

Amendment No. 472

Assembly Amendment to Assembly Bill No. 300

(BDR 9-668)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

AMI/BAW



Date: 4/18/2011

A.B. No. 300—Revises provisions governing foreclosures on property.
(BDR 9-668)



ASSEMBLY BILL NO. 300—ASSEMBLYMEN FRIERSON, ATKINSON, HORNE, SMITH,
OCEGUERA; BROOKS, BUSTAMANTE ADAMS, CONKLIN, DIAZ,
OHRENSCHALL AND SEGERBLOM

MARCH 17, 2011

JOINT SPONSOR: SENATOR HORSFORD

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing foreclosures on property.
(BDR 9-668)

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 providing for mediation in certain actions for foreclosure; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth procedures governing foreclosures on real property upon default. A trustee under a deed of trust, commonly referred to as a lender, has the power to sell the property to which a deed of trust applies, subject to certain restrictions. (NRS 107.080, 107.085) Existing law sets forth additional restrictions on the lender's power of sale with respect to owner-occupied housing by providing a grantor of a deed of trust or the person who holds the title of record, commonly referred to as a homeowner, with the right to request mediation under which he or she may receive a loan modification. (NRS 107.086)

Sections 7-10 of this bill revise the procedures concerning such a mediation. Specifically, **section 7**: (1) requires a mediator to complete and submit a statement that includes the findings of the mediator; (2) authorizes the homeowner to petition the court for an order imposing sanctions against the lender; and (3) creates a rebuttable presumption that the court will impose sanctions against the lender under certain circumstances which include, without limitation, the failure of the lender to attend the mediation.

Section 8 of this bill authorizes either party to the mediation to petition for judicial review if the party is dissatisfied with the findings ~~for recommendations~~ of the mediator. **Section 9** of this bill requires, under certain circumstances, a foreclosure to take place within 90 days after the specific date by which the homeowner is required to vacate the property pursuant to an agreement reached by the parties to such a mediation. **Section 10** of this bill sets forth certain requirements governing an agreement reached by the parties to such a mediation that authorizes a ~~short sale~~ sale of the property in which the sale price would be insufficient to pay to the lender the entire outstanding balance of the lien upon the trust property and the costs of the sale.

Section 13 of this bill prohibits a lender from assessing any fee to a homeowner for participating in such a mediation or any subsequent court action.

Section 6 of this bill establishes additional duties of the Mediation Administrator, including, without limitation, collecting and compiling statistics on the participation of lenders in such mediations.

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 the provisions set forth as sections 2 to 10, inclusive, of this act.

Sec. 2. *As used in NRS 107.086 and sections 2 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Mediation Administrator” means the entity so designated pursuant to subsection 8 of NRS 107.086.*

Sec. 4. *“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.*

Sec. 5. *“Owner-occupied housing” means housing that is occupied by an owner as the owner’s primary residence. The term does not include any time share or other property regulated under chapter 119A of NRS.*

Sec. 6. 1. *The Mediation Administrator shall collect and compile statistics on the participation of beneficiaries of deeds of trust or their representatives in mediation conducted pursuant to NRS 107.086 and shall document, by beneficiary, information concerning such mediation, including, without limitation:*

(a) The number of mediations in which the beneficiary of the deed of trust or a representative was a participant;

(b) Whether the parties to the mediation reached an agreement ~~if~~ as determined by the mediator; and

(c) Whether the mediator found that the beneficiary of the deed of trust or the representative complied with the requirements of the mediation as set forth in NRS 107.086, including, without limitation, whether the beneficiary or the representative:

(1) Attended the mediation;

(2) Brought the requisite documents to the mediation;

(3) Had authority to negotiate a loan modification or access to a person with the authority required by subsection 4 of NRS 107.086; and

(4) Participated in the mediation in good faith.

2. *The Mediation Administrator shall post the statistics maintained pursuant to subsection 1 on its Internet website.*

Sec. 7. 1. *After the conclusion of the mediation conducted pursuant to NRS 107.086 or if the beneficiary of the deed of trust or a representative fails to attend such a mediation, the mediator shall complete and submit to the Mediation Administrator a statement that includes the findings of the mediator.*

2. *If the statement of the mediator includes a finding by the mediator that the beneficiary of the deed of trust or the representative failed to attend the mediation, failed to participate in the mediation in good faith, did not bring to the mediation each document required by subsection 4 of NRS 107.086 or did not have the authority or access to a person with the authority required by subsection 4 of NRS 107.086 ~~if~~*

~~(a) The~~, the Mediation Administrator shall not issue a certificate to foreclose, ~~and~~

~~(b) No additional late fees or interest on the loan may be assessed to the grantor or the person who holds the title of record.~~

3. The statement of the mediator must document the conduct of the beneficiary of the deed of trust and the representative, if any, and include details concerning the conduct that would be sufficient to enable a judge considering the issue on judicial review to ascertain the circumstances and make a ruling.

