

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) 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.** (Deleted by amendment.)

**Sec. 1.3.** (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 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)]~~ (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. 1.7.** 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



1 respect to any trust agreement which concerns owner-occupied  
2 housing is subject to the provisions of this section.

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

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

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

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

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

19 (4) A form upon which the grantor or the person who holds  
20 the title of record may indicate an election to enter into mediation or  
21 to waive mediation *pursuant to this section* and one envelope  
22 addressed to the trustee and one envelope addressed to the  
23 Mediation Administrator, which the grantor or the person who holds  
24 the title of record may use to comply with the provisions of  
25 subsection 3;

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

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

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

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

36 3. The grantor or the person who holds the title of record shall,  
37 not later than 30 days after service of the notice in the manner  
38 required by NRS 107.080, complete the form required by  
39 subparagraph ~~(3)~~ (4) of paragraph (a) of subsection 2 and return  
40 the form to the trustee by certified mail, return receipt requested. If  
41 the grantor or the person who holds the title of record indicates  
42 on the form an election to enter into mediation, the trustee shall  
43 notify the beneficiary of the deed of trust and every other person  
44 with an interest as defined in NRS 107.090, by certified mail, return  
45 receipt requested, of the election of the grantor or the person who



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

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

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



6. 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.

7. 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.

8. 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.

(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.



\* S B 3 0 7 R 2 \*

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

4        12. As used in this section:

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

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

11        (c) "Owner-occupied housing" means housing that is occupied  
12 by an owner as the owner's primary residence. The term does not  
13 include any time share or other property regulated under chapter  
14 119A of NRS.

15        **Sec. 2.** The amendatory provisions of this act apply only with  
16 respect to trust agreements for which a notice of default is recorded  
17 on or after July 1, 2011.

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

