

SENATE BILL NO. 512—COMMITTEE ON FINANCE

MAY 30, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning real property. (BDR 9-1287)

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; authorizing a mortgagor or a grantor or the person who holds title of record with respect to a deed of trust to initiate participation in what is commonly known as the Foreclosure Mediation Program with the mortgagee or beneficiary of the deed of trust under certain circumstances; abolishing the Program as of June 30, 2017; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides for the establishment of a foreclosure mediation program
2 and generally requires that mediation, unless waived, be conducted as a condition
3 of a judicial foreclosure proceeding or the exercise of a power of sale affecting
4 owner-occupied housing. The Nevada Supreme Court is required to adopt rules to
5 implement the program. (NRS 40.437, 107.086) Existing law also creates the
6 Account for Foreclosure Mediation, the money in which may be expended only for
7 the purpose of supporting the program. (NRS 107.080)

8 **Section 1** of this bill authorizes a mortgagor under a mortgage secured by
9 owner-occupied housing or a grantor or the person who holds the title of record
10 with respect to a deed of trust concerning owner-occupied housing to initiate the
11 mediation process if: (1) a local housing counseling agency approved by the United
12 States Department of Housing and Urban Development certifies that the mortgagor,
13 grantor or person who holds the title of record has a documented financial hardship
14 and is in imminent risk of default; (2) the mortgagor, grantor or other person files a
15 form with the Mediation Administrator indicating an election to enter into
16 mediation; and (3) the mortgagor, grantor or other person pays his or her share of
17 the fee for the mediation. Under this bill, if the parties participate in mediation in
18 good faith, the requirement of existing law to participate in mediation before a
19 nonjudicial foreclosure sale of the owner-occupied housing is satisfied.



20 **Section 10.5** of this bill authorizes the Court Administrator, under certain
21 circumstances, to submit to the Interim Finance Committee a request for an
22 allocation from the Contingency Account created by NRS 353.266 for deposit in
23 the Account for Foreclosure Mediation.

24 **Section 12** of this bill repeals the existing statutes providing for the foreclosure
25 mediation program, effective on June 30, 2017, effectively ending the program on
26 that date. **Section 1** also expires by limitation on that date. Under **sections 1, 2.5**
27 **and 8.5** of this bill, December 31, 2016, is the last date on which a homeowner can
28 enroll in the foreclosure mediation program. Persons initiating foreclosures after
29 December 1, 2016, need not provide notice of the mediation program. **Sections 1.5,**
30 **2, 3-8, 9, 10 and 11** of this bill make conforming changes.

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 a new section to read as follows:

3 *1. A mortgagor under a mortgage secured by owner-occupied*
4 *housing or a grantor or the person who holds the title of record*
5 *with respect to any trust agreement which concerns owner-*
6 *occupied housing may initiate mediation to negotiate a loan*
7 *modification under the mediation process set forth in NRS*
8 *107.086 if, on or before December 31, 2016:*

9 *(a) A local housing counseling agency approved by the United*
10 *States Department of Housing and Urban Development certifies*
11 *that the mortgagor, grantor or person who holds the title of*
12 *record:*

13 *(1) Has a documented financial hardship; and*

14 *(2) Is in imminent risk of default; and*

15 *(b) The mortgagor, grantor or person who holds the title of*
16 *record:*

17 *(1) Submits a form prescribed by the Mediation*
18 *Administrator indicating an election to enter into mediation*
19 *pursuant to this section; and*

20 *(2) Pays to the Mediation Administrator his or her share of*
21 *the fee established pursuant to subsection 11 of NRS 107.086.*

22 *2. Upon satisfaction of the requirements of subsection 1, the*
23 *Mediation Administrator shall notify the mortgage servicer, by*
24 *certified mail, return receipt requested, of the enrollment of the*
25 *mortgagor, grantor or person who holds the title of record to*
26 *participate in mediation pursuant to this section and shall assign*
27 *the matter to a senior justice, judge, hearing master or other*
28 *designee and schedule the matter for mediation. The mortgage*
29 *servicer shall notify the mortgagee or the beneficiary of the deed*
30 *of trust, as applicable, and every other person with an interest as*
31 *defined in NRS 107.090, by certified mail, return receipt*



1 requested, of the enrollment of the mortgagor, grantor or person
2 who holds the title of record to participate in mediation.

3 3. Each mediation required by this section must be conducted
4 in conformity with the requirements of subsections 5 and 6 of
5 NRS 107.086.

6 4. If the mediator determines that the parties, while acting in
7 good faith, are not able to agree to a loan modification, the
8 mediator shall prepare and submit to the Mediation Administrator
9 a recommendation that the matter be terminated. The Mediation
10 Administrator shall, not later than 30 days after submittal of the
11 mediator's recommendation that the matter be terminated, provide
12 to the mortgage servicer a certificate which provides that the
13 mediation required by this section has been completed in the
14 matter. If the Mediation Administrator provides such a certificate,
15 the requirement for mediation pursuant to NRS 107.086 is
16 satisfied.

17 5. The certificate provided pursuant to subsection 4 must be
18 in the same form as the certificate provided pursuant to subsection
19 8 of NRS 107.086, and may be recorded in the office of the county
20 recorder in which the trust property, or some part thereof, is
21 situated. The recording of the certificate in the office of the county
22 recorder in which the trust property, or some part thereof, is
23 situated shall be deemed to be the recording of the certificate
24 required pursuant to subparagraph (2) of paragraph (d) of
25 subsection 2 of NRS 107.086.

26 6. A noncommercial lender is not excluded from the
27 application of this section.

28 7. The Mediation Administrator and each mediator who acts
29 pursuant to this section in good faith and without gross negligence
30 are immune from civil liability for those acts.

31 8. As used in this section:

32 (a) "Financial hardship" means a documented event that
33 would prevent the long-term payment of any debt relating to a
34 mortgage or deed of trust secured by owner-occupied housing,
35 including, without limitation:

36 (1) The death of the borrower or co-borrower;

37 (2) Serious illness;

38 (3) Divorce or separation; or

39 (4) Job loss or a reduction in pay.

40 (b) "Imminent risk of default" means the inability of a grantor
41 or the person who holds the title of record to make his or her
42 mortgage payment within the next 90 days.

43 (c) "Mediation Administrator" has the meaning ascribed to it
44 in NRS 107.086.



1 (d) *“Noncommercial lender” has the meaning ascribed to it in*
2 *NRS 107.086.*

3 (e) *“Owner-occupied housing” has the meaning ascribed to it*
4 *in NRS 107.086.*

5 **Sec. 1.5.** NRS 107.080 is hereby amended to read as follows:

6 107.080 1. Except as otherwise provided in NRS 106.210 ~~§~~
7 *and* 107.085, ~~and 107.086,~~ if any transfer in trust of any estate in
8 real property is made after March 29, 1927, to secure the
9 performance of an obligation or the payment of any debt, a power of
10 sale is hereby conferred upon the trustee to be exercised after a
11 breach of the obligation for which the transfer is security.

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

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

15 (1) On or after July 1, 1949, and before July 1, 1957, the
16 grantor, the person who holds the title of record, a beneficiary under
17 a subordinate deed of trust or any other person who has a
18 subordinate lien or encumbrance of record on the property has, for a
19 period of 15 days, computed as prescribed in subsection 3, failed to
20 make good the deficiency in performance or payment; or

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

27 (b) In the case of any trust agreement which concerns owner-
28 occupied housing, ~~as defined in NRS 107.086,~~ the grantor, the
29 person who holds the title of record, a beneficiary under a
30 subordinate deed of trust or any other person who has a subordinate
31 lien or encumbrance of record on the property has, for a period that
32 commences in the manner and subject to the requirements described
33 in subsection 3 and expires 5 days before the date of sale, failed to
34 make good the deficiency in performance or payment.

