Deleted by amendment.)  
11 **Sec. 29.** (Deleted by amendment.)  
12 **Sec. 30.** 1. Sections 2 to 16, inclusive, of this act apply only  
13 with respect to trust agreements for which a notice of default is  
14 recorded on or after October 1, 2013, and to a judicial foreclosure  
15 action commenced on or after October 1, 2013.  
16 2. The amendatory provisions of section 17 of this act apply  
17 only with respect to trust agreements for which a notice of default is  
18 recorded on or after October 1, 2013.  
19 3. The amendatory provisions of section 18 of this act apply  
20 only to an action commenced on or after October 1, 2013.  
21 **Sec. 31.** (Deleted by amendment.)

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