4. If the grantor or the person who holds the title of record wishes to pursue sanctions as a result of the conduct of the beneficiary of the deed of trust or the representative, the grantor or the person who holds the title of record may petition the court for an order imposing sanctions against the beneficiary of the deed of trust or the representative.

5. If the court finds that the beneficiary of the deed of trust or the representative failed to attend the mediation, failed to participate in the mediation in good faith, did not bring to the mediation each document required by subsection 4 of NRS 107.086 or did not have the authority or access to a person with the authority required by subsection 4 of NRS 107.086, there is a rebuttable presumption that the court will impose sanctions against the beneficiary of the deed of trust or the representative.

6. In determining whether to impose sanctions against the beneficiary of the deed of trust or the representative, the court shall consider:

(a) Whether the conduct of the beneficiary of the deed of trust or the representative was intentional;

(b) Whether the beneficiary of the deed of trust or the representative has engaged in a pattern of similar conduct;

(c) The record of the beneficiary of the deed of trust or the representative in mediations conducted pursuant to NRS 107.086 as set forth on the Internet website of the Mediation Administrator; and

(d) The pattern, as a whole, of the beneficiary of the deed of trust or the representative with regard to participation in mediations conducted pursuant to NRS 107.086.

7. 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:

(a) Requiring a loan modification ~~in the manner determined proper by the court,~~ if a loan modification was agreed to by the parties to a mediation conducted pursuant to NRS 107.086 and the loan modification is reflected in the statement of the mediator;

(b) Requiring further mediation and requiring the beneficiary of the deed of trust or the representative to pay:

(1) The fee for mediation services described in paragraph (e) of subsection 8 of NRS 107.086 for any subsequent mediation of the grantor or the person who holds the title of record; and

(2) The attorney's fees and costs of the grantor or the person who holds the title of record for any such subsequent mediation; ~~and~~

(c) Monetary sanctions which may include, without limitation ~~the~~ ;

(1) The payment of sums to the grantor or the person who holds the title of record which may be applied by the grantor or the person who holds the title of record to reduce the principal of the loan; and

(2) The interest and fees that accrued on the loan after the date on which the statement of the mediator was submitted to the Mediation Administrator

pursuant to subsection 1 if the statement included any findings described in subsection 2; and

(d) Such other relief as the court deems appropriate.

8. The court shall set forth written findings concerning any order issued by the court pursuant to subsection 7.

Sec. 8. If a party to a mediation conducted pursuant to NRS 107.086 is dissatisfied with the findings ~~for recommendations~~ of the mediator, the party may file a petition for judicial review. The court shall:

1. Review the statement of the mediator required pursuant to section 7 of this act and any briefs of the parties to the mediation;

2. Hold a hearing at which the parties to the mediation may present evidence; and

3. Order such relief as may be appropriate.

Sec. 9. If the parties to a mediation conducted pursuant to NRS 107.086 agree that the grantor or the person who holds the title of record is required to vacate the property as of a date certain and the Mediation Administrator has issued a certificate to foreclose, foreclosure must take place not later than 90 days after the date indicated in the agreement as the date by which the grantor or the person who holds the title of record is required to vacate the property ~~if~~ unless otherwise agreed to by the parties to the mediation.

Sec. 10. 1. If the parties to a mediation conducted pursuant to NRS 107.086 agree to a ~~short~~ sale ~~if~~ in which the sale price would be insufficient to pay to the beneficiary of the deed of trust the entire outstanding balance of the lien upon the trust property and the costs of the sale, the statement of the mediator required pursuant to section 7 of this act must include, without limitation:

(a) The date by which the beneficiary of the deed of trust will provide the grantor or the person who holds the title of record with ~~the short sale amount agreed upon;~~ an agreed-upon price at which the property will be listed for sale, which must include the costs of the sale;

(b) The date by which the property will be ~~placed on the market;~~ listed for sale;

(c) A specified period during which the property will be ~~on the market;~~ listed for sale; and

(d) A provision indicating that the beneficiary of the deed of trust has a specified period within which to decide whether to accept an offer to purchase the property. The specified period must not be more than ~~30~~ 60 days after the date on which such an offer is communicated to the beneficiary of the deed of trust.

2. Any ~~option for a short sale agreed to by the parties to the mediation;~~ agreement made pursuant to this section must include a release of the deficiency, if any, owed by the grantor or the person who holds the title of record.

3. If the ~~short sale~~ close of escrow is not completed within the period allowed by the agreement ~~if~~ after the acceptance of an offer to purchase the property, the beneficiary of the deed of trust may submit a request to the Mediation Administrator to issue a certificate to foreclose ~~if~~ unless such failure to close escrow is a result of the action or inaction of the beneficiary of the deed of trust.