35 (c) The beneficiary, the successor in interest of the beneficiary
36 or the trustee first executes and causes to be recorded in the office of
37 the recorder of the county wherein the trust property, or some part
38 thereof, is situated a notice of the breach and of the election to sell
39 or cause to be sold the property to satisfy the obligation which,
40 except as otherwise provided in this paragraph, includes a notarized
41 affidavit of authority to exercise the power of sale. Except as
42 otherwise provided in subparagraph (5), the affidavit required by
43 this paragraph must state under the penalty of perjury the following
44 information, which must be based on the direct, personal knowledge
45 of the affiant or the personal knowledge which the affiant acquired



1 by a review of the business records of the beneficiary, the successor
2 in interest of the beneficiary or the servicer of the obligation or debt
3 secured by the deed of trust, which business records must meet the
4 standards set forth in NRS 51.135:

5 (1) The full name and business address of the current trustee
6 or the current trustee's personal representative or assignee, the
7 current holder of the note secured by the deed of trust, the current
8 beneficiary of record and the current servicer of the obligation or
9 debt secured by the deed of trust.

10 (2) That the beneficiary under the deed of trust, the successor
11 in interest of the beneficiary or the trustee is in actual or
12 constructive possession of the note secured by the deed of trust or
13 that the beneficiary or its successor in interest or the trustee is
14 entitled to enforce the obligation or debt secured by the deed of
15 trust. For the purposes of this subparagraph, if the obligation or debt
16 is an instrument, as defined in subsection 2 of NRS 104.3103, a
17 beneficiary or its successor in interest or the trustee is entitled to
18 enforce the instrument if the beneficiary or its successor in interest
19 or the trustee is:

20 (I) The holder of the instrument;

21 (II) A nonholder in possession of the instrument who has
22 the rights of a holder; or

23 (III) A person not in possession of the instrument who is
24 entitled to enforce the instrument pursuant to a court order issued
25 under NRS 104.3309.

26 (3) That the beneficiary or its successor in interest, the
27 servicer of the obligation or debt secured by the deed of trust or the
28 trustee, or an attorney representing any of those persons, has sent to
29 the obligor or borrower of the obligation or debt secured by the deed
30 of trust a written statement of:

31 (I) The amount of payment required to make good
32 the deficiency in performance or payment, avoid the exercise of the
33 power of sale and reinstate the terms and conditions of the
34 underlying obligation or debt existing before the deficiency in
35 performance or payment, as of the date of the statement;

36 (II) The amount in default;

37 (III) The principal amount of the obligation or debt
38 secured by the deed of trust;

39 (IV) The amount of accrued interest and late charges;

40 (V) A good faith estimate of all fees imposed in
41 connection with the exercise of the power of sale; and

42 (VI) Contact information for obtaining the most current
43 amounts due and the local or toll-free telephone number described
44 in subparagraph (4).



1 (4) A local or toll-free telephone number that the obligor or
2 borrower of the obligation or debt may call to receive the most
3 current amounts due and a recitation of the information contained in
4 the affidavit.

5 (5) The date and the recordation number or other unique
6 designation of, and the name of each assignee under, each recorded
7 assignment of the deed of trust. The information required to be
8 stated in the affidavit pursuant to this subparagraph may be based
9 on:

10 (I) The direct, personal knowledge of the affiant;

11 (II) The personal knowledge which the affiant acquired
12 by a review of the business records of the beneficiary, the successor
13 in interest of the beneficiary or the servicer of the obligation or debt
14 secured by the deed of trust, which business records must meet the
15 standards set forth in NRS 51.135;

16 (III) Information contained in the records of the recorder
17 of the county in which the property is located; or

18 (IV) The title guaranty or title insurance issued by a title
19 insurer or title agent authorized to do business in this State pursuant
20 to chapter 692A of NRS.

21 ➔ The affidavit described in this paragraph is not required for the
22 exercise of the trustee's power of sale with respect to any trust
23 agreement which concerns a time share within a time-share plan
24 created pursuant to chapter 119A of NRS if the power of sale is
25 being exercised for the initial beneficiary under the deed of trust or
26 an affiliate of the initial beneficiary.

27 (d) The beneficiary or its successor in interest or the servicer of
28 the obligation or debt secured by the deed of trust has instructed the
29 trustee to exercise the power of sale with respect to the property.

30 (e) Not less than 3 months have elapsed after the recording of
31 the notice or, if the notice includes an affidavit and a certification
32 indicating that, pursuant to NRS 107.130, an election has been made
33 to use the expedited procedure for the exercise of the power of sale
34 with respect to abandoned residential property, not less than 60 days
35 have elapsed after the recording of the notice.

36 3. The 15- or 35-day period provided in paragraph (a) of
37 subsection 2, or the period provided in paragraph (b) of subsection
38 2, commences on the first day following the day upon which the
39 notice of default and election to sell is recorded in the office of the
40 county recorder of the county in which the property is located and a
41 copy of the notice of default and election to sell is mailed by
42 registered or certified mail, return receipt requested and with
43 postage prepaid to the grantor or, to the person who holds the title of
44 record on the date the notice of default and election to sell is
45 recorded, and, if the property is operated as a facility licensed under



1 chapter 449 of NRS, to the State Board of Health, at their respective
2 addresses, if known, otherwise to the address of the trust property.
3 The notice of default and election to sell must:

4 (a) Describe the deficiency in performance or payment and may
5 contain a notice of intent to declare the entire unpaid balance due if
6 acceleration is permitted by the obligation secured by the deed of
7 trust, but acceleration must not occur if the deficiency in
8 performance or payment is made good and any costs, fees and
9 expenses incident to the preparation or recordation of the notice and
10 incident to the making good of the deficiency in performance or
11 payment are paid within the time specified in subsection 2;

12 (b) If the property is subject to the requirements of NRS 107.400
13 to 107.560, inclusive, contain the declaration required by subsection
14 6 of NRS 107.510;

15 (c) If, pursuant to NRS 107.130, an election has been made to
16 use the expedited procedure for the exercise of the power of sale
17 with respect to abandoned residential property, include the affidavit
18 and certification required by subsection 6 of NRS 107.130; and

19 (d) If the property is a residential foreclosure, comply with the
20 provisions of NRS 107.087.

21 4. The trustee, or other person authorized to make the sale
22 under the terms of the trust deed or transfer in trust, shall, after
23 expiration of the applicable period specified in paragraph (d) of
24 subsection 2 following the recording of the notice of breach and
25 election to sell, and before the making of the sale, give notice of the
26 time and place thereof by recording the notice of sale and by:

27 (a) Providing the notice to each trustor, any other person entitled
28 to notice pursuant to this section and, if the property is operated as a
29 facility licensed under chapter 449 of NRS, the State Board of
30 Health, by personal service or by mailing the notice by registered or
31 certified mail to the last known address of the trustor and any other
32 person entitled to such notice pursuant to this section;

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

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

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

44 5. Every sale made under the provisions of this section and
45 other sections of this chapter vests in the purchaser the title of the



1 grantor and any successors in interest without equity or right of
2 redemption. A sale made pursuant to this section must be declared
3 void by any court of competent jurisdiction in the county where the
4 sale took place if:

5 (a) The trustee or other person authorized to make the sale does
6 not substantially comply with the provisions of this section or any
7 applicable provision of NRS ~~H07-086 and~~ 107.087;

8 (b) Except as otherwise provided in subsection 6, an action is
9 commenced in the county where the sale took place within 45 days
10 after the date of the sale; and

11 (c) A notice of lis pendens providing notice of the pendency of
12 the action is recorded in the office of the county recorder of the
13 county where the sale took place within 15 days after
14 commencement of the action.

