

Amendment No. 696

Senate Amendment to Assembly Bill No. 388 First Reprint (BDR 9-568)

Proposed by: Senate Committee on Judiciary

Amends: Summary: No Title: Yes 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.



ASSEMBLY BILL NO. 388—ASSEMBLYMAN OHRENSCHALL

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property. (BDR 9-568)

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

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

AN ACT relating to real property; revising provisions governing the exercise of the power of sale under a deed of trust concerning owner-occupied real property; ~~providing civil remedies for failure to comply with certain provisions governing the exercise of the power of sale under a deed of trust concerning owner-occupied real property; providing civil penalties;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the trustee under a deed of trust concerning owner-occupied housing has the power to sell the property to which the deed of trust applies, subject to certain restrictions. (NRS 107.080, 107.085, 107.086) ~~Sections 4-22 of this bill establish additional restrictions on the trustee's power of sale with respect to owner-occupied housing which are based on Senate Bill No. 729 of the current session of the California Legislature, as amended. Section 22 of this bill provides that these additional restrictions apply only to a notice of default and election to sell which is recorded on or after July 1, 2011.~~

~~Section 13 prohibits the recording of a notice of default and election to sell unless reasonable and good faith efforts have been made to evaluate the borrower for all available alternatives to the exercise of the trustee's power of sale. Section 14 prohibits the recording of a notice of default and election to sell until the trustee, beneficiary or authorized agent complies with certain requirements regarding contact with, or attempts to contact, the borrower. Under section 15, if an eligible borrower requests, either orally or in writing, a loan modification, a notice of default and election to sell may not be recorded unless the borrower's application has been reviewed in good faith and a decision has been rendered on that application. Sections 17 and 19 require a declaration of compliance to be recorded with the notice of default and election to sell and section 17 provides a form for that declaration. Section 18: (1) authorizes a borrower to bring a civil action to enjoin a trustee's sale, to void a trustee's sale and to recover a specified amount of damages and reasonable attorney's fee and costs under certain circumstances; (2) authorizes the Attorney General to obtain civil penalties for violations of the provisions of this bill; and (3) provides that a violation of the provisions of this bill by a person which is licensed in this State is deemed to be a violation of the law governing that license.~~

~~Additionally, section 19: (1) requires a life of loan accounting containing certain information to be included with the copy of the notice of default and election to sell which is mailed to the borrower; and (2) prohibits the recording of a notice of sale if the borrower has entered into a contract to sell the property which has been approved by the lender or the borrower has requested approval of such a contract but the lender has not yet approved or disapproved the sale.~~ ***One such restriction: (1) requires the trustee under the deed of***

trust to include a form to request mediation with the notice of default and election to sell which is mailed to the grantor of the deed of trust or the person who holds the title of record; and (2) authorizes the grantor of the deed of trust or the person who holds the title of record to request mediation under rules adopted by the Supreme Court. (NRS 107.086) Section 20.7 of this bill requires the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record to include a notice provided by the entity designated to administer the Foreclosure Mediation Program which states that the grantor or the person who holds the title of record has a right to seek foreclosure mediation in the Foreclosure Mediation Program.

Under existing law, another restriction on the exercise of the trustee's power of sale prohibits the trustee from exercising the power of sale unless, not later than 60 days before the date of the sale, the trustee causes a notice to be served on the grantor or the person who holds the title of record which contains the telephone numbers of certain agencies which may provide assistance to the grantor or the person who holds the title of record. (NRS 107.085) Section 20.3 of this bill amends this notice to include: (1) a statement that the person receiving the notice may have a right to participate in the State of Nevada Foreclosure Mediation Program if the time to request mediation has not expired; (2) the telephone number of the State of Nevada Foreclosure Mediation Program; and (3) the telephone number of the Division of Mortgage Lending of the Department of Business and Industry.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. ~~{Chapter 107 of NRS is hereby amended by adding thereto the provisions set forth as sections 5 to 18, inclusive, of this act.}~~ (Deleted by amendment.)

Sec. 5. ~~{As used in sections 5 to 18, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 6 to 11, inclusive, of this act have the meanings ascribed to them in those sections.}~~ (Deleted by amendment.)

Sec. 6. ~~{“Authorized agent” means an agent designated by a trustee or beneficiary to act on behalf of the trustee or beneficiary.}~~ (Deleted by amendment.)

Sec. 7. ~~{“Beneficiary” means the beneficiary of a deed of trust which concerns owner-occupied housing.}~~ (Deleted by amendment.)

Sec. 8. ~~{“Borrower” means the grantor of a deed of trust which concerns owner-occupied housing or the person who holds the title of record.}~~ (Deleted by amendment.)

Sec. 9. ~~{“Mortgage servicer” means a person responsible for the day-to-day management of a mortgage loan account, including, without limitation, collecting and crediting periodic loan payments, handling any escrow account or enforcing mortgage loan terms either as the holder of the loan note or on behalf of the holder of the loan note.}~~ (Deleted by amendment.)

Sec. 10. ~~{“Owner-occupied housing” has the meaning ascribed to it in NRS 107.086.}~~ (Deleted by amendment.)

