

Amendment No. 662

Assembly Amendment to Senate Bill No. 278 First Reprint (BDR 9-134)

Proposed by: Assembly Committee on Judiciary

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

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 278 R1 (§ 4).

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.

NCA/BAW



Date: 5/20/2013

S.B. No. 278—Establishes an expedited process for the foreclosure of abandoned residential property. (BDR 9-134)



SENATE BILL NO. 278—SENATORS FORD AND JONES

MARCH 15, 2013

JOINT SPONSORS: ASSEMBLYMEN HEALEY,
SPIEGEL; AND FRIERSON

Referred to Committee on Judiciary

SUMMARY—Establishes an expedited process for the foreclosure of abandoned residential property. (BDR 9-134)

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; establishing an expedited process for the foreclosure of abandoned residential property; authorizing a board of county commissioners or the governing body of an incorporated city to establish by ordinance a registry of abandoned residential real property and a registry of real property in danger of becoming abandoned; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for a trustee under a deed of trust to exercise a power of sale on real property after a breach of an obligation or payment of debt secured by the deed of trust. (NRS 107.080) This bill establishes an expedited procedure for the exercise of the power of sale with respect to abandoned residential property.

Section 2 of this bill establishes the criteria to be used to determine whether real property constitutes abandoned residential property. **Section 4** of this bill authorizes a beneficiary of a deed of trust to elect to use an expedited procedure for the exercise of the trustee's power of sale if: (1) after an investigation of the property, the beneficiary determines that the property is abandoned residential property; and (2) the beneficiary receives a certification that the property is abandoned residential property from an agency *or contractor* designated by the county or city in which the property is located. Under **section 4**, each county and city must designate an agency *or contractor* to provide certifications that property is abandoned residential property, and that agency *or contractor* may charge the beneficiary a fee of not more than ~~\$504~~ *\$300* to provide such certifications. To elect to use the expedited procedure, the beneficiary must include with the notice of default and election to sell the certification of the agency *or contractor* designated by the county or city and an affidavit setting forth the circumstances and conditions supporting the determination that the property is abandoned residential property. If the certification and affidavit are included with the notice of default and election to sell: (1) **section 5** of this bill authorizes a notice of the sale of the property to be recorded not less than 60 days, rather than 3 months, after the recording of the notice of default and election to sell; and (2) **section 6** of this bill provides that the requirements

relating to the Foreclosure Mediation Program are inapplicable and that the trustee may exercise the power of sale by obtaining a certificate from the Mediation Administrator.

Under **section 4**, if the trustee's sale is not conducted within 6 months, unless the trustee's sale is tolled under certain circumstances, after receipt of a certification from the agency or contractor designated by the county or city: (1) the notice of default and election to sell and the affidavit and certification to elect the expedited procedure are deemed to be withdrawn; and (2) the beneficiary is liable to the grantor or the successor in interest of the grantor for a civil penalty of not more than \$500. **Section 4** further authorizes a grantor of a deed of trust or his or her successor in interest to record an affidavit stating that the property is not abandoned residential property and, if such an affidavit is recorded before the trustee's sale of the property, the notice of default and election to sell and the affidavit and certification to elect the expedited sale procedure are deemed to be withdrawn.

Section 3 of this bill: (1) authorizes a board of county commissioners or the governing body of an incorporated city to establish a registry of abandoned residential property and a registry of real property that is in danger of becoming abandoned residential property; and (2) requires the affidavit and certification required to elect the expedited sale procedure to be submitted to the entity maintaining the registry of abandoned residential property for the jurisdiction in which the property is located.

Section 7 of this bill provides that this bill expires by limitation on June 30, 2017, and thus, the authorization to use the expedited procedure for the exercise of the trustee's power of sale expires on that date.