15 6. If proper notice is not provided pursuant to subsection 3 or
16 paragraph (a) of subsection 4 to the grantor, to the person who holds
17 the title of record on the date the notice of default and election to
18 sell is recorded, to each trustor or to any other person entitled to
19 such notice, the person who did not receive such proper notice may
20 commence an action pursuant to subsection 5 within 60 days after
21 the date on which the person received actual notice of the sale.

22 7. If, in an action brought by the grantor or the person who
23 holds title of record in the district court in and for the county in
24 which the real property is located, the court finds that the
25 beneficiary, the successor in interest of the beneficiary or the trustee
26 did not comply with any requirement of subsection 2, 3 or 4, the
27 court must award to the grantor or the person who holds title of
28 record:

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

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

35 (c) Reasonable attorney's fees and costs,
36 unless the court finds good cause for a different award. The
37 remedy provided in this subsection is in addition to the remedy
38 provided in subsection 5.

39 8. The sale of a lease of a dwelling unit of a cooperative
40 housing corporation vests in the purchaser title to the shares in the
41 corporation which accompany the lease.

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



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

4 (b) Within 20 days after the date of the sale, deliver the trustee's
5 deed upon sale to the successful bidder. Within 10 days after the
6 date of delivery of the deed by the trustee, the successful bidder
7 shall record the trustee's deed upon sale in the office of the county
8 recorder of the county in which the property is located.

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

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

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

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

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

22 (b) ~~A fee of \$45 for deposit in the Account for Foreclosure~~
23 ~~Mediation, which is hereby created in the State General Fund. The~~
24 ~~Account must be administered by the Court Administrator, and the~~
25 ~~money in the Account may be expended only for the purpose of~~
26 ~~supporting a program of foreclosure mediation established by~~
27 ~~Supreme Court Rule.~~

28 ~~—(c)~~ A fee of \$5 to be paid over to the county treasurer on or
29 before the fifth day of each month for the preceding calendar month.
30 The county recorder may direct that 1.5 percent of the fees collected
31 by the county recorder pursuant to this paragraph be transferred into
32 a special account for use by the office of the county recorder. The
33 county treasurer shall remit quarterly to the organization operating
34 the program for legal services that receives the fees charged
35 pursuant to NRS 19.031 for the operation of programs for the
36 indigent all the money received from the county recorder pursuant
37 to this paragraph.

38 12. The fees collected pursuant to ~~paragraphs~~ *paragraph* (a)
39 ~~and (b)~~ of subsection 11 must be paid over to the county treasurer
40 by the county recorder on or before the fifth day of each month for
41 the preceding calendar month, and, except as otherwise provided in
42 this subsection, must be placed to the credit of the State General
43 Fund . ~~for the Account for Foreclosure Mediation as prescribed~~
44 ~~pursuant to subsection 11.~~ The county recorder may direct that 1.5
45 percent of the fees collected by the county recorder be transferred



1 into a special account for use by the office of the county recorder.
2 The county treasurer shall, on or before the 15th day of each month,
3 remit the fees deposited by the county recorder pursuant to this
4 subsection to the State Controller for credit to the State General
5 Fund. ~~for the Account as prescribed in subsection 11.~~

6 13. The beneficiary, the successor in interest of the beneficiary
7 or the trustee who causes to be recorded the notice of default and
8 election to sell shall not charge the grantor or the successor in
9 interest of the grantor any portion of any fee required to be paid
10 pursuant to subsection 11.

11 14. As used in this section:

12 (a) *“Owner-occupied housing” means housing that is occupied*
13 *by an owner as the owner’s primary residence. The term does not*
14 *include vacant land or any time share or other property regulated*
15 *under chapter 119A of NRS.*

16 (b) “Residential foreclosure” means the sale of a single family
17 residence under a power of sale granted by this section. As used in
18 this paragraph, “single family residence”:

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

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

23 ~~(b)~~ (c) “Trustee” means the trustee of record.

24 **Sec. 2.** NRS 107.085 is hereby amended to read as follows:

25 107.085 1. With regard to a transfer in trust of an estate in
26 real property to secure the performance of an obligation or the
27 payment of a debt, the provisions of this section apply to the
28 exercise of a power of sale pursuant to NRS 107.080 only if:

29 (a) The trust agreement becomes effective on or after October 1,
30 2003, and, on the date the trust agreement is made, the trust
31 agreement is subject to the provisions of § 152 of the Home
32 Ownership and Equity Protection Act of 1994, 15 U.S.C. §
33 1602(bb), and the regulations adopted by the Board of Governors of
34 the Federal Reserve System pursuant thereto, including, without
35 limitation, 12 C.F.R. § 226.32; or

36 (b) The trust agreement concerns owner-occupied housing as
37 defined in NRS ~~107.086~~ **107.080**.

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

40 (a) In the manner required by subsection 3, not later than 60
41 days before the date of the sale, the trustee causes to be served upon
42 the grantor or the person who holds the title of record a notice in the
43 form described in subsection 3; and

44 (b) If an action is filed in a court of competent jurisdiction
45 claiming an unfair lending practice in connection with the trust



1 agreement, the date of the sale is not less than 30 days after the date
2 the most recent such action is filed.

3 3. The notice described in subsection 2 must be:

4 (a) Served upon the grantor or the person who holds the title of
5 record:

6 (1) Except as otherwise provided in subparagraph (2), by
7 personal service or, if personal service cannot be timely effected, in
8 such other manner as a court determines is reasonably calculated to
9 afford notice to the grantor or the person who holds the title of
10 record; or

11 (2) If the trust agreement concerns owner-occupied housing
12 as defined in NRS ~~107.086~~ 107.080:

13 (I) By personal service;

14 (II) If the grantor or the person who holds the title of
15 record is absent from his or her place of residence or from his or her
16 usual place of business, by leaving a copy with a person of suitable
17 age and discretion at either place and mailing a copy to the grantor
18 or the person who holds the title of record at his or her place of
19 residence or place of business; or

20 (III) If the place of residence or business cannot be
21 ascertained, or a person of suitable age or discretion cannot be found
22 there, by posting a copy in a conspicuous place on the trust property,
23 delivering a copy to a person there residing if the person can be
24 found and mailing a copy to the grantor or the person who holds the
25 title of record at the place where the trust property is situated; and

26 (b) In substantially the following form, with the applicable
27 telephone numbers and mailing addresses provided on the notice
28 and, except as otherwise provided in subsection 4, a copy of the
29 promissory note attached to the notice:
30

31 NOTICE
32 YOU ARE IN DANGER OF LOSING YOUR HOME!

33
34 Your home loan is being foreclosed. In not less than 60 days
35 your home may be sold and you may be forced to move. For
36 help, call:
37

- 38 Consumer Credit Counseling _____
- 39 The Attorney General _____
- 40 The Division of Mortgage Lending _____
- 41 The Division of Financial Institutions _____
- 42 Legal Services _____
- 43 Your Lender _____
- 44 Nevada Fair Housing Center _____



1 4. The trustee shall cause all social security numbers to be
2 redacted from the copy of the promissory note before it is attached
3 to the notice pursuant to paragraph (b) of subsection 3.

4 5. This section does not prohibit a judicial foreclosure.

5 6. As used in this section, "unfair lending practice" means an
6 unfair lending practice described in NRS 598D.010 to 598D.150,
7 inclusive.

