

ASSEMBLY BILL NO. 149—ASSEMBLYMEN BUCKLEY, OCEGUERA, CONKLIN, LESLIE, SMITH; AIZLEY, ANDERSON, ATKINSON, BOBZIEN, CLABORN, DENIS, DONDERO LOOP, GOICOECHEA, GRADY, HAMBRICK, HARDY, HOGAN, HORNE, KIHUEN, KIRKPATRICK, KOIVISTO, MANENDO, MASTROLUCA, MCCLAIN, MUNFORD, OHRENSCHALL, PARNELL, PIERCE, SEGERBLOM, SETTELMAYER, SPIEGEL AND STEWART

FEBRUARY 9, 2009

JOINT SPONSORS: SENATORS HORSFORD; AND COFFIN

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing foreclosures on property. (BDR 9-824)

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 foreclosures on property; providing for mediation under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law sets forth procedures governing foreclosures on real property upon
2 default. A trustee under a deed of trust has the power to sell the property to which
3 the deed of trust applies, subject to certain restrictions. (NRS 107.080, 107.085)
4 **Section 1** of this bill establishes additional restrictions on the trustee's power of
5 sale with respect to owner-occupied housing by providing a homeowner with the
6 right to request mediation under which he may receive a loan modification. Once a
7 homeowner requests mediation, no further action may be taken to exercise the
8 power of sale until the completion of the mediation. Each mediation must be
9 conducted by a senior justice, judge, hearing master or other designee pursuant to
10 rules adopted by the Nevada Supreme Court or an entity designated by the Nevada
11 Supreme Court. In addition, **section 4** of this bill authorizes the Nevada Supreme
12 Court to adopt rules providing for voluntary mediation with respect to a
13 homeowner who is not in default but is at risk of default.



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

Section 1. Chapter 107 of NRS is hereby amended by adding
thereto a new section to read as follows:

*1. 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 is
subject to the provisions of this section.*

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

*(a) Includes in the notice required by subsection 2 of
NRS 107.085:*

*(1) Contact information which the grantor 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; and*

*(3) A form upon which the grantor may indicate his
election to enter into mediation or to waive mediation and one
envelope addressed to the trustee and one envelope addressed to
the Mediation Administrator, which the grantor may use to comply
with the provisions of subsection 3;*

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

*(c) 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 3 or 6 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 7 which provides that
mediation has been completed in the matter.*

*3. The grantor shall, not later than 30 days after service of
the notice upon him in the manner required by NRS 107.085,
complete the form required by subparagraph (3) of paragraph (a)
of subsection 2 and return the form to the trustee by certified mail,
return receipt requested. If the grantor indicates on the form his
election to enter into 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*



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1 receipt requested, of the election of the grantor to enter into
2 mediation and file a copy of the form with the Mediation
3 Administrator, who shall assign the matter to a senior justice,
4 judge, hearing master or other designee and schedule the matter
5 for mediation. No further action may be taken to exercise the
6 power of sale until the completion of the mediation. If the grantor
7 indicates on the form his election to waive mediation or fails to
8 return the form to the trustee as required by this subsection, the
9 trustee shall execute an affidavit attesting to that fact under
10 penalty of perjury and serve a copy of the affidavit, together with
11 the waiver of mediation by the grantor or proof of service on the
12 grantor of the notice required by subsection 2 of this section and
13 subsection 2 of NRS 107.080, upon the Mediation Administrator.
14 Upon receipt of the affidavit and the waiver or proof of service, the
15 Mediation Administrator shall provide to the trustee a certificate
16 which provides that no mediation is required in the matter.

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

30 5. If the beneficiary of the deed of trust or his representative
31 fails to attend the mediation, does not bring to the mediation each
32 document required by subsection 4 or does not have the authority
33 or access to a person with the authority required by subsection 4,
34 the district court of the county in which the trust property, or some
35 part thereof, is situated may issue an order requiring a loan
36 modification in the manner determined proper by the court.

37 6. If the grantor fails to attend the mediation, the Mediation
38 Administrator shall provide to the trustee a certificate which states
39 that no mediation is required in the matter.

