

Amendment No. 250

Assembly Amendment to Assembly Bill No. 273

(BDR 9-719)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

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

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

BFG/BAW



Date: 4/14/2013

A.B. No. 273—Revises provisions relating to the Foreclosure Mediation Program.
(BDR 9-719)



ASSEMBLY BILL NO. 273—ASSEMBLYMEN
EISEN; AND FRIERSON

MARCH 15, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the Foreclosure Mediation Program.
(BDR 9-719)FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to real property; creating the Contingency Account for the Foreclosure Mediation Program; revising provisions governing enrollment in the Foreclosure Mediation Program; revising provisions governing the foreclosure of liens by an association of a common-interest community; 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 requires the trustee under the deed of trust to include with the copy of the notice of default and election to sell which is mailed to the homeowner: (1) a notice provided by the Foreclosure Mediation Program Administrator indicating that the grantor or the person who holds the title of record has the right to seek mediation under rules adopted by the Nevada Supreme Court; and (2) a form on which a homeowner may request such mediation. ~~Under rules adopted by the Nevada Supreme Court,~~ Under existing law, a homeowner must elect to participate by: (1) completing and returning to the trustee a form upon which the homeowner elects to enter into mediation; and (2) paying his or her share of the fee established under the rules adopted by the Nevada Supreme Court. (NRS 107.080, 107.086)

This bill revises provisions governing enrollment in the Foreclosure Mediation Program. Under sections ~~2~~ 2 and ~~3~~ 3 of this bill, a trustee under a deed of trust concerning owner-occupied housing must in addition to including certain information concerning the Foreclosure Mediation Program with the copy of the notice of default and election which is mailed to the homeowner, send that information to the homeowner ~~the notice provided by the Mediation Administrator~~ concurrently with, but separately from, the copy of the notice of default and election to sell ~~which is mailed to the homeowner pursuant to existing law.~~ Section ~~3~~ 3 further provides that a homeowner will be enrolled in the Foreclosure Mediation Program unless: (1) he or she elects to waive mediation; or (2) fails to pay his or her share of the fee established under the rules adopted by the Nevada Supreme Court. If the homeowner waives mediation, fails to pay his or her share of the fee or, if the homeowner is enrolled in the Foreclosure Mediation Program, fails to appear at a scheduled mediation, the Mediation Administrator must provide to the trustee a certificate authorizing the continuation of the

process to exercise the power of sale. Section 3 also establishes deadlines by which the Mediation Administrator must provide certain information to the trustee.

Section 1 of this bill creates the Contingency Account for the Foreclosure Mediation Program. Under section 1, the Supreme Court administers the Contingency Account and money in the Contingency Account must be expended only to carry out the Foreclosure Mediation Program.

Section 4 of this bill prohibits a homeowners' association from foreclosing its lien on a unit constituting owner-occupied housing while the unit's owner is eligible to participate or is participating in the Foreclosure Mediation Program.

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. The Contingency Account for the Foreclosure Mediation Program is hereby created in the State General Fund.

2. The Supreme Court shall administer the Contingency Account. The money in the Contingency Account must be expended only for the purpose of carrying out the provisions of NRS 107.086 and any rules adopted by the Supreme Court to carry out the provisions of NRS 107.086.

3. The Supreme Court may apply for and accept gifts, grants and donations or other sources of money for deposit in the Contingency Account.

4. The interest and income earned on money in the Contingency Account, after deducting any applicable charges, must be credited to the Contingency Account.

5. Any money remaining in the Contingency Account at the end of a fiscal year does not revert to the State General Fund and the balance in the Contingency Account must be carried forward to the next fiscal year.

~~Section 1.~~ Sec. 2. 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(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 may be sold and you 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. 2.~~ **Sec. 3.** NRS 107.086 is hereby amended to read as follows:

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

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

1 (a) ~~Includes with~~ *Provides to the grantor or the person who holds the title of*
2 ~~record the following information concurrently with, but separately from,~~ the
3 notice of default and election to sell which is mailed to the grantor or the person
4 who holds the title of record as required by subsection 3 of NRS 107.080:

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

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

10 (3) A notice provided by the Mediation Administrator indicating that the
11 grantor or the person who holds the title of record ~~has the right to seek~~ *will be*
12 *enrolled to participate in* mediation pursuant to this section ~~if he or she pays to~~
13 *the Mediation Administrator his or her share of the fee established pursuant to*
14 *subsection 9;* and