8 **Sec. 2.5.** NRS 107.086 is hereby amended to read as follows:

9 107.086 1. Except as otherwise provided in this subsection **H**
10 *and subsection 4 of section 1 of this act*, in addition to the
11 requirements of NRS 107.085, the exercise of the power of sale
12 pursuant to NRS 107.080 with respect to any trust agreement which
13 concerns owner-occupied housing *and for which a notice of default*
14 *and election to sell is mailed on or before December 1, 2016, to the*
15 *grantor or the person who holds the title of record as required by*
16 *subsection 3 of NRS 107.080* is subject to the provisions of this
17 section. The provisions of this section do not apply to the exercise of
18 the power of sale if the notice of default and election to sell recorded
19 pursuant to subsection 2 of NRS 107.080 includes an affidavit and a
20 certification indicating that, pursuant to NRS 107.130, an election
21 has been made to use the expedited procedure for the exercise of the
22 power of sale with respect to abandoned residential property.

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

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

28 (1) Contact information which the grantor or the person who
29 holds the title of record may use to reach a person with authority to
30 negotiate a loan modification on behalf of the beneficiary of the
31 deed of trust;

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

35 (3) A notice provided by the Mediation Administrator
36 indicating that the grantor or the person who holds the title of record
37 will be enrolled to participate in mediation pursuant to this section if
38 he or she pays to the Mediation Administrator his or her share of the
39 fee established pursuant to subsection 11; and

40 (4) A form upon which the grantor or the person who holds
41 the title of record may indicate an election to waive mediation
42 pursuant to this section and one envelope addressed to the trustee
43 and one envelope addressed to the Mediation Administrator, which
44 the grantor or the person who holds the title of record may use to
45 comply with the provisions of subsection 3;



1 (b) In addition to including the information described in
2 paragraph (a) with the notice of default and election to sell which is
3 mailed to the grantor or the person who holds the title of record as
4 required by subsection 3 of NRS 107.080, provides to the grantor or
5 the person who holds the title of record the information described in
6 paragraph (a) concurrently with, but separately from, the notice of
7 default and election to sell which is mailed to the grantor or the
8 person who holds the title of record as required by subsection 3 of
9 NRS 107.080;

10 (c) Serves a copy of the notice upon the Mediation
11 Administrator; and

12 (d) Causes to be recorded in the office of the recorder of the
13 county in which the trust property, or some part thereof, is situated:

14 (1) The certificate provided to the trustee by the Mediation
15 Administrator pursuant to subsection 4 or 7 which provides that no
16 mediation is required in the matter; or

17 (2) The certificate provided to the trustee by the Mediation
18 Administrator pursuant to subsection 8 which provides that
19 mediation has been completed in the matter.

20 3. If the grantor or the person who holds the title of record
21 elects to waive mediation, he or she shall, not later than 30 days
22 after service of the notice in the manner required by NRS 107.080
23 **§ or December 31, 2016, whichever is earlier**, complete the form
24 required by subparagraph (4) of paragraph (a) of subsection 2 and
25 return the form to the trustee and the Mediation Administrator by
26 certified mail, return receipt requested. If the grantor or the person
27 who holds the title of record does not elect to waive mediation, he or
28 she shall, not later than 30 days after the service of the notice in the
29 manner required by NRS 107.080 **§ or December 31, 2016,**
30 **whichever is earlier**, pay to the Mediation Administrator his or her
31 share of the fee established pursuant to subsection 11. Upon receipt
32 of the share of the fee established pursuant to subsection 11 owed by
33 the grantor or the person who holds title of record, the Mediation
34 Administrator shall notify the trustee, by certified mail, return
35 receipt requested, of the enrollment of the grantor or person who
36 holds the title of record to participate in mediation pursuant to this
37 section and shall assign the matter to a senior justice, judge, hearing
38 master or other designee and schedule the matter for mediation. The
39 trustee shall notify the beneficiary of the deed of trust and every
40 other person with an interest as defined in NRS 107.090, by certified
41 mail, return receipt requested, of the enrollment of the grantor or the
42 person who holds the title of record to participate in mediation. If
43 the grantor or person who holds the title of record is enrolled to
44 participate in mediation pursuant to this section, no further action



1 may be taken to exercise the power of sale until the completion of
2 the mediation.

3 4. If the grantor or the person who holds the title of record
4 indicates on the form described in subparagraph (4) of paragraph (a)
5 of subsection 2 an election to waive mediation or fails to pay to the
6 Mediation Administrator his or her share of the fee established
7 pursuant to subsection 11, as required by subsection 3, the
8 Mediation Administrator shall, not later than 60 days after the
9 Mediation Administrator receives the form indicating an election to
10 waive mediation or 90 days after the service of the notice in the
11 manner required by NRS 107.080, whichever is earlier, provide to
12 the trustee a certificate which provides that no mediation is required
13 in the matter.

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

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

40 7. If the grantor or the person who holds the title of record is
41 enrolled to participate in mediation pursuant to this section but fails
42 to attend the mediation, the Mediation Administrator shall, not later
43 than 30 days after the scheduled mediation, provide to the trustee a
44 certificate which states that no mediation is required in the matter.



1 8. If the mediator determines that the parties, while acting in
2 good faith, are not able to agree to a loan modification, the mediator
3 shall prepare and submit to the Mediation Administrator a
4 recommendation that the matter be terminated. The Mediation
5 Administrator shall, not later than 30 days after submittal of the
6 mediator's recommendation that the matter be terminated, provide
7 to the trustee a certificate which provides that the mediation
8 required by this section has been completed in the matter.

9 9. Upon receipt of the certificate provided to the trustee by the
10 Mediation Administrator pursuant to subsection 4, 7 or 8, if the
11 property is located within a common-interest community, the trustee
12 shall notify the unit-owners' association organized under NRS
13 116.3101 of the existence of the certificate.

14 10. During the pendency of any mediation pursuant to this
15 section, a unit's owner must continue to pay any obligation, other
16 than any past due obligation.

17 11. The Supreme Court shall adopt rules necessary to carry out
18 the provisions of this section. The rules must, without limitation,
19 include provisions:

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

25 (b) Ensuring that mediations occur in an orderly and timely
26 manner.

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

29 (d) Establishing procedures to protect the mediation process
30 from abuse and to ensure that each party to the mediation acts in
31 good faith.

32 (e) Establishing a total fee of not more than \$400 that may be
33 charged and collected by the Mediation Administrator for mediation
34 services pursuant to this section and providing that the responsibility
35 for payment of the fee must be shared equally by the parties to the
36 mediation.

37 12. Except as otherwise provided in subsection 14, the
38 provisions of this section do not apply if:

39 (a) The grantor or the person who holds the title of record has
40 surrendered the property, as evidenced by a letter confirming the
41 surrender or delivery of the keys to the property to the trustee, the
42 beneficiary of the deed of trust or the mortgagee, or an authorized
43 agent thereof; or

44 (b) A petition in bankruptcy has been filed with respect to the
45 grantor or the person who holds the title of record under chapter 7,



1 11, 12 or 13 of Title 11 of the United States Code and the
2 bankruptcy court has not entered an order closing or dismissing the
3 case or granting relief from a stay of foreclosure.

4 13. A noncommercial lender is not excluded from the
5 application of this section.

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

9 15. As used in this section:

10 (a) "Common-interest community" has the meaning ascribed to
11 it in NRS 116.021.

12 (b) "Mediation Administrator" means the entity so designated
13 pursuant to subsection 11.

14 (c) "Noncommercial lender" means a lender which makes a loan
15 secured by a deed of trust on owner-occupied housing and which is
16 not a bank, financial institution or other entity regulated pursuant to
17 title 55 or 56 of NRS.

18 (d) "Obligation" has the meaning ascribed to it in
19 NRS 116.310313.

20 (e) "Owner-occupied housing" means housing that is occupied
21 by an owner as the owner's primary residence. The term does not
22 include vacant land or any time share or other property regulated
23 under chapter 119A of NRS.