Sec. 11. ~~{“Trustee” means the trustee under a deed of trust which concerns owner-occupied housing.}~~ (Deleted by amendment.)

Sec. 12. ~~{I. In addition to the requirements of NRS 107.085 and 107.086, 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 sections 5 to 18, inclusive, of this act.~~

~~2. The provisions of sections 5 to 18, inclusive, of this act apply only to a deed of trust under a trust agreement which concerns owner-occupied housing.~~
(Deleted by amendment.)

Sec. 13. ~~{1. A trustee, beneficiary or authorized agent shall not record a notice of default and election to sell pursuant to subsection 3 of NRS 107.080 unless the trustee, beneficiary or authorized agent makes reasonable and good faith efforts to evaluate the borrower for all available loss mitigation options to avoid foreclosure.~~

~~2. This section must not be construed to require a trustee, beneficiary or authorized agent to act in a manner inconsistent with the terms of any applicable contract for the servicing of the loan at issue.~~ **(Deleted by amendment.)**

Sec. 14. ~~{1. Except as otherwise provided in this section, a trustee, beneficiary or authorized agent shall not record a notice of default and election to sell pursuant to subsection 3 of NRS 107.080 until:~~

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

~~(b) If applicable, the requirements of section 15 of this act have been satisfied.~~

~~2. Except as otherwise provided in subsection 6, a beneficiary or its authorized agent shall contact the borrower in person or by telephone to assess the borrower's financial situation and to explore options to avoid the exercise of the trustee's power of sale pursuant to NRS 107.080. During the initial contact, the beneficiary or its authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the beneficiary or its authorized agent shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and the discussion of the options to avoid the exercise of the trustee's power of sale may occur during the initial contact or at the subsequent meeting scheduled for that purpose. In either case, the beneficiary or its authorized agent shall provide to the borrower the toll-free telephone number made available by the United States Department of Housing and Urban Development to find a housing counseling agency certified by that Department and, if the borrower may be eligible for a loan modification, a deadline for the borrower to submit an initial application for a loan modification which must not be earlier than 45 days after the initial contact.~~

~~3. The loss mitigation personnel of the beneficiary or its authorized agent may participate by telephone during any contact required by this section.~~

~~4. A borrower may designate, in writing, a housing counseling agency certified by the United States Department of Housing and Urban Development, an attorney or any other advisor to discuss with the beneficiary or its authorized agent, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid the exercise of the trustee's power of sale. Contact with a person or agency designated by a borrower pursuant to this subsection satisfies the requirements of subsection 2. A loan modification or workout plan offered to a person or agency designated by a borrower pursuant to this subsection is subject to approval by the borrower.~~

~~5. Subject to the requirements of section 15 of this act and except as otherwise provided in subsection 6, even if the beneficiary or its authorized agent has not contacted the borrower as required by subsection 2, a notice of default may be recorded pursuant to subsection 3 of NRS 107.080 if the beneficiary or its authorized agent has taken all the following actions:~~

~~(a) The beneficiary or its authorized agent has mailed by registered or certified mail, return receipt requested and with postage prepaid, to the borrower a letter which includes:~~

~~(1) The toll-free telephone number made available by the United States Department of Housing and Urban Development to find a housing counseling agency certified by that Department; and~~

~~(2) If the borrower may be eligible for a loan modification, a deadline for the submission of an initial application for a loan modification which must not be earlier than 45 days after the date of the letter mailed pursuant to this paragraph or 45 days after the date on which the beneficiary or its authorized agent made initial contact with the borrower pursuant to subsection 2, whichever is earlier.~~

~~(b) After mailing the letter required by paragraph (a), the beneficiary or its authorized agent has attempted to contact the borrower by telephone at least 3 times at different hours and on different days. Telephone calls made pursuant to this paragraph must be made to the primary telephone number of the borrower which is on file with the beneficiary. The beneficiary or its authorized agent satisfies the requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the primary telephone number of the borrower on file and any secondary telephone numbers on file have been disconnected.~~

~~(c) If the borrower does not respond within 2 weeks after the beneficiary or its authorized agent has satisfied the requirements of paragraph (b), the beneficiary or its authorized agent has mailed to the borrower, by registered or certified mail, return receipt requested and with postage prepaid, a letter which includes the information required by paragraph (a).~~

~~(d) The beneficiary or its authorized agent provides a means for the borrower to contact the beneficiary or its authorized agent in a timely manner, including, without limitation, a toll-free telephone number that will provide access to a live representative during business hours.~~

~~(e) The beneficiary or its authorized agent posts a prominent link on its Internet website, if any, to the following information:~~

~~(1) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid the exercise of the trustee's power of sale, and instructions to such borrowers advising them on steps to take to explore those options.~~

~~(2) A list of financial documents the borrower should collect and be prepared to present to the beneficiary or its authorized agent when discussing options for avoiding the exercise of the trustee's power of sale.~~

~~(3) A toll-free telephone number for borrowers who wish to discuss with the beneficiary or its authorized agent options for avoiding the exercise of the trustee's power of sale.~~

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

~~6. The requirements of subsections 1, 2 and 5 do not apply if the borrower:~~

~~(a) Has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the trustee, beneficiary or authorized agent;~~

~~(b) Has contracted with a person whose primary business is advising persons who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to beneficiaries; or~~

~~1. (c) Has filed a petition pursuant to Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the petition or granting relief from a stay of the trustee's sale.~~ (Deleted by amendment.)