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 the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *As used in this section and NRS 107.080 to 107.110, inclusive, and sections 3 and 4 of this act, unless the context otherwise requires:*

1. *"Abandoned residential property" means residential real property:*

(a) *Consisting of not more than four family dwelling units or a single-family residential unit, including, without limitation, a condominium, townhouse or home within a subdivision, if the unit is sold, leased or otherwise conveyed unit by unit, regardless of whether the unit is part of a larger building or parcel that consists of more than four units; and*

(b) *That the grantor or the successor in interest of the grantor has surrendered as evidenced by a document signed by the grantor or successor confirming the surrender or by the delivery of the keys to the property to the beneficiary or that satisfies the following conditions:*

(1) *The residential real property is not currently occupied as a principal residence by the grantor of the deed of trust, the person who holds title of record or any lawful occupant;*

(2) *The obligation secured by the deed of trust is in default and the deficiency in performance or payment has not been cured;*

(3) *The gas, electric and water utility services to the residential real property have been terminated;*

(4) *It appears, after reasonable inquiry, that there are no children enrolled in school residing at the address of the residential real property;*

(5) *Payments pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits, payments for unemployment compensation or payments for public assistance, as defined in NRS 422.050 and 422A.065, are not currently being delivered, electronically or otherwise, to a*

1 *person who has registered the address of the residential real property as his or*
2 *her residence with the agency making the payment;*

3 *(6) An owner of the residential real property is not presently serving in*
4 *the Armed Forces of the United States, a reserve component thereof or the*
5 *National Guard; and*

6 *(7) Two or more of the following conditions exist:*

7 *(I) Construction was initiated on the residential real property and*
8 *was discontinued before completion, leaving a building unsuitable for occupancy,*
9 *and no construction has taken place for at least 6 months;*

10 *(II) Multiple windows on the residential real property are boarded up*
11 *or closed off or are smashed through, broken off or unhinged, or multiple*
12 *window panes are broken and unrepaired;*

13 *(III) Doors on the residential real property are smashed through,*
14 *broken off, unhinged or continuously unlocked;*

15 *(IV) The residential real property has been stripped of copper or*
16 *other materials, or interior fixtures to the property have been removed;*

17 *(V) Law enforcement officials have received at least one report of*
18 *trespassing or vandalism or other illegal acts being committed at the residential*
19 *real property within the immediately preceding 6 months;*

20 *(VI) The residential real property has been declared unfit for*
21 *occupancy and ordered to remain vacant and unoccupied under an order issued*
22 *by a municipal or county authority or a court of competent jurisdiction;*

23 *(VII) The local police, fire or code enforcement authority has*
24 *requested that the owner or any other interested or authorized party secure the*
25 *residential real property because the local authority has declared the property to*
26 *be an imminent danger to the health, safety and welfare of the public; or*

27 *(VIII) The residential real property is open and unprotected and in*
28 *reasonable danger of significant damage resulting from exposure to the elements*
29 *or vandalism.*

30 *2. The term does not include residential real property if:*

31 *(a) There is construction, renovation or rehabilitation on the residential real*
32 *property that is proceeding diligently to completion, and any building being*
33 *constructed, renovated or rehabilitated on the property is in substantial*
34 *compliance with all applicable ordinances, codes, regulations and laws;*

35 *(b) The residential real property is occupied on a seasonal basis, but is*
36 *otherwise secure;*

37 *(c) There are bona fide rental or sale signs on the residential real property,*
38 *or the property is listed on a Multiple Listing Service, and the property is secure;*
39 *or*

40 *(d) The residential real property is secure but is the subject of a probate*
41 *action, action to quiet title or any other ownership dispute.*

42 **Sec. 3. 1. A board of county commissioners or the governing body of an**
43 **incorporated city may establish by ordinance:**

44 *(a) A registry of abandoned residential property that contains information*
45 *concerning abandoned residential property located in the county or city.*

46 *(b) A registry of residential property located in the county or city that may be*
47 *in danger of becoming abandoned residential property.*

48 *2. If a beneficiary of a deed of trust, the successor in interest of the*
49 *beneficiary or the trustee includes with a notice of default and election to sell*
50 *recorded pursuant to subsection 2 of NRS 107.080 the affidavit and certification*
51 *described in subsection 6 of section 4 of this act and the county or city in which*
52 *the abandoned residential property is located has established a registry of*
53 *abandoned residential property, the beneficiary or its successor in interest or the*

trustee must submit a copy of the affidavit and certification to the entity maintaining the registry for the county or city in which the abandoned residential property is located.

3. If a beneficiary of a deed of trust, the successor in interest of the beneficiary or the trustee receives a copy of the affidavit described in subsection 7 of section 4 of this act, the beneficiary or its successor in interest or the trustee must notify the entity maintaining the registry for the county or city in which the property described in the affidavit is located. Upon receiving such a notification, the entity maintaining the registry must remove the property from the registry.