40 7. If the mediator determines that the parties, while acting in
41 good faith, are not able to agree to a loan modification, the district
42 court of the county in which the trust property, or some part
43 thereof, is situated shall issue an order dismissing the matter and
44 the Mediation Administrator shall provide to the trustee a



1 *certificate which provides that the mediation required by this*
2 *section has been completed in the matter.*

3 8. *The Supreme Court or an entity designated by the Supreme*
4 *Court shall adopt rules necessary to carry out the provisions of*
5 *this section. The rules must, without limitation, include*
6 *provisions:*

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

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

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

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

19 9. *The provisions of this section do not apply if:*

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

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

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

31 11. *As used in this section:*

32 (a) *“Mediation Administrator” means the entity so designated*
33 *pursuant to subsection 8.*

34 (b) *“Noncommercial lender” means a lender which makes a*
35 *loan secured by a deed of trust on owner-occupied housing and*
36 *which is not a bank, financial institution or other entity regulated*
37 *pursuant to title 55 or 56 of NRS.*

38 (c) *“Owner-occupied housing” means housing that is occupied*
39 *by the owner as his primary residence. The term does not include*
40 *any time share or other property regulated under chapter 119A of*
41 *NRS.*

42 **Sec. 2.** NRS 107.080 is hereby amended to read as follows:

43 107.080 1. Except as otherwise provided in NRS 107.085,
44 *and section 1 of this act*, if any transfer in trust of any estate in real
45 property is made after March 29, 1927, to secure the performance of



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1 an obligation or the payment of any debt, a power of sale is hereby
2 conferred upon the trustee to be exercised after a breach of the
3 obligation for which the transfer is security.

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

5 (a) In the case of any trust agreement coming into force:

6 (1) On or after July 1, 1949, and before July 1, 1957, the
7 grantor, or his successor in interest, a beneficiary under a
8 subordinate deed of trust or any other person who has a subordinate
9 lien or encumbrance of record on the property, has for a period of 15
10 days, computed as prescribed in subsection 3, failed to make good
11 the deficiency in performance or payment; or

12 (2) On or after July 1, 1957, the grantor, or his successor in
13 interest, a beneficiary under a subordinate deed of trust or any other
14 person who has a subordinate lien or encumbrance of record on the
15 property, has for a period of 35 days, computed as prescribed in
16 subsection 3, failed to make good the deficiency in performance or
17 payment;

18 (b) The beneficiary, the successor in interest of the beneficiary
19 or the trustee first executes and causes to be recorded in the office of
20 the recorder of the county wherein the trust property, or some part
21 thereof, is situated a notice of the breach and of his election to sell
22 or cause to be sold the property to satisfy the obligation; and

23 (c) Not less than 3 months have elapsed after the recording of
24 the notice.

25 3. The 15- or 35-day period provided in paragraph (a) of
26 subsection 2 commences on the first day following the day upon
27 which the notice of default and election to sell is recorded in the
28 office of the county recorder of the county in which the property is
29 located and a copy of the notice of default and election to sell is
30 mailed by registered or certified mail, return receipt requested and
31 with postage prepaid to the grantor, and to the person who holds the
32 title of record on the date the notice of default and election to sell is
33 recorded, at their respective addresses, if known, otherwise to the
34 address of the trust property. The notice of default and election to
35 sell must describe the deficiency in performance or payment and
36 may contain a notice of intent to declare the entire unpaid balance
37 due if acceleration is permitted by the obligation secured by the
38 deed of trust, but acceleration must not occur if the deficiency in
39 performance or payment is made good and any costs, fees and
40 expenses incident to the preparation or recordation of the notice and
41 incident to the making good of the deficiency in performance or
42 payment are paid within the time specified in subsection 2.

43 4. The trustee, or other person authorized to make the sale
44 under the terms of the trust deed or transfer in trust, shall, after
45 expiration of the 3-month period following the recording of the



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1 notice of breach and election to sell, and before the making of
2 the sale, give notice of the time and place thereof by recording the
3 notice of sale and by:

4 (a) Providing the notice to each trustor and any other person
5 entitled to notice pursuant to this section by personal service or by
6 mailing the notice by registered or certified mail to the last known
7 address of the trustor and any other person entitled to such notice
8 pursuant to this section;

9 (b) Posting a similar notice particularly describing the property,
10 for 20 days successively, in three public places of the township or
11 city where the property is situated and where the property is to be
12 sold; and

13 (c) Publishing a copy of the notice three times, once each week
14 for 3 consecutive weeks, in a newspaper of general circulation in the
15 county where the property is situated.