Sec. 15. ~~1. Except as otherwise provided in this section, if an eligible borrower requests an application for a loan modification, either orally or in writing, not later than 90 days after the date on which the obligation became delinquent or not later than 45 days after the beneficiary or its authorized agent makes initial contact with the borrower pursuant to section 14 of this act, whichever is later, the trustee, beneficiary or authorized agent shall not record a notice of default and election to sell pursuant to subsection 3 of NRS 107.080 unless and until it has, in good faith, reviewed the application, rendered a decision on the application and sent the borrower a denial explanation letter as required by section 16 of this act.~~

~~2. If a borrower requests a loan modification, either orally or in writing, by the deadline described in subsection 1, but does not initially submit all the documentation or information the beneficiary or its authorized agent requires to consider the borrower for a loan modification, the beneficiary or its authorized agent shall provide the borrower with a written notice that:~~

~~(a) Lists any supplemental documentation or information required; and~~

~~(b) Includes the deadline for providing that documentation or information, which must not be earlier than 30 calendar days from the date on which the borrower receives the notice.~~

~~3. Except as otherwise provided in this subsection, if a borrower requests a loan modification, either orally or in writing, within 15 days after receiving a copy of the notice of default and election to sell as required by subsection 3 of NRS 107.080 and submits a completed application for a loan modification within 15 days after receiving application instructions from the mortgage servicer or any other application deadline communicated in writing by the mortgage servicer, whichever is later, the trustee, beneficiary or authorized agent shall not record a notice of sale pursuant to subsection 5 of NRS 107.080 until at least 10 business days after it has, in good faith, reviewed the application, rendered a decision on the application and sent the borrower a denial explanation letter in accordance with section 16 of this act. This subsection does not apply if a borrower applied for a loan modification before the notice of default and election to sell was recorded pursuant to subsection 3 of NRS 107.080 and the trustee, beneficiary or authorized agent satisfied the requirements of sections 16 and 17 of this act.~~

~~4. If the mortgage servicer has signed a Making Home Affordable Servicer Participation Agreement with the Federal National Mortgage Association or is otherwise required to review the borrower's loan under the guidelines of the federal Making Home Affordable Modification Program, compliance with applicable rules of that program regarding deadlines and timeframes for the borrower to submit and complete an application for a loan modification satisfy the requirements of this section while that program remains in effect.~~

~~5. The provisions of this section must not be construed:~~

~~(a) To require a mortgage servicer to perform services in a manner inconsistent with the terms of any applicable contract for the servicing of the loan at issue;~~

~~(b) To diminish in any way the obligations of a trustee, beneficiary or authorized agent that has signed a Making Home Affordable Servicer Participation Agreement with the Federal National Mortgage Association or is otherwise required to review a loan under the guidelines of the federal Making Home Affordable Modification Program;~~

~~6. The requirements of this section do not apply if:~~

~~(a) The borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the trustee, beneficiary or authorized agent; or~~

~~(b) The beneficiary or its authorized agent does not offer any loan modifications.~~ **(Deleted by amendment.)**

Sec. 16. ~~1. If a borrower who requests a loan modification, either orally or in writing, is denied either a permanent loan modification or a trial period plan through the federal Making Home Affordable Modification Program, the beneficiary or its authorized agent shall mail to the borrower by certified mail, not later than 10 business days following the denial, a denial explanation letter that states the reason or reasons for the denial.~~

~~2. If an application for a loan modification is denied because the borrower failed to provide all required documents or information by the applicable deadline set forth in subsection 2 of section 15 of this act, the denial explanation letter mailed pursuant to subsection 1 must:~~

~~(a) Indicate the deadline for the submission of the documents or information;~~

~~(b) List the documents or information that were not provided; and~~

~~(c) State that the application for a loan modification was denied for that reason.~~

~~3. If the borrower submits all required written application materials for a loan modification by the applicable deadline as set forth in subsection 2 or 3 of section 15 of this act and the application is denied, the denial explanation letter must include:~~

~~(a) The date on which the beneficiary or its authorized agent received the final materials required to complete its review of the borrower's application for a loan modification.~~

~~(b) The date on which the beneficiary or its authorized agent made the decision to deny the borrower's application for a loan modification.~~

~~(c) If the beneficiary or its authorized agent was required to consider the borrower for a loan modification under the guidelines of the federal Making Home Affordable Modification Program, the information required to be provided in the borrower notice described in the most current version of the Making Home Affordable Program Handbook for Servicers of Non GSE Mortgages and any subsequent amendments thereto.~~

~~(d) The reason or reasons the borrower did not qualify for a loan modification, including, as applicable:~~

