

Amendment No. 741

Assembly Amendment to Senate Bill No. 307 First Reprint	(BDR 9-958)
Proposed by: Assembly 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.

MNM/BFG



Date: 5/24/2011

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.

~

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. Section 1 of this bill provides that, 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, 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 beneficiary within 30 days after the date on which it is received by the grantor or person who holds title of record: (1) the 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; (2) that person must complete an analysis of the application; and (3) the trustee may not exercise the power of sale unless the 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. 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 within 30 days after 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.) 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 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 1.7 of this bill requires the notice of default and election to sell that 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 1.5 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. ~~[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 receipt of the application, the beneficiary shall forward the loss mitigation application to the person responsible for conducting loss mitigation analysis on behalf of the beneficiary. 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. If the grantor or the person who holds the title of record has returned the loss mitigation application to the beneficiary within the time specified in this subsection and has elected to enter into mediation pursuant to NRS 107.086, the loss mitigation analysis must be completed before the mediation is conducted.~~

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

~~(a) Execute a final loss mitigation affidavit; and~~

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

~~6. A beneficiary of a deed of trust, or a person conducting loss mitigation analysis on behalf of the beneficiary, which has received a loan mitigation application within the time specified in subsection 4 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 beneficiary 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. As used in this section:~~

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

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

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

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

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

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

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

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

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

~~(2) Avoids the exercise of the trustee's power of sale through a short sale, deed in lieu of trustee's sale or other alternative that is intended to simplify the relinquishment of ownership of the property by the grantor or the person who 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 107.086.1 (Deleted by amendment.)~~

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 25 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~~

1 and a copy of the notice of default and election to sell is mailed by registered or
2 certified mail, return receipt requested and with postage prepaid to the grantor or, to
3 the person who holds the title of record on the date the notice of default and
4 election to sell is recorded, and, if the property is operated as a facility licensed
5 under chapter 449 of NRS, to the State Board of Health, at their respective
6 addresses, if known, otherwise to the address of the trust property. The notice of
7 default and election to sell must:

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

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

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

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

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

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

33 ~~—(d) If the property is a residential foreclosure, complying with the provisions of~~
34 ~~NRS 107.087.~~

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

40 ~~—(a) The trustee or other person authorized to make the sale does not~~
41 ~~substantially comply with the provisions of this section or any applicable provision~~
42 ~~of NRS 107.086 and 107.087 [.] or the beneficiary of the deed of trust does not~~
43 ~~comply with any applicable provision of section 1 of this act;~~

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

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

49 ~~6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of~~
50 ~~subsection 4 to the grantor, to the person who holds the title of record on the date~~
51 ~~the notice of default and election to sell is recorded, to each trustor or to any other~~
52 ~~person entitled to such notice, the person who did not receive such proper notice~~

may commence an action pursuant to subsection 5 within 120 days after the date on which the person received actual notice of the sale.

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

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

~~(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. 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 149A of NRS.] (Deleted by amendment.)~~

Sec. 1.5. 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

1 this section apply to the exercise of a power of sale pursuant to NRS 107.080 only
2 if:

3 (a) The trust agreement becomes effective on or after October 1, 2003, and, on
4 the date the trust agreement is made, the trust agreement is subject to the provisions
5 of § 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. §
6 1602, ~~((aa))~~ *(bb)*, and the regulations adopted by the Board of Governors of the
7 Federal Reserve System pursuant thereto, including, without limitation, 12 C.F.R. §
8 226.32; or

9 (b) The trust agreement concerns owner-occupied housing as defined in NRS
10 107.086.

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

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

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

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

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

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

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

27 (I) By personal service;

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

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

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

41
42 NOTICE
43 YOU ARE IN DANGER OF LOSING YOUR HOME!

44
45 **YOU MAY HAVE A RIGHT TO PARTICIPATE IN THE STATE OF NEVADA**
46 **FORECLOSURE MEDIATION PROGRAM IF THE TIME TO REQUEST**
47 **MEDIATION HAS NOT EXPIRED!**

48
49 Your home loan is being foreclosed. In not less than 60 days your home ~~will~~ may
50 be sold and you ~~will~~ may be forced to move. For help, call:

51 **State of Nevada Foreclosure Mediation Program**

52 Consumer Credit Counseling _____
53

1 The Attorney General _____

2 *The Division of Mortgage Lending*

3 The Division of Financial Institutions _____

4 Legal Services _____

5 Your Lender _____

6 Nevada Fair Housing Center _____

7
8 4. The trustee shall cause all social security numbers to be redacted from the
9 copy of the promissory note before it is attached to the notice pursuant to paragraph
10 (b) of subsection 3.

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

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

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

15 107.086 1. In addition to the requirements of NRS 107.085, ~~and section 1~~
16 ~~of this act,~~ the exercise of the power of sale pursuant to NRS 107.080 with respect
17 to any trust agreement which concerns owner-occupied housing is subject to the
18 provisions of this section.

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

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

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

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

30 (3) *A notice provided by the Mediation Administrator indicating that the*
31 *grantor or the person who holds the title of record has the right to seek mediation*
32 *pursuant to this section; and*

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

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

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

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

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

47 3. The grantor or the person who holds the title of record shall, not later than
48 30 days after service of the notice in the manner required by NRS 107.080,
49 complete the form required by subparagraph ~~(3)~~ (4) of paragraph (a) of subsection
50 2 and return the form to the trustee by certified mail, return receipt requested. If the
51 grantor or the person who holds the title of record indicates on the form an election
52 to enter into mediation, the trustee shall notify the beneficiary of the deed of trust
53 and every other person with an interest as defined in NRS 107.090, by certified

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

16 4. Each mediation required by this section must be conducted by a senior
17 justice, judge, hearing master or other designee pursuant to the rules adopted
18 pursuant to subsection 8. The beneficiary of the deed of trust or a representative
19 shall attend the mediation. The grantor or a representative shall attend the
20 mediation if the grantor elected to enter into mediation, or the person who holds the
21 title of record or a representative shall attend the mediation if the person who holds
22 the title of record elected to enter into mediation. The beneficiary of the deed of
23 trust shall bring to the mediation the original or a certified copy of the deed of trust,
24 the mortgage note and each assignment of the deed of trust or mortgage note. ~~and,~~
25 ~~if the grantor or the person who holds the title of record has returned to the~~
26 ~~beneficiary a loss mitigation application pursuant to section 1 of this act, a copy~~
27 ~~of the loss mitigation application, a final loss mitigation affidavit and the~~
28 ~~information obtained in connection with the loss mitigation analysis.]~~ If the
29 beneficiary of the deed of trust is represented at the mediation by another person,
30 that person must have authority to negotiate a loan modification on behalf of the
31 beneficiary of the deed of trust or have access at all times during the mediation to a
32 person with such authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. As used in this section:

(a) ~~“Final loss mitigation affidavit” has the meaning ascribed to it in section 1 of this act.~~

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

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

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

Sec. 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 1.7 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.