4. If the grantor or the person who holds the title of record believes that ~~the~~ :

(a) The beneficiary of the deed of trust failed to comply with the terms of the agreement for the ~~short~~ sale, the grantor or the person who holds the title of record may file a petition for judicial review within ~~15~~ 30 days after the expiration of the period set forth in ~~the agreement.~~

~~4. As used in this section, "short sale" means sale of property by the grantor or the person who holds the title of record for an amount less than the outstanding balance owed on the loan secured by a deed of trust on such property, where, before the sale, the beneficiary of the deed of trust agrees to accept less than the outstanding balance on the loan in full or partial satisfaction of the loan and the proceeds of the sale are paid to the beneficiary of the deed of trust; the statement of the mediator pursuant to paragraph (d) of subsection 1; or~~
(b) Escrow did not close because of the action or inaction of the beneficiary of the deed of trust, the grantor or the person who holds the title of record may file a petition for judicial review within 30 days after the date on which escrow was required to close.

Sec. 11. NRS 107.080 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

3. The 15- or 35-day period provided in paragraph (a) of subsection 2, or the period provided in paragraph (b) of subsection 2, commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor or, to the person who holds the title of record on the date the notice of default and election to sell is recorded, and, if the property is operated as a facility licensed under chapter 449 of NRS, to the State Board of Health, at their respective

addresses, if known, otherwise to the address of the trust property. The notice of default and election to sell must:

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

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

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

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

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

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

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

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

(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section or any applicable provision of NRS 107.086 and 107.087 ~~and~~ **and sections 2 to 10, inclusive, of this act;**

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

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

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

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

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

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

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

8 9. If the successful bidder fails to record the trustee's deed upon sale pursuant
9 to paragraph (b) of subsection 8, the successful bidder:

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

13 (b) Is liable in a civil action for any actual damages caused by the failure to
14 comply with the provisions of subsection 8 and for reasonable attorney's fees and
15 the costs of bringing the action.

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

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

19 (b) A fee of \$50 for deposit in the Account for Foreclosure Mediation, which is
20 hereby created in the State General Fund. The Account must be administered by the
21 Court Administrator, and the money in the Account may be expended only for the
22 purpose of supporting a program of foreclosure mediation established by Supreme
23 Court Rule.

24 ➤ The fees collected pursuant to this subsection must be paid over to the county
25 treasurer by the county recorder on or before the fifth day of each month for the
26 preceding calendar month, and, except as otherwise provided in this subsection,
27 must be placed to the credit of the State General Fund or the Account as prescribed
28 pursuant to this subsection. The county recorder may direct that 1.5 percent of the
29 fees collected by the county recorder be transferred into a special account for use by
30 the office of the county recorder. The county treasurer shall, on or before the 15th
31 day of each month, remit the fees deposited by the county recorder pursuant to this
32 subsection to the State Controller for credit to the State General Fund or the
33 Account as prescribed in this subsection.

34 11. The beneficiary, the successor in interest of the beneficiary or the trustee
35 who causes to be recorded the notice of default and election to sell shall not charge
36 the grantor or the successor in interest of the grantor any portion of any fee required
37 to be paid pursuant to subsection 10.

38 12. As used in this section, "residential foreclosure" means the sale of a single
39 family residence under a power of sale granted by this section. As used in this
40 subsection, "single family residence":

41 (a) Means a structure that is comprised of not more than four units.

42 (b) Does not include any time share or other property regulated under chapter
43 119A of NRS.

44 **Sec. 12.** NRS 107.085 is hereby amended to read as follows:

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

49 (a) The trust agreement becomes effective on or after October 1, 2003, and, on
50 the date the trust agreement is made, the trust agreement is subject to the provisions
51 of § 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. §
52 1602(aa), and the regulations adopted by the Board of Governors of the Federal

1 Reserve System pursuant thereto, including, without limitation, 12 C.F.R. § 226.32;
2 or

3 (b) The trust agreement concerns owner-occupied housing as defined in ~~NRS~~
4 ~~107.086~~ **section 5 of this act.**

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

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

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

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

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

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

19 (2) If the trust agreement concerns owner-occupied housing as defined in
20 ~~NRS 107.086~~ **section 5 of this act:**

21 (I) By personal service;

22 (II) If the grantor or the person who holds the title of record is absent
23 from his or her place of residence or from his or her usual place of business, by
24 leaving a copy with a person of suitable age and discretion at either place and
25 mailing a copy to the grantor or the person who holds the title of record at his or her
26 place of residence or place of business; or

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

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

35
36 **NOTICE**
37 **YOU ARE IN DANGER OF LOSING YOUR HOME!**

38
39 Your home loan is being foreclosed. In not less than 60 days your home will be
40 sold and you will be forced to move. For help, call:

41
42 Consumer Credit Counseling _____
43 The Attorney General _____
44 The Division of Financial Institutions _____
45 Legal Services _____
46 Your Lender _____
47 Nevada Fair Housing Center _____
48

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

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

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

Sec. 13. NRS 107.086 is hereby amended to read as follows:

107.086 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 ~~and~~ *and sections 2 to 10, inclusive, of this act.*

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; and

(3) A form upon which the grantor or the person who holds the title of record may indicate an 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 or the person who holds the title of record 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 ~~4~~ 5 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 ~~4~~ 6 which provides that mediation has been completed in the matter.