~~(1) If the denial is based on any investor guideline or restriction on loan modifications, a description of the guideline or restriction that resulted in the denial with a copy of the applicable provision in the pooling and servicing agreement or other controlling document evidencing that guideline or restriction;~~

~~(2) If the denial is based on the borrower's income or expenses, the income and expense figures used to determine the borrower's qualification for a loan modification, including, without limitation, the borrower's gross and net monthly income, property taxes and hazard insurance premiums;~~

~~(3) If the denial is based on a determination that the net present value of the income stream expected from the modified loan is not greater than the net present value of the income stream that is expected from the loan without modification, all the inputs, assumptions and calculations used to make that determination; and~~

~~(4) If applicable, a finding that the borrower was previously offered a loan modification but failed to successfully make payments under the terms of the loan modification.~~

~~—(e) The name and contact information of the holder of the note for the borrower's loan.~~

~~—(f) A description of alternatives to avoid the exercise of the trustee's sale other than a loan modification for which the borrower may be eligible, if any, including, without limitation, other loan modification programs, a short sale, a deed in lieu of a trustee's sale or a forbearance, and a list of the steps the borrower must take to be considered for those options. If the borrower has already been approved for another alternative to the exercise of the trustee's sale, information necessary to participate in or complete the alternative should be included.~~

~~—(g) Contact information which the borrower may use to reach the beneficiary or its authorized agent to discuss the reasons for the denial of the loan modification.~~

~~4. If a borrower is denied a loan modification and the beneficiary or its authorized agent sends a denial explanation letter pursuant to this section, the trustee, beneficiary or authorized agent may record a notice of default and election to sell pursuant to subsection 3 of NRS 107.080 even if the borrower initiates a dispute relating to the denial and the dispute has not yet been resolved.] (Deleted by amendment.)~~

Sec. 17. ~~[1. After satisfying the requirements of sections 15 and 16 of this act, as applicable, a mortgage servicer shall take the following action to initiate the process of exercising the trustee's power of sale pursuant to NRS 107.080:~~

~~—(a) Compile in one place a record demonstrating that the initial contact required by subsection 2 of section 14 of this act has occurred or the requirements of subsection 5 of section 14 of this act have been satisfied. The record must:~~

~~—(1) Include the dates and times of, and addresses and telephone numbers used for, the contact or attempted contacts with the borrower, as well as a record of the good faith efforts undertaken pursuant to sections 13 and 15 of this act; and~~

~~—(2) After the recording of a notice of default and election to sell pursuant to subsection 3 of NRS 107.080, be made available to the borrower within 10 business days after a written request for the record by the borrower; and~~

~~—(b) Transmit to the trustee or its authorized agent a declaration of compliance that is signed on behalf of the mortgage servicer by a natural person having personal knowledge of the facts stated in the declaration, or by a natural person with authority to bind the mortgage servicer, who certifies that the declaration is based on records which were made in the regular course of business at or near the time of the events recorded. The declaration of compliance must be included as part of, or attached to, every notice of default and election to sell which is recorded pursuant to subsection 3 of NRS 107.080. A notice of default and election to sell which does not include the declaration of compliance described in this paragraph is void.~~

~~2. The declaration of compliance described in paragraph (b) of subsection 1 must be in substantially the following form:~~

~~DECLARATION OF COMPLIANCE~~

~~I—BORROWER CONTACT~~

~~—A. () This loan is not subject to section 14 of this act pursuant to subsection 6 of section 14 of this act.~~

~~If item (I)(A) is checked, no further information regarding borrower contact is required. If item (I)(A) is not checked, complete item (I)(B).~~

~~B. () This loan is subject to section 14 of this act, and the beneficiary or authorized agent has complied with the requirements of section 14 of this act by satisfying the applicable contact or due diligence requirements described in subsection 2 or 3 of section 14 of this act. If checked, insert the date that the applicable borrower contact requirements were completed here.~~

~~II. FORECLOSURE AVOIDANCE REVIEW~~

~~A. () This loan is not subject to section 15 of this act pursuant to (check all that apply):~~

~~() Paragraph (a) of subsection 6 of section 15 of this act.~~

~~() Paragraph (b) of subsection 6 of section 15 of this act.~~

~~() Section 12 of this act.~~

~~If item (II)(A) is checked, no further information regarding borrower solicitation efforts is required. If item (II)(A) is not checked, complete item (II)(B).~~

~~B. () This loan is subject to section 15 of this act (check only one):~~

~~() The borrower was evaluated for a loan modification, was not approved, and the beneficiary or authorized agent sent the borrower a denial explanation letter in compliance with the requirements of subsection 2 of section 16 of this act.~~

~~() The borrower did not submit all required written application materials by the applicable deadline, and the beneficiary or authorized agent sent the borrower a denial explanation letter in compliance with the requirements of subsection 2 of section 16 of this act.~~

~~() The borrower did not initiate an application for a loan modification by the applicable deadline.~~

~~() The borrower was offered a HAMP trial period plan, but did not accept the trial period plan or did not complete the plan.~~