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

22 (a) The trustee or other person authorized to make the sale does
23 not substantially comply with the provisions of this section;

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

41 **Sec. 3.** NRS 107.085 is hereby amended to read as follows:

42 107.085 1. With regard to a transfer in trust of an estate in
43 real property to secure the performance of an obligation or the
44 payment of a debt, the provisions of this section apply to the
45 exercise of a power of sale pursuant to NRS 107.080 only if:



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(a) The trust agreement becomes effective on or after October 1, 2003 ~~[-and~~
~~—(b) On]~~, *and, on* the date the trust agreement is made, the trust agreement is subject to the provisions of § 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1602(aa), and the regulations adopted by the Board of Governors of the Federal Reserve System pursuant thereto, including, without limitation, 12 C.F.R. § 226.32 ~~[-]~~; *or*

(b) The trust agreement concerns owner-occupied housing as defined in section 1 of this act.

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

(a) In the manner required by subsection 3, not later than 60 days before the date of the sale, the trustee causes to be served upon the grantor a notice in the form described in subsection 3; and

(b) If an action is filed in a court of competent jurisdiction claiming an unfair lending practice in connection with the trust agreement, the date of the sale is not less than 30 days after the date the most recent such action is filed.

3. The notice described in subsection 2 must be:

(a) Served upon the grantor by personal service or, if personal service cannot be timely effected, in such other manner as a court determines is reasonably calculated to afford notice to the grantor; and

(b) In substantially the following form, with the applicable telephone numbers and mailing addresses provided on the notice and a copy of the promissory note attached to the notice:

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME!

Your home loan is being foreclosed. In 60 days your home will be sold and you will be forced to move. For help, call:

Consumer Credit Counseling _____

The Attorney General _____

The Division of Financial Institutions _____

Legal Services _____

Your Lender _____

Nevada Fair Housing Center _____

4. This section does not prohibit a judicial foreclosure.

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



1 **Sec. 4.** Chapter 2 of NRS is hereby amended by adding thereto
2 a new section to read as follows:

3 *The Supreme Court may adopt rules providing for voluntary*
4 *mediation with respect to a homeowner who is not in default but is*
5 *at risk of default.*

6 **Sec. 5.** NRS 459.646 is hereby amended to read as follows:

7 459.646 1. A person who, without participating in the
8 management of a parcel of real property, holds or is the beneficiary
9 of evidence of title to the property primarily to protect a security
10 interest in the property is not a responsible party with respect to a
11 release of a hazardous substance on the property if:

12 (a) The owner of the property is relieved from liability under
13 NRS 459.610 to 459.658, inclusive, with respect to the release;

14 (b) The owner or holder of evidence of title did not cause the
15 release; and

16 (c) The owner or holder of evidence of title does not participate
17 actively in decisions concerning hazardous substances on the
18 property.

19 2. A lender to a prospective purchaser who has filed an
20 application to participate in the program pursuant to NRS 459.634
21 or a lender who forecloses his security interest in property pursuant
22 to NRS 40.430 to 40.450, inclusive, or 107.080 to 107.100,
23 inclusive, *and section 1 of this act*, and within a reasonable period
24 after the foreclosure, not to exceed 2 years, sells, transfers or
25 conveys the property to a prospective purchaser who has filed an
26 application to participate in the program pursuant to NRS 459.634 is
27 not a responsible party solely as a result of:

28 (a) Foreclosing a security interest in the property; or

29 (b) Making a loan to the prospective purchaser if the loan:

30 (1) Is to be used for acquiring property or removing or
31 remediating hazardous substances on property; and

32 (2) Is secured by the property that is to be acquired or on
33 which is located the hazardous substances that are to be removed or
34 remediated.

35 **Sec. 6.** This act becomes effective on July 1, 2009.

