

Amendment No. 405

Senate Amendment to Senate Bill No. 321

(BDR 9-748)

Proposed by: Senate Committee on Judiciary**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will REMOVE the 2/3s majority vote requirement from S.B. 321.

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

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

BFG/BAW



Date: 4/18/2013

S.B. No. 321—Enacts a “Homeowner’s Bill of Rights.” (BDR 9-748)



SENATE BILL NO. 321—SENATORS JONES, DENIS, SMITH, SEGERBLOM, FORD;
BROWER, HAMMOND, HUTCHISON AND KIHUEN

MARCH 18, 2013

JOINT SPONSORS: ASSEMBLYMEN HEALEY,
 KIRKPATRICK AND FRIERSON

Referred to Committee on Judiciary

SUMMARY—Enacts a “Homeowner’s Bill of Rights.” (BDR 9-748)

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 foreclosure of owner-occupied property securing a residential mortgage loan; providing civil remedies for failure to comply with certain provisions governing the foreclosure of owner-occupied property securing a residential mortgage loan; authorizing a defendant in a judicial foreclosure action to elect mediation; ~~requiring a person who services a residential mortgage loan secured by real property located in this State to obtain a license from the Commissioner of Mortgage Lending of the Department of Business and Industry; requiring the Commissioner to adopt regulations prescribing the procedures for applying for licensure as a residential mortgage service, establishing a fee for such a license and regulating the business of a residential mortgage loan servicer;~~ 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 also provides for a judicial foreclosure action under certain circumstances for the recovery of any debt or for the enforcement of any right secured by a mortgage or other lien upon real estate. (NRS 40.430) **Sections 2-16** of this bill establish additional restrictions on the exercise of the trustee’s power of sale and the judicial foreclosure which apply only to a residential mortgage loan secured by owner-occupied housing. Under section 7.5 of this bill, these additional restrictions do not apply to a credit union that, during its immediately preceding annual reporting period, as established with its primary regulator, has foreclosed on 100 or fewer owner-occupied homes located in this State. Under **section 30** of this bill, these additional restrictions apply only to a notice of default and election to sell which is recorded on or after October 1, 2013.

Section 10 of this bill provides that at least 30 days before recording a notice of default and election to sell or commencing a judicial foreclosure action and at least 30 days after the borrower's default, the mortgage servicer, mortgagee or beneficiary of the deed of trust must provide to the borrower certain information concerning the borrower's account, the foreclosure prevention alternatives offered by the mortgage servicer, mortgagee or beneficiary and a statement of the facts supporting the right of the mortgagee or beneficiary to foreclose. **Section 11** of this bill prohibits the recording of a notice of default and election to sell or the commencement of a judicial foreclosure action until the mortgage servicer complies with certain requirements regarding contact with, or attempts to contact, the borrower. **Section 13** of this bill prohibits the practice commonly known as "dual-tracking" by prohibiting a mortgage servicer, trustee, mortgagee or beneficiary of a deed of trust from continuing the foreclosure process while an application for a foreclosure prevention alternative is pending or while the borrower is current on his or her obligation under a foreclosure prevention alternative. **Section 14** of this bill requires a mortgage servicer to provide a single point of contact for a borrower who requests a foreclosure prevention alternative. **Section 15** of this bill requires that under certain circumstances, a mortgage servicer, mortgagee or beneficiary of a deed of trust must cause to be dismissed a judicial foreclosure action or cause to be withdrawn any recorded notice of default and election or notice of sale. **Section 16** of this bill provides for certain civil remedies for a material violation of the provisions of **sections 2-16** and provides that a material violation of such provisions is a deceptive trade practice.

Section 18 of this bill provides that a defendant in a judicial foreclosure action concerning owner-occupied property may elect to participate in the Foreclosure Mediation Program.