4. If a property which has been removed from a registry established pursuant to this section subsequently becomes abandoned residential property or in danger of becoming abandoned residential property, the property may be added to the applicable registry in accordance with this section or the requirements established for the registry by the board of county commissioners or the governing body of an incorporated city.

Sec. 4. 1. A beneficiary may elect to use an expedited procedure for the exercise of the trustee's power of sale pursuant to NRS 107.080 if, after an investigation, the beneficiary:

(a) Determines that real property is abandoned residential property; and

(b) Receives from the applicable governmental entity a certification pursuant to subsection 4.

2. Each board of county commissioners of a county and each governing body of an incorporated city shall designate an agency or a contractor to inspect real property upon receipt of a request pursuant to paragraph (b) of subsection 3 and to provide certifications that real property is abandoned residential property pursuant to subsection 4.

3. If a beneficiary has a reasonable belief that real property may be abandoned residential property, the beneficiary or its agent:

(a) May enter the real property , but may not enter any dwelling or structure, to investigate whether the real property is abandoned residential property. Notwithstanding any other provision of law, a beneficiary and its agents who enter real property pursuant to this ~~subsection~~ paragraph are not liable for trespass.

(b) May request a certification pursuant to subsection 4 from the agency or contractor designated by the applicable governmental entity pursuant to subsection 2.

4. Upon receipt of a request pursuant to paragraph (b) of subsection 3, the agency or contractor designated by the applicable governmental entity shall inspect the real property ~~to~~ to determine the existence of two or more conditions pursuant to subparagraph (7) of paragraph (b) of subsection 1 of section 2 of this act. The ~~agency~~ designee and any ~~of its~~ employees of the designee may enter the real property , but may not enter any dwelling or structure, to perform an inspection pursuant to this subsection, and the ~~agency~~ designee and any ~~of its~~ employees who enter real property pursuant to this subsection are not liable for any civil damages as a result of any act or omission, not amounting to gross negligence, or for trespass. If the ~~agency~~ designee or an employee of the ~~agency~~ designee determines that the real property is abandoned residential property, the ~~agency~~ designee shall serve a notice by first-class mail to the grantor or the successor in interest of the grantor and by posting the notice on the front door of the residence. The notice must provide that unless a lawful occupant of the real property contacts the ~~agency~~ designee within 30 days after service of the notice, the ~~agency~~ designee will issue a certification that the real property is abandoned residential property and that the beneficiary may use the

1 certification to seek an expedited procedure for the exercise of the trustee's power
2 of sale. If a grantor or the successor in interest of the grantor or a lawful
3 occupant of the real property fails to contact the ~~agency~~ designee within 30 days
4 after service of the notice, the ~~agency~~ designee shall provide to the beneficiary a
5 certification that the real property is abandoned residential property. The
6 certification required by this subsection must:

7 (a) Be signed and verified by the designee or the employee or employees of
8 the ~~agency~~ designee who inspected the real property;

9 (b) State that, upon information and belief of the ~~agency~~ designee, after
10 investigation by the designee or the employee or employees of the ~~agency~~ designee,
11 the real property is abandoned residential property; and

12 (c) State the conditions or circumstances supporting the determination that
13 the property is abandoned residential property. Documentary evidence in support
14 of such conditions or circumstances must be attached to the certification.

15 5. For an inspection, service of notice and issuance of a certification
16 pursuant to subsection 4, the agency or contractor designated pursuant to
17 subsection 2 by the applicable governmental entity may charge and receive from
18 the beneficiary a fee of not more than ~~\$50~~ \$300.

19 6. A beneficiary who elects to use an expedited procedure for the exercise of
20 the trustee's power of sale pursuant to NRS 107.080 must include, or cause to be
21 included, with the notice of default and election to sell recorded pursuant to
22 subsection 2 of NRS 107.080 an affidavit setting forth the facts supporting the
23 determination that the real property is abandoned residential property and the
24 certification provided to the beneficiary pursuant to subsection 4. The affidavit
25 required by this subsection must:

26 (a) Be signed and verified by the beneficiary;

27 (b) State that, upon information and belief of the beneficiary after
28 investigation by the beneficiary or its agent, the property is abandoned residential
29 property; and

30 (c) State the conditions or circumstances supporting the determination that
31 the property is abandoned residential property. ~~Photographic or other~~
32 ~~documentary~~ Documentary evidence in support of such conditions or
33 circumstances must be attached to the affidavit.