~~() The borrower was offered a permanent loan modification, but the borrower did not accept the modification offered.~~

~~() The borrower was offered and accepted a permanent loan modification, but did not comply with the terms of the modification.~~

~~() The borrower communicated to the beneficiary or authorized agent that he or she does not intend to apply for loan modification.~~

~~III. PROOF OF OWNERSHIP~~

~~() Attached is a copy of the note and all assignments and endorsements of the note, along with a declaration attesting to the existence and possession of the original note as well as all the assignments and endorsements, and certifying ownership of the mortgage and the right to foreclose.~~

~~() The trustee, beneficiary or any of their authorized agents are not reasonably able to obtain possession of the note and/or all assignments and endorsements thereof. Attached is a declaration of lost note that complies with the requirements of paragraph (b) of subsection 3 of NRS 107.080.~~ (Deleted by amendment.)

Sec. 18. ~~1. If the trustee, beneficiary or authorized agent records a notice of sale pursuant to subsection 5 of NRS 107.080;~~

~~(a) Without completing an evaluation of a timely completed application for a loan modification;~~

~~(b) Before the borrower's deadline for requesting and applying for a loan modification; or~~

~~(c) Without sending a denial explanation letter that materially complies with section 16 of this act;~~

~~the borrower may seek an order in any court having jurisdiction to enjoin the exercise of the trustee's power of sale with respect to the property until any of these requirements not previously satisfied are satisfied.~~

~~2. If:~~

~~(a) The trustee, beneficiary or authorized agent records a notice of default and election to sell pursuant to subsection 3 of NRS 107.080;~~

~~(1) Without completing its evaluation of the borrower's timely completed application for a loan modification;~~

~~(2) Before the borrower's deadline for requesting and applying for a loan modification; or~~

~~(3) Without sending a denial explanation letter that materially complies with section 16 of this act;~~

~~(b) The trustee, beneficiary or authorized agent causes the property at issue to be sold at a trustee's sale pursuant to NRS 107.080; and~~

~~(c) The property at issue is sold to a bona fide purchaser at a trustee's sale pursuant to NRS 107.080;~~

~~the borrower may recover in a civil action which must be commenced within 1 year following the trustee's sale the greater of treble actual damages or statutory damages in the amount of \$15,000, plus reasonable attorney's fees and costs.~~

~~3. If:~~

~~(a) The trustee, beneficiary or authorized agent records a notice of default and election to sell pursuant to subsection 3 of NRS 107.080;~~

~~(1) Without completing its evaluation of the borrower's timely completed application for a loan modification;~~

~~(2) Before the borrower's deadline for requesting and applying for a loan modification; or~~

~~(3) Without sending a denial explanation letter that materially complies with section 16 of this act;~~

~~(b) The trustee, beneficiary or authorized agent causes the property at issue to be sold at a trustee's sale pursuant to NRS 107.080; and~~

~~(c) Before commencement of an action pursuant to this subsection, the property at issue is sold by the trustee, beneficiary or authorized agent to a bona fide purchaser after a trustee's sale at which the trustee, beneficiary or authorized agent acquired title to the property;~~

~~the borrower may recover in a civil action which must be commenced within 1 year following the trustee's sale the greater of treble actual damages or statutory damages in the amount of \$15,000, plus reasonable attorney's fees and costs. If the trustee, beneficiary or authorized agent had actual notice of the borrower's claim under this subsection before selling the property to a bona fide purchaser,~~

~~the borrower is entitled to recover statutory damages in the amount of \$20,000 in addition to other damages recoverable under this subsection;~~

~~4. If the trustee, beneficiary or authorized agent:~~

~~(a) Records a notice of default and election to sell pursuant to subsection 3 of NRS 107.080;~~

~~(1) Without completing its evaluation of the borrower's timely completed application for a loan modification;~~

~~(2) Before the borrower's deadline for requesting and applying for a loan modification; or~~

~~(3) Without sending a denial explanation letter that materially complies with section 16 of this act;~~

~~(b) Causes the property at issue to be sold at a trustee's sale pursuant to NRS 107.080; and~~

~~(c) Acquired title to the property at the trustee's sale but has not sold the property to a bona fide purchaser;~~

~~the borrower may, within 1 year following the trustee's sale, bring an action to void the trustee's sale, to enjoin the recording of any further notice of sale until at least 30 days after any requirement of sections 5 to 18, inclusive, of this act not previously satisfied is satisfied and for reasonable attorney's fees and costs;~~

~~5. If the mortgage servicer fails to cause the declaration of compliance required by section 17 of this act to be included with, or attached to, a notice of default and election to sell which is recorded pursuant to subsection 3 of NRS 107.080, the borrower may recover from the mortgage servicer statutory damages of not less than \$1,500 but not more than \$10,000, plus reasonable attorney's fees and costs. If the mortgage servicer records, or causes to be recorded, a materially false declaration of compliance, a borrower may recover from the mortgage servicer statutory damages of not less than \$10,000 but not more than \$25,000, plus attorney's fees and costs. For the purposes of this subsection, the declaration of compliance is not false if it lists any incorrect dates for the date that the requirements described in the declaration were completed, unless the mortgage servicer knowingly included the wrong date on the declaration.~~