24 (f) "Unit's owner" has the meaning ascribed to it in
25 NRS 116.095.

26 **Sec. 3.** NRS 107.095 is hereby amended to read as follows:

27 107.095 1. The notice of default required by NRS 107.080
28 must also be sent by registered or certified mail, return receipt
29 requested and with postage prepaid, to each guarantor or surety of
30 the debt. If the address of the guarantor or surety is unknown, the
31 notice must be sent to the address of the trust property. Failure to
32 give the notice, except as otherwise provided in subsection 3,
33 releases the guarantor or surety from his or her obligation to the
34 beneficiary, but does not affect the validity of a sale conducted
35 pursuant to NRS 107.080 or the obligation of any guarantor or
36 surety to whom the notice was properly given.

37 2. Failure to give the notice of default required by NRS
38 107.090, except as otherwise provided in subsection 3, releases the
39 obligation to the beneficiary of any person who has complied with
40 NRS 107.090 and who is or may otherwise be held liable for the
41 debt or other obligation secured by the deed of trust, but such a
42 failure does not affect the validity of a sale conducted pursuant to
43 NRS 107.080 or the obligation of any person to whom the notice
44 was properly given pursuant to this section or to NRS 107.080 or
45 107.090.



1 3. A guarantor, surety or other obligor is not released pursuant
2 to this section if:

3 (a) The required notice is given at least 15 days before the later
4 of:

5 (1) The expiration of the 15- or 35-day period described in
6 paragraph (a) of subsection 2 of NRS 107.080;

7 (2) In the case of any trust agreement which concerns owner-
8 occupied housing as defined in NRS ~~107.086,~~ **107.080**, the
9 expiration of the period described in paragraph (b) of subsection 2
10 of NRS 107.080; or

11 (3) Any extension of the applicable period by the
12 beneficiary; or

13 (b) The notice is rescinded before the sale is advertised.

14 **Sec. 4.** NRS 107.450 is hereby amended to read as follows:

15 107.450 "Residential mortgage loan" means a loan which is
16 primarily for personal, family or household use and which is secured
17 by a mortgage or deed of trust on owner-occupied housing as
18 defined in NRS ~~107.086,~~ **107.080**.

19 **Sec. 5.** NRS 107.460 is hereby amended to read as follows:

20 107.460 The provisions of NRS 107.400 to 107.560, inclusive,
21 do not apply to a financial institution, as defined in NRS 660.045,
22 that, during its immediately preceding annual reporting period, as
23 established with its primary regulator, has foreclosed on 100 or
24 fewer real properties located in this State which constitute owner-
25 occupied housing, as defined in NRS ~~107.086,~~ **107.080**.

26 **Sec. 6.** NRS 107.480 is hereby amended to read as follows:

27 107.480 1. In addition to the requirements of NRS 107.085 ,
28 ~~and 107.086,~~ the exercise of a trustee's power of sale pursuant to
29 NRS 107.080 with respect to a deed of trust securing a residential
30 mortgage loan is subject to the provisions of NRS 107.400 to
31 107.560, inclusive.

32 2. In addition to the requirements of NRS 40.430 to 40.4639,
33 inclusive, a civil action for a foreclosure sale pursuant to
34 NRS 40.430 involving a failure to make a payment required by a
35 residential mortgage loan is subject to the requirements of NRS
36 107.400 to 107.560, inclusive.

37 **Sec. 7.** NRS 107.550 is hereby amended to read as follows:

38 107.550 1. A civil action for a foreclosure sale pursuant to
39 NRS 40.430 involving a failure to make a payment required by a
40 residential mortgage loan must be dismissed without prejudice, any
41 notice of default and election to sell recorded pursuant to subsection
42 2 of NRS 107.080 or any notice of sale recorded pursuant to
43 subsection 4 of NRS 107.080 must be rescinded, and any pending
44 foreclosure sale must be cancelled, 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 calendar days
7 after a notice of sale is recorded pursuant to subsection 4 of
8 NRS 107.080.

9 2. The periods specified in paragraphs (b) and (c) of subsection
10 1 are tolled:

11 (a) If a borrower has filed a case under 11 U.S.C. Chapter 7, 11,
12 12 or 13, until the bankruptcy court enters an order closing or
13 dismissing the bankruptcy case or granting relief from a stay of
14 foreclosure or trustee's sale;

15 ~~(b) If mediation pursuant to NRS 107.086 is required, until the~~
16 ~~date on which the Mediation Administrator, as defined in NRS~~
17 ~~107.086, issues the certificate that mediation has been completed in~~
18 ~~the matter;~~

19 ~~—(c) If [mediation pursuant to NRS 40.437 is required or if] a~~
20 ~~court orders participation in a settlement program, until the date on~~
21 ~~which the [mediation or] participation in a settlement program is~~
22 ~~terminated; or~~

23 ~~(d)~~ (c) If a borrower has submitted an application for a
24 foreclosure prevention alternative, until the date on which:

25 (1) A written offer for a foreclosure prevention alternative is
26 submitted to the borrower;

27 (2) A written statement of the denial of the application has
28 been submitted to the borrower pursuant to subsection 4 of NRS
29 107.530, and any appeal period pursuant to subsection 5 of NRS
30 107.530 has expired; or

31 (3) If the borrower has appealed the denial of an application
32 for a foreclosure prevention alternative, a written offer for a
33 foreclosure prevention alternative or a written denial of the appeal is
34 submitted to the borrower.

35 3. If, pursuant to subsection 1, a civil action is dismissed, a
36 notice of default and election to sell recorded pursuant to subsection
37 2 of NRS 107.080 or any notice of sale recorded pursuant to
38 subsection 4 of NRS 107.080 is rescinded, or any pending
39 foreclosure sale is cancelled, the mortgagee or beneficiary of the
40 deed of trust is thereupon restored to its former position and has the
41 same rights as though an action for a judicial foreclosure had not
42 been commenced or a notice of default and election to sell had not
43 been recorded.



1 **Sec. 8.** NRS 2.125 is hereby amended to read as follows:

2 2.125 The Supreme Court may adopt rules providing for
3 voluntary mediation with respect to ~~f~~:

4 ~~1. A homeowner who is not in default but is at risk of default.~~

5 ~~2. A~~ *a* small business whose commercial property is in
6 default. If the Supreme Court adopts such rules, the Supreme Court
7 shall consider:

8 ~~(a)~~ 1. The goals and purposes of the mediation process;

9 ~~(b)~~ 2. The necessity, efficiency and desirability of allowing
10 mediation for the various types of commercial property; and

11 ~~(c)~~ 3. Any other factor that is relevant in determining
12 whether allowing mediation under the circumstances is in the best
13 interests of the residents, businesses and governmental entities in
14 this State.

15 **Sec. 8.5.** NRS 40.437 is hereby amended to read as follows:

16 40.437 1. ~~ff a~~ *A* civil action for a foreclosure sale pursuant
17 to NRS 40.430 affecting owner-occupied housing *that* is
18 commenced in a court of competent jurisdiction ~~f~~ *on or before*
19 *December 1, 2016, is subject to the provisions of this section.*

20 2. *In a civil action described in subsection 1:*

21 (a) The copy of the complaint served on the mortgagor must
22 include a separate document containing:

23 (1) Contact information which the mortgagor may use to
24 reach a person with authority to negotiate a loan modification on
25 behalf of the plaintiff;

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

29 (3) A notice provided by the Mediation Administrator
30 indicating that the mortgagor has the right to seek mediation
31 pursuant to this section; and

32 (4) A form upon which the mortgagor may indicate an
33 election to enter into mediation or to waive mediation pursuant to
34 this section and one envelope addressed to the plaintiff and one
35 envelope addressed to the Mediation Administrator, which the
36 mortgagor may use to comply with the provisions of subsection ~~f2~~
37 *3*; and

38 (b) The plaintiff must submit a copy of the complaint to the
39 Mediation Administrator.