34 7. If the notice of default and election to sell recorded pursuant to
35 subsection 2 of NRS 107.080 includes the affidavit and certification described in
36 subsection 6, before the sale, the grantor or a successor in interest of the grantor
37 may record in the office of the county recorder in the county where the real
38 property is located an affidavit stating that the real property is not abandoned
39 residential property, unless the grantor or the successor in interest of the grantor
40 has surrendered the property as evidenced by a document signed by the grantor
41 or successor confirming the surrender or by the delivery of the keys to the real
42 property to the beneficiary. Upon the recording of such an affidavit:

43 (a) The grantor or the successor in interest must mail by registered or
44 certified mail, return receipt requested, to the beneficiary and the trustee a copy
45 of the affidavit; and

46 (b) The notice of default and election to sell and the affidavit and
47 certification described in subsection 6 are deemed to be withdrawn.

48 8. If the notice of default and election to sell recorded pursuant to
49 subsection 2 of NRS 107.080 includes the affidavit and certification described in
50 subsection 6, the trustee's sale of the abandoned residential property must be
51 conducted within 6 months after the beneficiary received the certification. If the
52 trustee's sale is not conducted within 6 months after the beneficiary received the
53 certification:

(a) The notice of default and election to sell and the affidavit and certification described in subsection 6 are deemed to be withdrawn; and

(b) The beneficiary is liable to the grantor or the successor in interest of the grantor for a civil penalty of not more than \$500.

9. The period specified in subsection 8 is tolled:

(a) If a borrower has filed a case under 11 U.S.C. Chapter 7, 11, 12 or 13, until the bankruptcy court enters an order closing or dismissing the bankruptcy case or granting relief from a stay of the trustee's sale.

(b) If a court issues a stay or enjoins the trustee's sale, until the court issues an order granting relief from the stay or dissolving the injunction.

10. As used in this section:

(a) "Applicable governmental entity" means:

(1) If the real property is within the boundaries of a city, the governing body of the city; and

(2) If the real property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located.

(b) "Beneficiary" means the beneficiary of the deed of trust or the successor in interest of the beneficiary or any person designated or authorized to act on behalf of the beneficiary or its successor in interest.

Sec. 5. NRS 107.080 is hereby amended to read as follows:

107.080 1. Except as otherwise provided in NRS 106.210, 107.085 and 107.086, 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 which, except as otherwise provided in this paragraph, includes a notarized affidavit of authority to exercise the power of sale stating, based on personal knowledge and under the penalty of perjury:

(1) The full name and business address of the trustee or the trustee's personal representative or assignee, the current holder of the note secured by the deed of trust, the current beneficiary of record and the servicers of the obligation or debt secured by the deed of trust;

(2) The full name and last known business address of every prior known beneficiary of the deed of trust;

(3) That the beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the deed of trust;

(4) That the trustee has the authority to exercise the power of sale with respect to the property pursuant to the instruction of the beneficiary of record and the current holder of the note secured by the deed of trust;

(5) The amount in default, the principal amount of the obligation or debt secured by the deed of trust, a good faith estimate of all fees imposed and to be imposed because of the default and the costs and fees charged to the debtor in connection with the exercise of the power of sale; and

(6) The date, recordation number or other unique designation of the instrument that conveyed the interest of each beneficiary and a description of the instrument that conveyed the interest of each beneficiary.

➤ The affidavit described in this paragraph is not required for the exercise of the trustee's power of sale with respect to any trust agreement which concerns a time share within a time share plan created pursuant to chapter 119A of NRS if the power of sale is being exercised for the initial beneficiary under the deed of trust or an affiliate of the initial beneficiary.