15 (4) A form upon which the grantor or the person who holds the title of
16 record may indicate an election ~~to enter into mediation or~~ to waive mediation
17 pursuant to this section and one envelope addressed to the trustee and one envelope
18 addressed to the Mediation Administrator, which the grantor or the person who
19 holds the title of record may use to comply with the provisions of subsection 3;

20 (b) *In addition to including the information described in paragraph (a) with*
21 *the notice of default and election to sell which is mailed to the grantor or the*
22 *person who holds the title of record as required by subsection 3 of NRS 107.080,*
23 *provides to the grantor or the person who holds the title of record the information*
24 *described in paragraph (a) concurrently with, but separately from, the notice of*
25 *default and election to sell which is mailed to the grantor or the person who holds*
26 *the title of record as required by subsection 3 of NRS 107.080;*

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

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

30 (1) The certificate provided to the trustee by the Mediation Administrator
31 pursuant to subsection ~~4~~ 4 or ~~6~~ 7 which provides that no mediation is required in
32 the matter; or

33 (2) The certificate provided to the trustee by the Mediation Administrator
34 pursuant to subsection ~~7~~ 8 which provides that mediation has been completed in
35 the matter.

36 3. ~~The~~ *If the* grantor or the person who holds the title of record *elects to*
37 *waive mediation, he or she* shall, not later than 30 days after service of the notice in
38 the manner required by NRS 107.080, complete the form required by subparagraph

39 (4) of paragraph (a) of subsection 2 and return the form to the trustee *and the*
40 *Mediation Administrator* by certified mail, return receipt requested. If the grantor
41 or the person who holds the title of record ~~indicates on the form an election to~~
42 ~~enter into mediation, the trustee~~ *does not elect to waive mediation, he or she shall,*
43 *not later than 30 days after the service of the notice in the manner required by*
44 *NRS 107.080, pay to the Mediation Administrator his or her share of the fee*
45 *established pursuant to subsection 9. Upon receipt of the share of the fee*
46 *established pursuant to subsection 9 owed by the grantor or the person who holds*
47 *title of record, the Mediation Administrator* shall notify the ~~beneficiary of the~~
48 ~~deed of trust and every other person with an interest as defined in NRS 107.090,~~
49 *trustee,* by certified mail, return receipt requested, of the ~~election of the grantor or~~
50 ~~the person who holds the title of record to enter into~~ *enrollment of the grantor or*
51 *person who holds the title of record to participate in* mediation *pursuant to this*
52 *section and* ~~file the form with the Mediation Administrator, who~~ shall assign the
53 matter to a senior justice, judge, hearing master or other designee and schedule the

1 matter for mediation. ~~Not~~ *The trustee shall notify the beneficiary of the deed of*
2 *trust and every other person with an interest as defined in NRS 107.090, by*
3 *certified mail, return receipt requested, of the enrollment of the grantor or the*
4 *person who holds the title of record to participate in mediation. If the grantor or*
5 *person who holds the title of record is enrolled to participate in mediation*
6 *pursuant to this section, no* further action may be taken to exercise the power of
7 sale until the completion of the mediation.

8 4. If the grantor or the person who holds the title of record indicates on the
9 form ~~required by~~ described in subparagraph (4) of paragraph (a) of subsection
10 2 an election to waive mediation or fails to ~~return the form to the trustee~~ pay to
11 the Mediation Administrator his or her share of the fee established pursuant to
12 subsection 9, as required by ~~this subsection, the trustee shall execute an affidavit~~
13 ~~attesting to that fact under penalty of perjury and serve a copy of the affidavit,~~
14 ~~together with the waiver of mediation by the grantor or the person who holds the~~
15 ~~title of record, or proof of service on the grantor or the person who holds the title of~~
16 ~~record of the notice required by subsection 2 of this section and subsection 3 of~~
17 ~~NRS 107.080, upon the Mediation Administrator. Upon receipt of the affidavit and~~
18 ~~the waiver or proof of service,~~ subsection 3, the Mediation Administrator shall,
19 not later than 60 days after the Mediation Administrator receives the form
20 indicating an election to waive mediation or 90 days after the service of the notice
21 in the manner required by NRS 107.080, whichever is earlier, provide to the
22 trustee a certificate which provides that no mediation is required in the matter.