3. The grantor or the person who holds the title of record shall, not later than 30 days after service of the notice in the manner required by NRS 107.080, 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 or the person who holds the title of record indicates on the form an 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 receipt requested, of the election of the grantor or the person who holds the title of record 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. No further action may be taken to exercise the power of sale until the completion of the mediation. If the grantor or the person who holds the title of record indicates on the form an election to waive mediation or fails to return the form to the trustee as required by this subsection, the trustee shall execute an affidavit attesting to that fact under penalty of perjury and serve a copy of the affidavit, together with the waiver of mediation by the grantor or the person who holds the title of record, or proof of service on the grantor or the person who holds the title of record of the notice required by subsection 2 of this section and subsection 3 of NRS 107.080, upon the Mediation Administrator. Upon receipt of the affidavit and the waiver or proof of service, the

1 Mediation Administrator shall provide to the trustee a certificate which provides
2 that no mediation is required in the matter.

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

16 ~~5. If the beneficiary of the deed of trust or the representative fails to attend~~
17 ~~the mediation, fails to participate in the mediation in good faith or does not bring to~~
18 ~~the mediation each document required by subsection 4 or does not have the~~
19 ~~authority or access to a person with the authority required by subsection 4, the~~
20 ~~mediator shall prepare and submit to the Mediation Administrator a petition and~~
21 ~~recommendation concerning the imposition of sanctions against the beneficiary of~~
22 ~~the deed of trust or the representative. The court may issue an order imposing such~~
23 ~~sanctions against the beneficiary of the deed of trust or the representative as the~~
24 ~~court determines appropriate, including, without limitation, requiring a loan~~
25 ~~modification in the manner determined proper by the court.~~

26 ~~—6—~~ If the grantor or the person who holds the title of record elected to enter
27 into mediation and fails to attend the mediation, the Mediation Administrator shall
28 provide to the trustee a certificate which states that no mediation is required in the
29 matter.

30 ~~7~~ 6. If the mediator determines that the parties, while acting in good faith,
31 are not able to agree to a loan modification, the mediator shall prepare and submit
32 to the Mediation Administrator a recommendation that the matter be terminated.
33 The Mediation Administrator shall provide to the trustee a certificate which
34 provides that the mediation required by this section has been completed in the
35 matter.

36 *7. A beneficiary of the deed of trust or a representative shall not assess any*
37 *fee, however described, to the grantor or the person who holds the title of record*
38 *for participating in the mediation or any subsequent court action, unless*
39 *specifically ordered by a court.*

40 8. The Supreme Court shall adopt rules necessary to carry out the provisions
41 of this section ~~and sections 2 to 10, inclusive, of this act~~. The rules must,
42 without limitation, include provisions:

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

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

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

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

52 (e) Establishing a total fee of not more than \$400 that may be charged and
53 collected by the Mediation Administrator for mediation services pursuant to this

section and providing that , *except as otherwise provided in section 7 of this act*, the responsibility for payment of the fee must be shared equally by the parties to the mediation.

9. Except as otherwise provided in subsection 11, the provisions of this section *and sections 2 to 10, inclusive, of this act* 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.

10. A noncommercial lender is not excluded from the application of this section ~~H~~ *and sections 2 to 10, inclusive, of this act*.

11. The Mediation Administrator and each mediator who acts pursuant to this section *and sections 2 to 10, inclusive, of this act* in good faith and without gross negligence are immune from civil liability for those acts.

~~[H2.—As used in this section:~~

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

~~(b) “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.~~

~~(c) “Owner occupied housing” means housing that is occupied by an owner as the owner’s primary residence. The term does not include any time share or other property regulated under chapter 119A of NRS.]~~

Sec. 14. NRS 107.095 is hereby amended to read as follows:

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

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

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

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

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

(2) In the case of any trust agreement which concerns owner-occupied housing as defined in ~~[NRS 107.086.]~~ *section 5 of this act*, the expiration of the period described in paragraph (b) of subsection 2 of NRS 107.080; or

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

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

1 **Sec. 15.** This act becomes effective on July 1, 2011.