40 ~~f2~~ 3. The mortgagor shall, not later than the date on which an
41 answer to the complaint is due ~~f~~ *or December 31, 2016, whichever*
42 *is earlier*, complete the form required by subparagraph (4) of
43 paragraph (a) of subsection ~~ff~~ 2 and file the form with the court and
44 return a copy of the form to the plaintiff by certified mail, return
45 receipt requested. If the mortgagor indicates on the form an election



1 to enter into mediation, the plaintiff shall notify any person with an
2 interest as defined in NRS 107.090, by certified mail, return receipt
3 requested, of the election of the mortgagor to enter into mediation
4 and file the form with the Mediation Administrator, who shall
5 assign the matter to a senior justice, judge, hearing master or other
6 designee and schedule the matter for mediation. The judicial
7 foreclosure action must be stayed until the completion of the
8 mediation. If the mortgagor indicates on the form an election to
9 waive mediation or fails to file the form with the court and return a
10 copy of the form to the plaintiff as required by this subsection, no
11 mediation is required in the action.

12 ~~13~~ 4. Each mediation required by this section must be
13 conducted by a senior justice, judge, hearing master or other
14 designee pursuant to the rules adopted pursuant to subsection 11 of
15 NRS 107.086. The plaintiff or a representative, and the mortgagor or
16 his or her representative, shall attend the mediation. If the plaintiff is
17 represented at the mediation by another person, that person must
18 have authority to negotiate a loan modification on behalf of the
19 plaintiff or have access at all times during the mediation to a person
20 with such authority.

21 ~~14~~ 5. If the plaintiff or the representative fails to attend the
22 mediation, fails to participate in the mediation in good faith or does
23 not have the authority or access to a person with the authority
24 required by subsection ~~13~~ 4, the mediator shall prepare and submit
25 to the Mediation Administrator and the court a petition and
26 recommendation concerning the imposition of sanctions against the
27 plaintiff or the representative. The court may issue an order
28 imposing such sanctions against the plaintiff or the representative as
29 the court determines appropriate, including, without limitation,
30 requiring a loan modification in the manner determined proper by
31 the court.

32 ~~15~~ 6. If the mortgagor elected to enter into mediation and
33 fails to attend the mediation, no mediation is required and the
34 judicial foreclosure action must proceed as if the mortgagor had not
35 elected to enter into mediation.

36 ~~16~~ 7. If the mediator determines that the parties, while acting
37 in good faith, are not able to agree to a loan modification, the
38 mediator shall prepare and submit to the court and the Mediation
39 Administrator a recommendation that the mediation be terminated.
40 The court may terminate the mediation and proceed with the judicial
41 foreclosure action.

42 ~~17~~ 8. The rules adopted by the Supreme Court pursuant to
43 subsection 11 of NRS 107.086 apply to a mediation conducted
44 pursuant to this section, and the Supreme Court may adopt any
45 additional rules necessary to carry out the provisions of this section.



1 ~~18.1~~ 9. Except as otherwise provided in subsection ~~10.1~~ 11, the
2 provisions of this section do not apply if:

3 (a) The mortgagor has surrendered the property, as evidenced by
4 a letter confirming the surrender or delivery of the keys to the
5 property to the trustee, the beneficiary of the deed of trust or the
6 mortgagee, or an authorized agent thereof; or

7 (b) A petition in bankruptcy has been filed with respect to
8 the defendant under 11 U.S.C. Chapter 7, 11, 12 or 13 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 ~~19.1~~ 10. A noncommercial lender is not excluded from the
12 application of this section.

13 ~~10.1~~ 11. The Mediation Administrator and each mediator who
14 acts pursuant to this section in good faith and without gross
15 negligence are immune from civil liability for those acts.

16 ~~11.1~~ 12. As used in this section:

17 (a) "Mediation Administrator" has the meaning ascribed to it in
18 NRS 107.086.

19 (b) "Noncommercial lender" has the meaning ascribed to it in
20 NRS 107.086.

21 (c) "Owner-occupied housing" has the meaning ascribed to it in
22 NRS 107.086.

23 **Sec. 9.** Section 2 of Senate Bill 306 of this session is hereby
24 amended to read as follows:

25 Sec. 2. NRS 116.31162 is hereby amended to read as
26 follows:

27 116.31162 1. Except as otherwise provided in
28 subsection 5 ~~1.6~~ or ~~17.1~~ 6, in a condominium, in a planned
29 community, in a cooperative where the owner's interest in a
30 unit is real estate under NRS 116.1105, or in a cooperative
31 where the owner's interest in a unit is personal property under
32 NRS 116.1105 and the declaration provides that a lien may be
33 foreclosed under NRS 116.31162 to 116.31168, inclusive, the
34 association may foreclose its lien by sale after all of the
35 following occur:

36 (a) The association has mailed by certified or registered
37 mail, return receipt requested, to the unit's owner or his or her
38 successor in interest, at his or her address, if known, and at
39 the address of the unit, a notice of delinquent assessment
40 which states the amount of the assessments and other sums
41 which are due in accordance with subsection 1 of NRS
42 116.3116, a description of the unit against which the lien is
43 imposed and the name of the record owner of the unit.

44 (b) Not less than 30 days after mailing the notice of
45 delinquent assessment pursuant to paragraph (a), the



1 association or other person conducting the sale has executed
2 and caused to be recorded, with the county recorder of the
3 county in which the common-interest community or any part
4 of it is situated, a notice of default and election to sell the unit
5 to satisfy the lien which must contain the same information as
6 the notice of delinquent assessment and which must also
7 comply with the following:

8 (1) Describe the deficiency in payment.

9 (2) State the total amount of the deficiency in
10 payment, with a separate statement of:

11 (I) The amount of the association's lien that is prior
12 to the first security interest on the unit pursuant to subsection
13 3 of NRS 116.3116 as of the date of the notice;

14 (II) The amount of the lien described in sub-
15 subparagraph (I) that is attributable to assessments based on
16 the periodic budget adopted by the association pursuant to
17 NRS 116.3115 as of the date of the notice;

18 (III) The amount of the lien described in sub-
19 subparagraph (I) that is attributable to amounts described in
20 NRS 116.310312 as of the date of the notice; and

21 (IV) The amount of the lien described in sub-
22 subparagraph (I) that is attributable to the costs of enforcing
23 the association's lien as of the date of the notice.

24 (3) State that:

25 (I) If the holder of the first security interest on the
26 unit does not satisfy the amount of the association's lien that
27 is prior to that first security interest pursuant to subsection 3
28 of NRS 116.3116, the association may foreclose its lien by
29 sale and that the sale may extinguish the first security interest
30 as to the unit; and

31 (II) If, not later than 5 days before the date of the
32 sale, the holder of the first security interest on the unit
33 satisfies the amount of the association's lien that is prior to
34 that first security interest pursuant to subsection 3 of NRS
35 116.3116 and, not later than 2 days before the date of the sale,
36 a record of such satisfaction is recorded in the office of the
37 recorder of the county in which the unit is located, the
38 association may foreclose its lien by sale but the sale may not
39 extinguish the first security interest as to the unit.

40 (4) State the name and address of the person
41 authorized by the association to enforce the lien by sale.

42 (5) Contain, in 14-point bold type, the following
43 warning:



1 WARNING! IF YOU FAIL TO PAY THE AMOUNT
2 SPECIFIED IN THIS NOTICE, YOU COULD LOSE
3 YOUR HOME, EVEN IF THE AMOUNT IS IN
4 DISPUTE!
5

6 (c) The unit's owner or his or her successor in interest has
7 failed to pay the amount of the lien, including costs, fees and
8 expenses incident to its enforcement, for 90 days following
9 the recording of the notice of default and election to sell.

