

Amendment No. 465

Senate Amendment to Senate Bill No. 307	(BDR 9-958)
Proposed by: Senate Committee on Judiciary	
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.

BFG/BAW



Date: 4/18/2011

S.B. No. 307—Revises provisions relating to the exercise of the power of sale under a deed of trust concerning owner-occupied property.
(BDR 9-958)



SENATE BILL NO. 307—SENATOR COPENING

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the exercise of the power of sale under a deed of trust concerning owner-occupied property. (BDR 9-958)

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

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

AN ACT relating to real property; revising provisions governing the exercise of the power of sale under a deed of trust concerning owner-occupied property; 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) Existing law prohibits the exercise of the trustee's power of sale concerning owner-occupied property unless the trustee records in the office of the county recorder a certificate issued by the entity designated as the Mediation Administrator for the foreclosure mediation program which indicates that foreclosure mediation is not required or has been completed. (NRS 107.086)

This bill establishes additional restrictions on the trustee's power of sale with respect to owner-occupied housing which are based on Maryland law and which require an analysis of the eligibility of the grantor or person who holds the title of record for a loan modification or other loss mitigation alternative. **Under this bill, the trustee must include with Section 1 of this bill provides that, not later than 30 days before the notice of default and election to sell (mailed to the grantor or the person who holds title of record) is recorded in the office of the county recorder of the county in which the property is located, the beneficiary of the deed of trust must mail to the grantor or the person who holds title of record an application for a loan modification program or other loss mitigation alternative. If the application is returned to the (trustee) beneficiary within 30 days after the date on which it is received by the grantor or person who holds title of record: (1) the (trustee) beneficiary must forward it to the person responsible for analyzing the eligibility of the grantor or the person who holds title of record for a loan modification or other loss mitigation alternative (and) ; (2) that person must complete an analysis of the application; and (2) the Mediation Administrator may not issue to (3) the trustee (the certificate which must be recorded before the) may not exercise (or) the power of sale unless the (trustee serves on the Mediation Administrator) beneficiary has mailed to the grantor or the person who holds title of record an affidavit certifying that an analysis of the application was completed. (This bill also provides the procedures to be followed if a) If the grantor or person who holds title of record returns a loss mitigation application within the required time period and requests foreclosure mediation in accordance with existing law: (1) under section 1, the analysis of the application must be completed before the mediation is conducted; and (2) under section 1.7 of this bill, the beneficiary of the deed of trust must bring to the mediation**

certain information related to the loss mitigation application. Section 1 further provides that if the grantor or the person who holds title of record does not return the loss mitigation application ~~[is not returned]~~ within 30 days after ~~[service of the notice of default and election to sell and the procedures to be followed with respect to loss mitigation applications if mediation is required under existing law. Finally, this bill requires the Mediation Administrator to create standard forms for the required affidavit.]~~ receipt of the application: (1) the beneficiary shall mail an affidavit to the grantor or person who holds title of record attesting to that fact; and (2) the trustee may exercise the power of sale in accordance with existing law.

Existing law provides that if certain provisions of existing law governing the exercise of the trustee's power of sale are not followed, a court of competent jurisdiction may void the sale. (NRS 107.080) Section 1.3 of this bill authorizes a court of competent jurisdiction to void a sale made pursuant to the exercise of the trustee's power of sale if the beneficiary of the deed of trust does not comply with the provisions of this bill.

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

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

1. In addition to the requirements of NRS 107.085 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 this section.

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

(a) Not later than 30 days before 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 pursuant to subsection 3 of NRS 107.080, the beneficiary of the deed of trust mails 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:

(1) A loss mitigation application for loss mitigation programs that are applicable to the obligation secured by the deed of trust;

(2) Instructions for completing the loss mitigation application;

(3) A description of the eligibility requirements for the loss mitigation programs offered by the beneficiary that may be applicable to the obligation secured by the deed of trust;

(4) A telephone number which the grantor or the person who holds title of record may call to confirm receipt of the completed loss mitigation application; and

(5) An envelope preprinted with the address of the beneficiary.

(b) The beneficiary mails by registered or certified mail, return receipt requested and with postage prepaid, to the grantor or the person who holds title of record, the affidavit described in subsection 3 or a final loss mitigation affidavit.

3. If the grantor or the person who holds the title of record fails to return the loss mitigation application to the beneficiary of the deed of trust within 30 days after receipt of the application, the beneficiary shall execute an affidavit attesting to that fact under penalty of perjury and mail a copy of the affidavit to the grantor or the person who holds the title of record by registered or certified mail, return receipt requested and with postage prepaid.