23 ~~4.4~~ 5. Each mediation required by this section must be conducted by a senior
24 justice, judge, hearing master or other designee pursuant to the rules adopted
25 pursuant to subsection ~~4.8~~ 9. The beneficiary of the deed of trust or a representative
26 shall attend the mediation. The grantor or ~~his or her~~ representative, ~~shall~~
27 ~~attend the mediation if the grantor elected to enter into mediation,~~ or the person
28 who holds the title of record or ~~his or her~~ representative, shall attend the
29 mediation. ~~If the person who holds the title of record elected to enter into~~
30 ~~mediation,~~ The beneficiary of the deed of trust shall bring to the mediation the
31 original or a certified copy of the deed of trust, the mortgage note and each
32 assignment of the deed of trust or mortgage note. If the beneficiary of the deed of
33 trust is represented at the mediation by another person, that person must have
34 authority to negotiate a loan modification on behalf of the beneficiary of the deed of
35 trust or have access at all times during the mediation to a person with such
36 authority.

37 ~~5.5~~ 6. If the beneficiary of the deed of trust or the representative fails to
38 attend the mediation, fails to participate in the mediation in good faith or does not
39 bring to the mediation each document required by subsection ~~4.4~~ 5 or does not have
40 the authority or access to a person with the authority required by subsection ~~4.4~~ 5,
41 the mediator shall prepare and submit to the Mediation Administrator a petition and
42 recommendation concerning the imposition of sanctions against the beneficiary of
43 the deed of trust or the representative. The court may issue an order imposing such
44 sanctions against the beneficiary of the deed of trust or the representative as the
45 court determines appropriate, including, without limitation, requiring a loan
46 modification in the manner determined proper by the court.

47 ~~6.6~~ 7. If the grantor or the person who holds the title of record ~~elected to~~
48 ~~enter into mediation and~~ is enrolled to participate in mediation pursuant to this
49 section but fails to attend the mediation, the Mediation Administrator shall, not
50 later than 30 days after the scheduled mediation, provide to the trustee a
51 certificate which states that no mediation is required in the matter.

52 ~~7.7~~ 8. If the mediator determines that the parties, while acting in good faith,
53 are not able to agree to a loan modification, the mediator shall prepare and submit

1 to the Mediation Administrator a recommendation that the matter be terminated.
2 The Mediation Administrator shall, not later than 30 days after submittal of the
3 mediator's recommendation that the matter be terminated, provide to the trustee a
4 certificate which provides that the mediation required by this section has been
5 completed in the matter.

6 ~~8.1~~ 9. The Supreme Court shall adopt rules necessary to carry out the
7 provisions of this section. The rules must, without limitation, include provisions:

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

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

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

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

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

21 ~~9.1~~ 10. Except as otherwise provided in subsection ~~11.1~~ 12, the provisions
22 of this section do not apply if:

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

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

31 ~~10.1~~ 11. A noncommercial lender is not excluded from the application of this
32 section.

33 ~~11.1~~ 12. The Mediation Administrator and each mediator who acts pursuant
34 to this section in good faith and without gross negligence are immune from civil
35 liability for those acts.

36 ~~12.1~~ 13. As used in this section:

37 (a) "Mediation Administrator" means the entity so designated pursuant to
38 subsection ~~8.1~~ 9.

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

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

45 **Sec. 4. NRS 116.31162 is hereby amended to read as follows:**

46 116.31162 1. Except as otherwise provided in subsection 4 ~~1.1~~ and 5, in a
47 condominium, in a planned community, in a cooperative where the owner's interest
48 in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's
49 interest in a unit is personal property under NRS 116.1105 and the declaration
50 provides that a lien may be foreclosed under NRS 116.31162 to 116.31168,
51 inclusive, the association may foreclose its lien by sale after all of the following
52 occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the name and address of the person authorized by the association to enforce the lien by sale.

(3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association.

3. The period of 90 days begins on the first day following:

(a) The date on which the notice of default is recorded; or

(b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit, whichever date occurs later.

4. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

5. The association may not foreclose a lien by sale if:

(a) The unit is owner-occupied housing encumbered by a deed of trust;

(b) The beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee has recorded a notice of default and election to sell with respect to the unit pursuant to subsection 2 of NRS 107.080; and

(c) The trustee of record has not recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph (d) of subsection 2 of NRS 107.086.

As used in this subsection, "owner-occupied housing" has the meaning ascribed to it in NRS 107.086.

1 ~~Sec. 2.~~ **Sec. 5.** The amendatory provisions of this act apply only with
2 respect to trust agreements for which a notice of default and election to sell is
3 recorded on or after October 1, 2013.