~~6. A beneficiary or mortgage servicer is not civilly liable under subsections 2, 3 and 4 if, before commencement of an action by the borrower and not later than 180 days after the date of the trustee's sale pursuant to NRS 107.080:~~

~~(a) The trustee, beneficiary or authorized agent:~~

~~(1) Voluntarily rescinds the trustee's sale before filing an unlawful detainer action against the borrower;~~

~~(2) Provides a written notice of that rescission to the borrower not later than 3 days after the rescission;~~

~~(3) Lists in the notice the steps the beneficiary or mortgage servicer will take before recording any further notice of sale;~~

~~(4) Materially complies with any requirements of sections 5 to 18, inclusive, of this act that were not previously satisfied not later than 30 days before recording any further notice of sale; and~~

~~(5) Sends the borrower a written communication stating that the beneficiary or mortgage servicer will not file an unlawful detainer action against the borrower before completing the steps set forth in the letter; or~~

~~(b) The trustee, beneficiary or authorized agent refrains from filing an unlawful detainer action against the borrower until at least 30 days after the beneficiary or mortgage servicer:~~

~~(1) Materially complies with all the applicable requirements of sections 5 to 18, inclusive, of this act that were not previously satisfied and sends the borrower a written communication informing the borrower of the actions taken~~

~~and the outcome of those actions, including, without limitation, any reason for the denial of a loan modification, if applicable; and~~

~~(2) Sends the borrower a written communication stating the steps that were taken and the outcome, including, without limitation, any reason for the denial of a loan modification, if applicable. If the beneficiary or mortgage servicer determines that the borrower qualifies for a loan modification, it shall rescind the trustee's sale and offer the borrower the loan modification.~~

~~7. A borrower shall not have any cause of action under this section for any failure or error that is technical or de minimis in nature.~~

~~8. A mortgage servicer, trustee, beneficiary or authorized agent who violates a provision of sections 5 to 18, inclusive, of this act is liable, in addition to any other penalty or remedy that may be provided by law, to a civil penalty of not more than \$10,000 for each violation and not more than \$25,000 for each violation involving the recording of a false or fraudulent declaration of compliance pursuant to section 17 of this act, which may be recovered by civil action on complaint of the Attorney General. All money collected as civil penalties pursuant to this section must be deposited in the State General Fund.~~

~~9. A trustee, beneficiary or authorized agent who is licensed by this State and who violates any provision of sections 5 to 18, inclusive, of this act shall be deemed to have violated the law governing that person's license and is subject to enforcement action by the licensing agency.~~ **(Deleted by amendment.)**

Sec. 19. ~~{NRS 107.080 is hereby amended to read as follows:~~

~~107.080 1. Except as otherwise provided in NRS 107.085 and 107.086, and sections 5 to 18, inclusive, of this act, 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, 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 25-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 owner-occupied housing as defined in NRS 107.086, include, or have attached to it, the declaration of compliance required by section 16 of this act and proof of ownership of the note secured by the deed of trust. Proof of ownership of the note must include a copy of the note secured by the deed of trust, evidence of all assignments and endorsements of the deed of trust and the note secured by the deed of trust and a declaration which attests to the existence and possession of the note secured by the deed of trust and to all assignments and endorsements of that note and certifies ownership of the deed of trust and the right to exercise the trustee's power of sale. If this proof cannot be located, the trustee, beneficiary or authorized agent shall include with, or attach to, the notice of default and election to sell a declaration signed either by a natural person having personal knowledge of the facts stated within, or by a natural person with authority to bind the trustee, beneficiary or authorized agent, who certifies that the declaration is based upon records that were made in the regular course of business at or near the time of the events recorded, including the following:~~

~~(1) Facts sufficient to show that the trustee, beneficiary or authorized agent has the right to enforce the note secured by the deed of trust;~~

~~(2) A statement that the person cannot reasonably obtain possession of the note and a description of the reasonable efforts made to obtain the note; and~~

~~(3) A description of the terms of the note and any riders attached thereto, including, without limitation:~~

~~(I) The date on which the note was executed;~~

~~(II) The parties to the note;~~

~~(III) The principal amount of the loan;~~

~~(IV) The amortization period of the loan;~~

~~(V) The initial interest rate of the loan and, if applicable, the initial date and the frequency of any adjustments to the interest rate, and the index and margin used to calculate the interest rate at the time of any scheduled adjustment; and~~

~~(VI) The expiration date of any interest-only period, if applicable.~~

~~This paragraph must not be construed in derogation of the parties' rights established under NRS 104.3309 or any similar right established under the law of this State.~~

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

~~4. If the property is owner-occupied housing as defined in NRS 107.086, the copy of the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record pursuant to subsection 3 must include:~~

~~— (a) An accounting of all payments made on the obligation secured by the deed of trust from the close of escrow to the date on which the notice of default and election to sell is recorded pursuant to subsection 3 in the form of a spreadsheet showing all account activity;~~