4. If the grantor or the person who holds the title of record returns the loss mitigation application to the beneficiary of the deed of trust within 30 days after

1 receipt of the application, the beneficiary shall forward the loss mitigation
2 application to the person responsible for conducting loss mitigation analysis on
3 behalf of the beneficiary. Upon receipt of a loss mitigation application pursuant
4 to this subsection, the person responsible for conducting loss mitigation analysis
5 shall perform and complete a loss mitigation analysis. If the grantor or the
6 person who holds the title of record has returned the loss mitigation application
7 to the beneficiary within the time specified in this subsection and has elected to
8 enter into mediation pursuant to NRS 107.086, the loss mitigation analysis must
9 be completed before the mediation is conducted.

10 5. Upon completion of the loss mitigation analysis pursuant to subsection 4,
11 the beneficiary shall:

12 (a) Execute a final loss mitigation affidavit; and
13 (b) Mail the final loss mitigation affidavit by registered or certified mail,
14 return receipt requested and with postage prepaid, to the grantor or the person
15 who holds the title of record.

16 6. A beneficiary of a deed of trust, or a person conducting loss mitigation
17 analysis on behalf of the beneficiary, which has received a loan mitigation
18 application within the time specified in subsection 4 shall not deny a loan
19 modification or any other loss mitigation program because of an inability to
20 establish communication with the grantor or the person who holds the title of
21 record or obtain all documentation and information necessary to conduct the loss
22 mitigation analysis unless, for at least 30 days after receipt of the loss mitigation
23 application, the beneficiary or the person acting on its behalf has made good
24 faith attempts to:

25 (a) Establish communication with the grantor or the person who holds the
26 title of record; and

27 (b) Obtain all documentation and information necessary to conduct the loss
28 mitigation analysis.

29 7. As used in this section:

30 (a) "Final loss mitigation affidavit" means an affidavit that:

31 (1) Is made by the beneficiary of a deed of trust or a person authorized to
32 act on behalf of the beneficiary;

33 (2) Certifies the completion of the final determination of loss mitigation
34 analysis in connection with a deed of trust; and

35 (3) Certifies the denial of a loan modification or other loss mitigation.

36 (b) "Loss mitigation analysis" means an evaluation of the facts and
37 circumstances of an obligation secured by a deed of trust concerning owner-
38 occupied housing to determine:

39 (1) Whether the grantor or the person who holds the title of record
40 qualifies for a loan modification; and

41 (2) If there will not be a loan modification, whether any other loss
42 mitigation program may be made available to the grantor or the person who
43 holds the title of record.

44 (c) "Loss mitigation program" means an option in connection with an
45 obligation secured by a deed of trust concerning owner-occupied housing that:

46 (1) Avoids the exercise of the trustee's power of sale through loan
47 modification or other changes to the existing terms of the obligation that are
48 intended to allow the grantor or the person who holds the title of record to stay in
49 the property;

50 (2) Avoids the exercise of the trustee's power of sale through a short sale,
51 deed in lieu of trustee's sale or other alternative that is intended to simplify the
52 relinquishment of ownership of the property by the grantor or the person who
53 holds the title of record; or

(3) Lessens the harmful impact of the exercise of the trustee's power of sale on the grantor or the person who holds the title of record.

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

Sec. 1.3. 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 section 1 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 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 recording of the notice and incident to the

1 making good of the deficiency in performance or payment are paid within the time
2 specified in subsection 2; and

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

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

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

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

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

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

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

28 (a) The trustee or other person authorized to make the sale does not
29 substantially comply with the provisions of this section or any applicable provision
30 of NRS 107.086 and 107.087 ~~or~~ or the beneficiary of the deed of trust does not
31 comply with any applicable provision of section 1 of this act;

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

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

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

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

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

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

51 (b) Within 20 days after the date of the sale, deliver the trustee's deed upon
52 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. If the successful bidder fails to record the trustee's deed upon sale pursuant to paragraph (b) of subsection 8, 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 and for reasonable attorney's fees and the costs of bringing the action.

10. 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. 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. 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.

~~Section 1.7~~ **Sec. 1.7.** NRS 107.086 is hereby amended to read as follows:

107.086 1. In addition to the requirements of NRS 107.085, and section 1 of this act, 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 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;

~~(4) A loss mitigation application for loss mitigation programs that are applicable to the obligation secured by the deed of trust;~~

~~(5) Instructions for completing the loss mitigation application;~~

~~(6) A description of the eligibility requirements for the loss mitigation programs offered by the trustee or beneficiary of the deed of trust that may be applicable to the obligation secured by the deed of trust;~~

~~(7) A telephone number which the grantor or the person who holds title of record may call to confirm receipt of the completed loss mitigation application; and~~

~~(8) An envelope preprinted with the address of the trustee;~~

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

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

(1) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 3 or ~~6~~ ~~(9)~~ which provides that no mediation is required in the matter; or

(2) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection ~~7~~ ~~(10)~~ 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, ~~and fails to return the loss mitigation application required to be mailed to the grantor or the person who holds title of record pursuant to subparagraph (4) of paragraph (a) of subsection 2,~~ the trustee shall execute an affidavit attesting to that fact ~~those facts~~ 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 Mediation Administrator shall provide to the trustee a certificate which provides that no mediation is required in the matter.