10 (d) The unit's owner or his or her successor in interest, or
11 the holder of a recorded security interest on the unit, has, for a
12 period which commences in the manner and subject to the
13 requirements described in subsection 3 and which expires 5
14 days before the date of sale, failed to pay the assessments and
15 other sums that are due to the association in accordance with
16 subsection 1 of NRS 116.3116.

17 (e) The association or other person conducting the sale
18 has executed and caused to be recorded, with the county
19 recorder of the county in which the common-interest
20 community or any part of it is situated, an affidavit which
21 states, based on the direct, personal knowledge of the affiant,
22 the personal knowledge which the affiant acquired by a
23 review of a trustee sale guarantee or a similar product or the
24 personal knowledge which the affiant acquired by a review of
25 the business records of the association or other person
26 conducting the sale, which business records must meet the
27 standards set forth in NRS 51.135, the following:

28 (1) The name of each holder of a security interest on
29 the unit to which the notice of default and election to sell and
30 the notice of sale was mailed, as required by subsection 2 of
31 NRS 116.31163 and paragraph (d) of subsection 1 of NRS
32 116.311635; and

33 (2) The address at which the notices were mailed to
34 each such holder of a security interest.

35 2. The notice of default and election to sell must be
36 signed by the person designated in the declaration or by the
37 association for that purpose or, if no one is designated, by the
38 president of the association.

39 3. The period of 90 days described in paragraph (c) of
40 subsection 1 begins on the first day following:

41 (a) The date on which the notice of default and election to
42 sell is recorded; or

43 (b) The date on which a copy of the notice of default and
44 election to sell is mailed by certified or registered mail, return
45 receipt requested, to the unit's owner or his or her successor



* S B 5 1 2 R 2 *

1 in interest at his or her address, if known, and at the address
2 of the unit,

3 ↪ whichever date occurs later.

4 4. An association may not mail to a unit's owner or his
5 or her successor in interest a letter of its intent to mail a
6 notice of delinquent assessment pursuant to paragraph (a) of
7 subsection 1, mail the notice of delinquent assessment or take
8 any other action to collect a past due obligation from a unit's
9 owner or his or her successor in interest unless:

10 (a) Not earlier than 60 days after the obligation becomes
11 past due, the association mails to the address on file for the
12 unit's owner:

13 (1) A schedule of the fees that may be charged if the
14 unit's owner fails to pay the past due obligation;

15 (2) A proposed repayment plan; and

16 (3) A notice of the right to contest the past due
17 obligation at a hearing before the executive board and the
18 procedures for requesting such a hearing; and

19 (b) Within 30 days after the date on which the
20 information described in paragraph (a) is mailed, the past due
21 obligation has not been paid in full or the unit's owner or his
22 or her successor in interest has not entered into a repayment
23 plan or requested a hearing before the executive board. If the
24 unit's owner or his or her successor in interest requests a
25 hearing or enters into a repayment plan within 30 days after
26 the date on which the information described in paragraph (a)
27 is mailed and is unsuccessful at the hearing or fails to make a
28 payment under the repayment plan within 10 days after the
29 due date, the association may take any lawful action pursuant
30 to subsection 1 to enforce its lien.

31 5. The association may not foreclose a lien by sale if the
32 association has not mailed a copy of the notice of default and
33 election to sell and a copy of the notice of sale to each holder
34 of a security interest on the unit in the manner and subject to
35 the requirements set forth in subsection 2 of NRS 116.31163
36 and paragraph (d) of subsection 1 of 116.311635.

37 6. The association may not foreclose a lien by sale based
38 on a fine or penalty for a violation of the governing
39 documents of the association unless:

40 (a) The violation poses an imminent threat of causing a
41 substantial adverse effect on the health, safety or welfare of
42 the units' owners or residents of the common-interest
43 community; or

44 (b) The penalty is imposed for failure to adhere to a
45 schedule required pursuant to NRS 116.310305.



~~7.— The association may not foreclose a lien by sale if the association has received notice pursuant to NRS 107.086 that the unit is subject to foreclosure mediation pursuant to that section, unless:~~

~~—(a) The trustee of record has recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph (c) of subsection 2 of NRS 107.086; or~~

~~—(b) The unit’s owner has failed to pay to the association any amounts enforceable as assessments pursuant to subsection 1 of NRS 116.3116 that become due during the pendency of foreclosure mediation pursuant to NRS 107.086, other than past due obligations as described in subsection 10 of NRS 107.086.]~~

Sec. 10. Section 8.5 of Senate Bill 306 of this session is hereby amended to read as follows:

Sec. 8.5. Chapter 657 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A bank, credit union, savings bank, savings and loan association, thrift company or other financial institution which is licensed, registered or otherwise authorized to do business in this State and which is the mortgagee or beneficiary of a deed of trust under a residential mortgage loan shall provide to the Division of Financial Institutions the name, street address and any other contact information of a person to whom ~~†~~

~~—(a) A borrower or a representative of a borrower must send any document, record or notification necessary to facilitate a mediation conducted pursuant to NRS 40.437 or 107.086.~~

~~—(b) A] a~~ unit-owners’ association must send any notice required to be given pursuant to NRS 116.3116 to 116.31168, inclusive.

2. The Division of Financial Institutions shall maintain on its Internet website the information provided to the Division pursuant to subsection 1 and provide a prominent display of, or a link to, the information described in subsection 1, on the home page of its Internet website.

3. As used in this section ~~†~~

~~—(a) “Borrower” means a person who is a mortgagor or grantor of a deed of trust under a residential mortgage loan.~~

~~—(b) “Residential] , “residential~~ mortgage loan” means a loan which is primarily for personal, family or household use and which is secured by a mortgage or deed of trust on owner-occupied housing as defined in NRS ~~[107.086.]~~ **107.080.**



1 **Sec. 10.5.** If the Court Administrator determines that money in
2 the Account for Foreclosure Mediation created by NRS 107.080 is
3 not sufficient to support the mediation process set forth in NRS
4 107.086, as amended by section 2.5 of this act, and the mediation
5 process set forth in section 1 of this act, the Court Administrator
6 may submit to the Interim Finance Committee a request for an
7 allocation from the Contingency Account created by NRS 353.266
8 for deposit in the Account for Foreclosure Mediation for such
9 purpose.

10 **Sec. 11.** Any balance remaining in the Account for
11 Foreclosure Mediation created by NRS 107.080 that has not been
12 committed for expenditure before June 30, 2017, must be reverted to
13 the State General Fund.

14 **Sec. 12.** NRS 40.437 and 107.086 are hereby repealed.

15 **Sec. 13.** 1. This section and sections 2.5, 8.5, 10.5 and 11 of
16 this act become effective upon passage and approval.

17 2. Section 1 of this act becomes effective upon passage and
18 approval and expires by limitation on June 30, 2017.

19 3. Sections 1.5, 2, 3 to 8, inclusive, 9, 10 and 12 of this act
20 become effective on June 30, 2017.

21 4. Section 10.5 of this act expires by limitation on June 30,
22 2017.

TEXT OF REPEALED SECTIONS

40.437 Additional requirements for action affecting owner-occupied housing; Notice; form; election of mediation; rules concerning mediation; applicability.

1. A civil action for a foreclosure sale pursuant to NRS 40.430 affecting owner-occupied housing that is commenced in a court of competent jurisdiction on or before December 1, 2016, is subject to the provisions of this section.