~~— (b) An itemization and description of all late fees, late charges, appraisal fees, property inspection fees, forced-placed insurance charges, legal fees and recoverable advances charged on the obligation secured by the deed of trust and an explanation of the reason for such charges;~~

~~— (c) A copy of all interest rate adjustment notices and the two most recent escrow analysis notices sent to the grantor or the person who holds the title of record; and~~

~~— (d) A breakdown of the current escrow charges which indicates how the charges are calculated and the reason for any increase in the charges within the preceding 24 months, and any shortage or surplus in the escrow account in the past three years.~~

~~5. 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.~~

~~— A notice of sale may not be recorded pursuant to this subsection if the grantor or the person who holds the title of record has entered into a contract to sell the property and the beneficiary of the deed of trust has approved the sale or the grantor or the person who holds the title of record has requested the beneficiary's approval of the sale but the beneficiary has not yet approved or disapproved the sale.~~

~~[5.] 6. 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 sections 5 to 18, inclusive, of this act;~~

~~— (b) Except as otherwise provided in subsection [6.] 7, 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.] 7. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection [4] 5 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] 6 within 120 days after the date on which the person received actual notice of the sale.~~

~~— [7.] 8. 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.] 9. After a sale of property is conducted pursuant to this section, the trustee shall:~~

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

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

~~— [9.] 10. If the successful bidder fails to record the trustee's deed upon sale pursuant to paragraph (b) of subsection [8.] 9, the successful bidder:~~

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

~~— (b) Is liable in a civil action for any actual damages caused by the failure to comply with the provisions of subsection [8.] 9 and for reasonable attorney's fees and the costs of bringing the action.~~

~~— [10.] 11. The county recorder shall, in addition to any other fee, at the time of recording a notice of default and election to sell collect:~~

~~— (a) A fee of \$150 for deposit in the State General Fund;~~

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

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

~~— [11.] 12. The beneficiary, the successor in interest of the beneficiary or the trustee who causes to be recorded the notice of default and election to sell shall not charge the grantor or the successor in interest of the grantor any portion of any fee required to be paid pursuant to subsection [10.]~~

~~12.] 11.~~

~~13. As used in this section, "residential foreclosure" means the sale of a single family residence under a power of sale granted by this section. As used in this subsection, "single family residence":~~

~~(a) Means a structure that is comprised of not more than four units;~~

~~(b) Does not include any time share or other property regulated under chapter 119A of NRS.] (Deleted by amendment.)~~

Sec. 20. ~~[NRS 107.084 is hereby amended to read as follows:~~

~~107.084 It is unlawful for a person to willfully remove or deface a notice posted pursuant to subsection [4] 5 of NRS 107.080, if done before the sale or, if the default is satisfied before the sale, before the satisfaction of the default. In addition to any other penalty, any person who violates this section is liable in the amount of \$500 to any person aggrieved by the removal or defacing of the notice.] (Deleted by amendment.)~~

Sec. 20.3. NRS 107.085 is hereby amended to read as follows:

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

(a) The trust agreement becomes effective on or after October 1, 2003, 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)]~~ 15 U.S.C. § 1602(bb) 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 NRS 107.086.

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 or the person who holds the title of record 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 or the person who holds the title of record:

(1) Except as otherwise provided in subparagraph (2), 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 or the person who holds the title of record; or

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

(I) By personal service;

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

(III) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the trust property, delivering a copy to a person there residing

if the person can be found and mailing a copy to the grantor or the person who holds the title of record at the place where the trust property is situated; and

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

NOTICE
YOU ARE IN DANGER OF LOSING YOUR HOME!

**YOU MAY HAVE A RIGHT TO PARTICIPATE IN THE STATE OF NEVADA
FORECLOSURE MEDIATION PROGRAM IF THE TIME TO REQUEST
MEDIATION HAS NOT EXPIRED!**

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

State of Nevada Foreclosure Mediation Program

Consumer Credit Counseling _____

The Attorney General _____

The Division of Mortgage Lending

The Division of Financial Institutions _____

Legal Services _____

Your Lender _____

Nevada Fair Housing Center _____

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

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. 20.7. 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.

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 notice provided by the Mediation Administrator indicating that the grantor or the person who holds the title of record has the right to seek mediation pursuant to this section; and**

(4) 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 **pursuant to this section** and one envelope addressed to the trustee and one

1 envelope addressed to the Mediation Administrator, which the grantor or the person
2 who holds the title of record may use to comply with the provisions of subsection 3;