4. ~~If the grantor or the person who holds the title of record returns the loss mitigation application to the trustee within 30 days after service of the notice in the manner required by NRS 107.080, whether or not the grantor or person who holds the title of record has elected to waive mediation pursuant to subsection 3 or failed to return the form required by subparagraph (2) of paragraph (a) of subsection 2, the trustee shall:~~

~~(a) Notify the Mediation Administrator, 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 receipt of the application;~~

~~(b) Forward the loss mitigation application to the person responsible for conducting loss mitigation analysis on behalf of the trustee or beneficiary of the deed of trust. Upon receipt of a loss mitigation application pursuant to this subsection, the person responsible for conducting loss mitigation analysis shall perform and complete a loss mitigation analysis;~~

~~5. Upon completion of the loss mitigation analysis pursuant to paragraph (b) of subsection 4, the trustee shall:~~

~~(a) Execute a final loss mitigation affidavit in the form created by the Mediation Administrator;~~

~~(b) Mail the final loss mitigation affidavit by registered or certified mail, return receipt requested, to the grantor or the person who holds the title of record; and~~

~~(c) Serve a copy of the final loss mitigation affidavit upon the Mediation Administrator;~~

~~6. A trustee or a person conducting loss mitigation analysis on behalf of the trustee who has received a loan mitigation application pursuant to this section shall not deny a loan modification or any other loss mitigation program because of an inability to establish communication with the grantor or the person who holds the title of record or obtain all documentation and information necessary to conduct the loss mitigation analysis unless, for at least 30 days after receipt of the loss mitigation application, the trustee or the person acting on its behalf has made good faith attempts to:~~

~~(a) Establish communication with the grantor or the person who holds the title of record; and~~

~~(b) Obtain all documentation and information necessary to conduct the loss mitigation analysis;~~

~~7.] Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 8. ~~[[1]]~~ The beneficiary of the deed of trust or a representative shall attend the mediation. The grantor or a representative shall attend the mediation if the grantor elected to enter into mediation, or the person who holds the title of record or a representative shall attend the mediation if the person who holds the title of record elected to enter into mediation. The beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note, ~~and~~ each assignment of the deed of trust or mortgage note ~~and, if the grantor or the person who holds the title of record has returned to the trustee the~~ beneficiary a loss mitigation application pursuant to subsection 4, section 1 of this act, a copy of the loss mitigation application, a final loss mitigation affidavit and the information obtained in connection with the loss mitigation analysis. ~~In addition to these documents, if the grantor or the person who holds the title of record has returned to the trustee the loss mitigation application pursuant to subsection 4, the trustee shall bring to the mediation a preliminary loss mitigation affidavit or a final loss mitigation affidavit, whichever is applicable.]~~ If the beneficiary of the deed of trust is~~

represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust or have access at all times during the mediation to a person with such authority.

5. ~~[8.]~~ If the beneficiary of the deed of trust or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not bring to the mediation each document required by subsection 4 ~~[7]~~ or does not have the authority or access to a person with the authority required by subsection 4 ~~[7]~~ the mediator shall prepare and submit to the Mediation Administrator a petition and recommendation concerning the imposition of sanctions against the beneficiary of the deed of trust or the representative. The court may issue an order imposing such sanctions against the beneficiary of the deed of trust or the representative as the court determines appropriate, including, without limitation, requiring a loan modification in the manner determined proper by the court.

6. ~~If~~
~~[9. Except as otherwise provided in this subsection, if]~~ the grantor or the person who holds the title of record elected to enter into mediation and fails to attend the mediation, the Mediation Administrator shall provide to the trustee a certificate which states that no mediation is required in the matter. ~~[If the grantor or the person who holds the title of record returned a loss mitigation application to the trustee pursuant to subsection 4, the Mediation Administrator may not provide the certificate to the trustee until the trustee serves on the Mediation Administrator a final loss mitigation affidavit.]~~

7. ~~If~~
~~[10. Except as otherwise provided in this subsection, if]~~ the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification, the mediator shall prepare and submit to the Mediation Administrator a recommendation that the matter be terminated. The Mediation Administrator shall provide to the trustee a certificate which provides that the mediation required by this section has been completed in the matter. ~~[If the grantor or the person who holds the title of record returned a loss mitigation application to the trustee pursuant to subsection 4, the Mediation Administrator may not provide the certificate to the trustee until the trustee serves on the Mediation Administrator a final loss mitigation affidavit.]~~