(d) Not less than 3 months have elapsed after the recording of the notice ~~or~~, *if the notice includes an affidavit and a certification indicating that, pursuant to section 4 of this act, an election has been made to use the expedited procedure for the exercise of the power of sale with respect to abandoned residential property, not less than 60 days 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 recordation of the notice and incident to the making good of the deficiency in performance or payment are paid within the time specified in subsection 2; ~~and~~

(b) *If, pursuant to section 4 of this act, an election has been made to use the expedited procedure for the exercise of the power of sale with respect to abandoned residential property, include the affidavit and certification required by subsection 6 of section 4 of this act; and*

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

4. The trustee, or other person authorized to make the sale under the terms of the trust deed or transfer in trust, shall, after expiration of the ~~13-month~~ *applicable* period *specified in paragraph (d) of subsection 2* following the recording of the notice of breach and election to sell, and before the making of the sale, give notice of the time and place thereof by recording the notice of sale and by:

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

(b) Posting a similar notice particularly describing the property, for 20 days successively, in a public place in the county where the property is situated;

(c) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the property is situated or, if the property is a time share, by posting a copy of the notice on an Internet website and publishing a statement in a newspaper in the manner required by subsection 3 of NRS 119A.560; and

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

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

(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section or any applicable provision of NRS 107.086 and 107.087;

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

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

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

7. If, in an action brought by the grantor or the person who holds title of record in the district court in and for the county in which the real property is located, the court finds that the beneficiary, the successor in interest of the beneficiary or the trustee did not comply with any requirement of subsection 2, 3 or 4, the court must award to the grantor or the person who holds title of record:

(a) Damages of \$5,000 or treble the amount of actual damages, whichever is greater;

(b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor in interest of the beneficiary or the trustee complies with the requirements of subsections 2, 3 and 4; and

(c) Reasonable attorney's fees and costs,

➤ unless the court finds good cause for a different award. The remedy provided in this subsection is in addition to the remedy provided in subsection 5.

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

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

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

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

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

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

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

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

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

(b) A fee of \$45 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.

(c) A fee of \$5 to be paid over to the county treasurer on or before the fifth day of each month for the preceding calendar month. The county recorder may direct that 1.5 percent of the fees collected by the county recorder pursuant to this paragraph be transferred into a special account for use by the office of the county recorder. The county treasurer shall remit quarterly to the organization operating the program for legal services that receives the fees charged pursuant to NRS 19.031 for the operation of programs for the indigent all the money received from the county recorder pursuant to this paragraph.

12. The fees collected pursuant to paragraphs (a) and (b) of subsection 11 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 for Foreclosure Mediation as prescribed pursuant to subsection 11. 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 subsection 11.

13. 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 11.

14. As used in this section:

1 (a) "Residential foreclosure" means the sale of a single family residence under
2 a power of sale granted by this section. As used in this paragraph, "single family
3 residence":

4 (1) Means a structure that is comprised of not more than four units.

5 (2) Does not include vacant land or any time share or other property
6 regulated under chapter 119A of NRS.

7 (b) "Trustee" means the trustee of record.

8 **Sec. 6.** NRS 107.086 is hereby amended to read as follows:

9 107.086 1. ~~1. Except as otherwise provided in this subsection, in~~ addition
10 to the requirements of NRS 107.085, the exercise of the power of sale pursuant to
11 NRS 107.080 with respect to any trust agreement which concerns owner-occupied
12 housing is subject to the provisions of this section. *The provisions of this section*
13 *do not apply to the exercise of the power of sale if the notice of default and*
14 *election to sell recorded pursuant to subsection 2 of NRS 107.080 includes an*
15 *affidavit and a certification indicating that, pursuant to section 4 of this act, an*
16 *election has been made to use the expedited procedure for the exercise of the*
17 *power of sale with respect to abandoned residential property.*

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

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

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

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

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

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

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

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

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

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

45 3. The grantor or the person who holds the title of record shall, not later than
46 30 days after service of the notice in the manner required by NRS 107.080,
47 complete the form required by subparagraph (4) of paragraph (a) of subsection 2
48 and return the form to the trustee by certified mail, return receipt requested. If the
49 grantor or the person who holds the title of record indicates on the form an election
50 to enter into mediation, the trustee shall notify the beneficiary of the deed of trust
51 and every other person with an interest as defined in NRS 107.090, by certified
52 mail, return receipt requested, of the election of the grantor or the person who holds
53 the title of record to enter into mediation and file the form with the Mediation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 12. As used in this section:

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

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

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

33 **Sec. 6.5. Nothing in this act shall be construed to limit the ability of a**
34 **county or city to enforce any existing ordinance relating to abandoned**
35 **property.**

36 **Sec. 7.** This act becomes effective on July 1, 2013, and expires by limitation
37 on June 30, 2017.