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

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

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

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

12 3. The grantor or the person who holds the title of record shall, not later than
13 30 days after service of the notice in the manner required by NRS 107.080,
14 complete the form required by subparagraph ~~(3)~~ (4) of paragraph (a) of subsection
15 2 and return the form to the trustee by certified mail, return receipt requested. If the
16 grantor or the person who holds the title of record indicates on the form an election
17 to enter into mediation, the trustee shall notify the beneficiary of the deed of trust
18 and every other person with an interest as defined in NRS 107.090, by certified
19 mail, return receipt requested, of the election of the grantor or the person who holds
20 the title of record to enter into mediation and file the form with the Mediation
21 Administrator, who shall assign the matter to a senior justice, judge, hearing master
22 or other designee and schedule the matter for mediation. No further action may be
23 taken to exercise the power of sale until the completion of the mediation. If the
24 grantor or the person who holds the title of record indicates on the form an election
25 to waive mediation or fails to return the form to the trustee as required by this
26 subsection, the trustee shall execute an affidavit attesting to that fact under penalty
27 of perjury and serve a copy of the affidavit, together with the waiver of mediation
28 by the grantor or the person who holds the title of record, or proof of service on the
29 grantor or the person who holds the title of record of the notice required by
30 subsection 2 of this section and subsection 3 of NRS 107.080, upon the Mediation
31 Administrator. Upon receipt of the affidavit and the waiver or proof of service, the
32 Mediation Administrator shall provide to the trustee a certificate which provides
33 that no mediation is required in the matter.

34 4. Each mediation required by this section must be conducted by a senior
35 justice, judge, hearing master or other designee pursuant to the rules adopted
36 pursuant to subsection 8. The beneficiary of the deed of trust or a representative
37 shall attend the mediation. The grantor or a representative shall attend the
38 mediation if the grantor elected to enter into mediation, or the person who holds the
39 title of record or a representative shall attend the mediation if the person who holds
40 the title of record elected to enter into mediation. The beneficiary of the deed of
41 trust shall bring to the mediation the original or a certified copy of the deed of trust,
42 the mortgage note and each assignment of the deed of trust or mortgage note. If the
43 beneficiary of the deed of trust is represented at the mediation by another person,
44 that person must have authority to negotiate a loan modification on behalf of the
45 beneficiary of the deed of trust or have access at all times during the mediation to a
46 person with such authority.

47 5. If the beneficiary of the deed of trust or the representative fails to attend the
48 mediation, fails to participate in the mediation in good faith or does not bring to the
49 mediation each document required by subsection 4 or does not have the authority or
50 access to a person with the authority required by subsection 4, the mediator shall
51 prepare and submit to the Mediation Administrator a petition and recommendation
52 concerning the imposition of sanctions against the beneficiary of the deed of trust
53 or the representative. The court may issue an order imposing such sanctions against

1 the beneficiary of the deed of trust or the representative as the court determines
2 appropriate, including, without limitation, requiring a loan modification in the
3 manner determined proper by the court.

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

8 7. If the mediator determines that the parties, while acting in good faith, are
9 not able to agree to a loan modification, the mediator shall prepare and submit to the
10 Mediation Administrator a recommendation that the matter be terminated. The
11 Mediation Administrator shall provide to the trustee a certificate which provides
12 that the mediation required by this section has been completed in the matter.

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

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

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

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

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

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

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

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

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

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

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

43 12. As used in this section:

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

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

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

~~NOTICE TO TENANTS OF THE PROPERTY~~

If the property is sold and you pay rent by the month or any other period of time that is 1 month or longer, you should generally receive notice at least 60 days in advance.

~~Under Nevada Revised Statutes 40.280, notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes and may be served by:~~

~~— (1) Delivering a copy to you personally in the presence of a witness;~~

~~— (2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business; or~~

~~— (3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property, delivering a copy to a person residing there, if a person can be found, and mailing a copy to you at the place where the leased property is;~~

~~If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to Nevada Revised Statutes 40.360 or some combination of those results;~~

~~Under the Justice Court Rules of Civil Procedure:~~

~~— (1) You will be given at least 10 days to answer a summons and complaint;~~

~~— (2) If you do not file an answer, an order evicting you by default may be obtained against you;~~

~~— (3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and~~

~~— (4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint;~~

~~4. As used in this section, “residential foreclosure” has the meaning ascribed to it in NRS 107.080.]~~ **(Deleted by amendment.)**

Sec. 22. ~~{NRS 459.646 is hereby amended to read as follows:~~

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

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

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

~~— (c) The owner or holder of evidence of title does not participate actively in decisions concerning hazardous substances on the property;~~

~~2. A lender to a prospective purchaser who has filed an application to participate in the program pursuant to NRS 459.634 or a lender who forecloses his or her security interest in property pursuant to NRS 40.430 to 40.450, inclusive, or 107.080 to 107.110, inclusive, and sections 5 to 18, inclusive, of this act and within a reasonable period after the foreclosure, not to exceed 2 years, sells, transfers or conveys the property to a prospective purchaser who has filed an application to participate in the program pursuant to NRS 459.634 is not a responsible party solely as a result of:~~

~~— (a) Foreclosing a security interest in the property; or~~

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

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

~~(2) Is secured by the property that is to be acquired or on which is located the hazardous substances that are to be removed or remediated.]~~ **(Deleted by amendment.)**

Sec. 23. The amendatory provisions of ~~[sections 4 to 22, inclusive, of]~~ this act apply only with respect to trust agreements ~~[which concern owner-occupied housing, as defined in NRS 107.086,]~~ for which a notice of default is recorded on or after July 1, 2011.

Sec. 24. This act becomes effective on July 1, 2011.