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

(a) Designating an entity to serve as the Mediation Administrator pursuant to this section. The entities that may be so designated include, without limitation, the Administrative Office of the Courts, the district court of the county in which the property is situated or any other judicial entity. ~~[The Mediation Administrator shall create a standard form for a preliminary loss mitigation affidavit and a final loss mitigation affidavit. A preliminary loss mitigation affidavit and a final loss mitigation affidavit must be in the form created by the Mediation Administrator pursuant to this section.]~~

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

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

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

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

1 ~~9. ~~H2~~~~ Except as otherwise provided in subsection ~~11. ~~H4~~~~, the provisions

2 of this section do not apply if:

3 (a) The grantor or the person who holds the title of record has surrendered the

4 property, as evidenced by a letter confirming the surrender or delivery of the keys

5 to the property to the trustee, the beneficiary of the deed of trust or the mortgagee,

6 or an authorized agent thereof; or

7 (b) A petition in bankruptcy has been filed with respect to the grantor or the

8 person who holds the title of record under chapter 7, 11, 12 or 13 of Title 11 of the

9 United States Code and the bankruptcy court has not entered an order closing or

10 dismissing the case or granting relief from a stay of foreclosure.

11 ~~10. ~~H3~~~~ A noncommercial lender is not excluded from the application of this

12 section.

13 ~~11. ~~H4~~~~ The Mediation Administrator and each mediator who acts pursuant

14 to this section in good faith and without gross negligence are immune from civil

15 liability for those acts.

16 ~~12. ~~H5~~~~ As used in this section:

17 (a) ~~“Final loss mitigation affidavit” means an affidavit that:~~

18 ~~===== (1) Is made by the trustee or a person authorized to act on behalf of the~~

19 ~~trustee;~~

20 ~~===== (2) Certifies the completion of the final determination of loss mitigation~~

21 ~~analysis in connection with a deed of trust; and~~

22 ~~===== (3) Certifies the denial of a loan modification or other loss mitigation;]~~

23 has the meaning ascribed to it in section 1 of this act.

24 (b) ~~“Loss mitigation analysis” means an evaluation of the facts and~~

25 ~~circumstances of an obligation secured by a deed of trust concerning owner-~~

26 ~~occupied housing to determine:~~

27 ~~===== (1) Whether the grantor or the person who holds the title of record~~

28 ~~qualifies for a loan modification; and~~

29 ~~===== (2) If there will not be a loan modification, whether any other loss~~

30 ~~mitigation program may be made available to the grantor or the person who~~

31 ~~holds the title of record;~~

32 ~~===== (c) “Loss mitigation program” means an option in connection with an~~

33 ~~obligation secured by a deed of trust concerning owner-occupied housing that:~~

34 ~~===== (1) Avoids the exercise of the trustee’s power of sale through loan~~

35 ~~modification or other changes to the existing terms of the obligation that are~~

36 ~~intended to allow the grantor or the person who holds the title of record to stay in~~

37 ~~the property;~~

38 ~~===== (2) Avoids the exercise of the trustee’s power of sale through a short sale,~~

39 ~~deed in lieu of trustee’s sale or other alternative that is intended to simplify the~~

40 ~~relinquishment of ownership of the property by the grantor or the person who~~

41 ~~holds the title of record; or~~

42 ~~===== (3) Lessens the harmful impact of the exercise of the trustee’s power of~~

43 ~~sale on the grantor or the person who holds the title of record.~~

44 ~~===== (d) “Mediation Administrator” means the entity so designated pursuant to~~

45 ~~subsection 8.~~

46 ~~===== ~~H6~~ ~~H1~~~~

47 ~~===== (e) (c) “Noncommercial lender” means a lender which makes a loan secured~~

48 ~~by a deed of trust on owner-occupied housing and which is not a bank, financial~~

49 ~~institution or other entity regulated pursuant to title 55 or 56 of NRS.~~

50 ~~===== ~~H7~~ ~~H2~~ (d) “Owner-occupied housing” means housing that is occupied by~~

51 ~~an owner as the owner’s primary residence. The term does not include any time~~

52 ~~share or other property regulated under chapter 119A of NRS.~~

53 ~~===== (g) “Preliminary loss mitigation affidavit” means an affidavit that:~~

~~(1) Is made by the trustee or a person authorized to act on behalf of the trustee;~~

~~(2) Certifies the status of an incomplete loss mitigation analysis in connection with a deed of trust; and~~

~~(3) States the reason that the loss mitigation analysis is incomplete.]~~

Sec. 2. The amendatory provisions of this act apply only with respect to trust agreements which concern owner-occupied housing, as defined in NRS 107.086, as amended by section ~~1.1~~ 1.7 of this act, for which a notice of default is recorded on or after July 1, 2011.

Sec. 3. This act becomes effective on July 1, 2011.