2. In a civil action described in subsection 1:

(a) The copy of the complaint served on the mortgagor must include a separate document containing:

(1) Contact information which the mortgagor may use to reach a person with authority to negotiate a loan modification on behalf of the plaintiff;

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



* S B 5 1 2 R 2 *

(3) A notice provided by the Mediation Administrator indicating that the mortgagor has the right to seek mediation pursuant to this section; and

(4) A form upon which the mortgagor may indicate an election to enter into mediation or to waive mediation pursuant to this section and one envelope addressed to the plaintiff and one envelope addressed to the Mediation Administrator, which the mortgagor may use to comply with the provisions of subsection 3; and

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

3. The mortgagor shall, not later than the date on which an answer to the complaint is due or December 31, 2016, whichever is earlier, complete the form required by subparagraph (4) of paragraph (a) of subsection 2 and file the form with the court and return a copy of the form to the plaintiff by certified mail, return receipt requested. If the mortgagor indicates on the form an election to enter into mediation, the plaintiff shall notify any person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the election of the mortgagor to enter into mediation and file the form with the Mediation Administrator, who shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. The judicial foreclosure action must be stayed until the completion of the mediation. If the mortgagor indicates on the form an election to waive mediation or fails to file the form with the court and return a copy of the form to the plaintiff as required by this subsection, no mediation is required in the action.

4. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 11 of NRS 107.086. The plaintiff or a representative, and the mortgagor or his or her representative, shall attend the mediation. If the plaintiff is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the plaintiff or have access at all times during the mediation to a person with such authority.

5. If the plaintiff or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not have the authority or access to a person with the authority required by subsection 4, the mediator shall prepare and submit to the Mediation Administrator and the court a petition and recommendation concerning the imposition of sanctions against the plaintiff or the representative. The court may issue an order imposing such sanctions against the plaintiff or the representative as



* S B 5 1 2 R 2 *

the court determines appropriate, including, without limitation, requiring a loan modification in the manner determined proper by the court.

6. If the mortgagor elected to enter into mediation and fails to attend the mediation, no mediation is required and the judicial foreclosure action must proceed as if the mortgagor had not elected to enter into mediation.

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

8. The rules adopted by the Supreme Court pursuant to subsection 11 of NRS 107.086 apply to a mediation conducted pursuant to this section, and the Supreme Court may adopt any additional rules necessary to carry out the provisions of this section.

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

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

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

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

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

12. As used in this section:

(a) "Mediation Administrator" has the meaning ascribed to it in NRS 107.086.

(b) "Noncommercial lender" has the meaning ascribed to it in NRS 107.086.

(c) "Owner-occupied housing" has the meaning ascribed to it in NRS 107.086.

107.086 Additional requirements for sale of owner-occupied housing; Notice; form; enrollment in mediation; election to waive mediation; adoption of rules concerning mediation; applicability.

1. Except as otherwise provided in this subsection, in addition to the requirements of NRS 107.085, the exercise of the power of



sale pursuant to NRS 107.080 with respect to any trust agreement which concerns owner-occupied housing and for which a notice of default and election to sell is mailed on or before December 1, 2016, to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080 is subject to the provisions of this section. The provisions of this section do not apply to the exercise of the power of sale if the notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 includes an affidavit and a certification indicating that, pursuant to NRS 107.130, an election has been made to use the expedited procedure for the exercise of the power of sale with respect to abandoned residential property.

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

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

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

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

(3) A notice provided by the Mediation Administrator indicating that the grantor or the person who holds the title of record will be enrolled to participate in mediation pursuant to this section if he or she pays to the Mediation Administrator his or her share of the fee established pursuant to subsection 11; and

(4) A form upon which the grantor or the person who holds the title of record may indicate an election to waive mediation pursuant to this section and one envelope addressed to the trustee and one envelope addressed to the Mediation Administrator, which the grantor or the person who holds the title of record may use to comply with the provisions of subsection 3;

(b) In addition to including the information described in paragraph (a) with the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080, provides to the grantor or the person who holds the title of record the information described in paragraph (a) concurrently with, but separately from, the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080;

(c) Serves a copy of the notice upon the Mediation Administrator; and



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

(1) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 4 or 7 which provides that no mediation is required in the matter; or

(2) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 8 which provides that mediation has been completed in the matter.

3. If the grantor or the person who holds the title of record elects to waive mediation, he or she shall, not later than 30 days after service of the notice in the manner required by NRS 107.080 or December 31, 2016, whichever is earlier, complete the form required by subparagraph (4) of paragraph (a) of subsection 2 and return the form to the trustee and the Mediation Administrator by certified mail, return receipt requested. If the grantor or the person who holds the title of record does not elect to waive mediation, he or she shall, not later than 30 days after the service of the notice in the manner required by NRS 107.080 or December 31, 2016, whichever is earlier, pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11. Upon receipt of the share of the fee established pursuant to subsection 11 owed by the grantor or the person who holds title of record, the Mediation Administrator shall notify the trustee, by certified mail, return receipt requested, of the enrollment of the grantor or person who holds the title of record to participate in mediation pursuant to this section and shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. The trustee shall notify the beneficiary of the deed of trust and every other person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the enrollment of the grantor or the person who holds the title of record to participate in mediation. If the grantor or person who holds the title of record is enrolled to participate in mediation pursuant to this section, no further action may be taken to exercise the power of sale until the completion of the mediation.

4. If the grantor or the person who holds the title of record indicates on the form described in subparagraph (4) of paragraph (a) of subsection 2 an election to waive mediation or fails to pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11, as required by subsection 3, the Mediation Administrator shall, not later than 60 days after the Mediation Administrator receives the form indicating an election to waive mediation or 90 days after the service of the notice in the manner required by NRS 107.080, whichever is earlier, provide to the trustee a certificate which provides that no mediation is required in the matter.



* S B 5 1 2 R 2 *

5. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 11. The beneficiary of the deed of trust or a representative shall attend the mediation. The grantor or his or her representative, or the person who holds the title of record or his or her representative, shall attend the mediation. The beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note. If the beneficiary of the deed of trust is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust or have access at all times during the mediation to a person with such authority.

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

7. If the grantor or the person who holds the title of record is enrolled to participate in mediation pursuant to this section but fails to attend the mediation, the Mediation Administrator shall, not later than 30 days after the scheduled mediation, provide to the trustee a certificate which states that no mediation is required in the matter.

8. If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification, the mediator shall prepare and submit to the Mediation Administrator a recommendation that the matter be terminated. The Mediation Administrator shall, not later than 30 days after submittal of the mediator's recommendation that the matter be terminated, provide to the trustee a certificate which provides that the mediation required by this section has been completed in the matter.

9. Upon receipt of the certificate provided to the trustee by the Mediation Administrator pursuant to subsection 4, 7 or 8, if the property is located within a common-interest community, the trustee shall notify the unit-owners' association organized under NRS 116.3101 of the existence of the certificate.



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10. During the pendency of any mediation pursuant to this section, a unit's owner must continue to pay any obligation, other than any past due obligation.

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

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

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

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

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

(e) Establishing a total fee of not more than \$400 that may be charged and collected by the Mediation Administrator for mediation services pursuant to this section and providing that the responsibility for payment of the fee must be shared equally by the parties to the mediation.

12. Except as otherwise provided in subsection 14, the provisions of this section do not apply if:

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

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

13. A noncommercial lender is not excluded from the application of this section.

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

15. As used in this section:

(a) "Common-interest community" has the meaning ascribed to it in NRS 116.021.

(b) "Mediation Administrator" means the entity so designated pursuant to subsection 11.



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

(d) "Obligation" has the meaning ascribed to it in NRS 116.310313.

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

(f) "Unit's owner" has the meaning ascribed to it in NRS 116.095.

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