~~Under existing law, the Commissioner of Mortgage Lending issues licenses to and regulates residential mortgage loan servicers located in this State under the existing laws governing escrow agencies and agents. (NRS 645A.020) Under existing law, residential mortgage loan servicers who are not located in this State but who service mortgage loans secured by real property located in this State are only required to register with the Commissioner. (NRS 80.015, 86.5483, 87A.615, 88.602, 645F.265) Existing law provides that certain entities are exempt from the requirement to obtain a license from the Commissioner, including, without limitation, certain financial institutions regulated under the laws of this State, any other state or the United States. (NRS 645B.015, 645E.150) Sections 21, 22, 28 and 29 of this bill: (1) require any person who services a residential mortgage loan secured by real property located in this State, other than certain entities exempt under existing law from the requirement to obtain a license from the Commissioner, to obtain a license from the Commissioner; and (2) require the Commissioner to adopt regulations establishing the requirements and procedures for obtaining such a license, prescribing a reasonable fee for application and licensure as a residential mortgage loan servicer and regulating the business practices of residential mortgage loan servicers.~~

WHEREAS, The State of Nevada has been severely affected by the mortgage foreclosure crisis and consistently ranks as one of the top states for underwater home mortgage loans, mortgage defaults and foreclosures; and

WHEREAS, The dramatic increase in foreclosures during the mortgage foreclosure crisis has led to predatory and illegal practices by mortgage servicers and outside firms hired by mortgage servicers; and

WHEREAS, The Nevada Attorney General investigated and sued certain large financial institutions for engaging in illegal practices relating to the servicing of mortgage loans in default and entered into consent agreements and settlements requiring certain large financial institutions to adopt certain practices when servicing a mortgage loan in default; and

WHEREAS, The consent agreements and settlements only apply to the large financial institutions and are not permanent; and

WHEREAS, All homeowners in the State of Nevada deserve better consumer protections and fair and honest treatment in the servicing of mortgage loans in default; now therefore,

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 to 16, inclusive, of this act.

Sec. 2. *As used in sections 2 to 16, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Borrower” means a natural person who is a mortgagor or grantor of a deed of trust under a residential mortgage loan. The term does not include a natural person who:*

1. Has surrendered the secured property as evidenced by a letter confirming the surrender or the delivery of the keys to the property to the mortgagee, trustee, beneficiary of the deed of trust or an authorized agent of such a person.

2. Has contracted with an organization, person or entity whose primary business is advising persons who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries of deeds of trust.

3. Has filed a case under 11 U.S.C. Chapter 7, 11, 12 or 13 and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case, or granting relief from a stay of foreclosure or trustee’s sale.

Sec. 4. *“Foreclosure prevention alternative” means a modification of a loan secured by the most senior mortgage or deed of trust on the property that is the subject of the notice of default and election to sell or any other loss mitigation option.*

Sec. 5. *“Foreclosure sale” means the exercise of the trustee’s power of sale pursuant to NRS 107.080 or a sale directed by a court pursuant to NRS 40.430.*

Sec. 6. *“Mortgage servicer” means a person or entity who directly services a residential mortgage loan, or who is responsible for interacting with a borrower, managing a loan account on a daily basis, including, without limitation, collecting and crediting periodic loan payments, managing any escrow account or enforcing the note and security instrument, either as the current owner of the promissory note or as the authorized agent of the current owner of the promissory note. The term includes a person or entity providing such services by contract as a subservicing agent to a master servicer by contract. The term does not include a trustee under a deed of trust, or the trustee’s authorized agent, acting under a power of sale pursuant to a deed of trust.*

Sec. 7. *“Residential mortgage loan” means a loan which is primarily for personal, family or household use and which is secured by a mortgage, deed of trust or other equivalent, consensual security interest on owner-occupied housing as defined in NRS 107.086.*

Sec. 7.5. *The provisions of sections 2 to 16, inclusive, of this act do not apply to a credit union, as defined in NRS 678.070, that, during its immediately preceding annual reporting period, as established with its primary regulator, has foreclosed on 100 or fewer real properties located in this State which constitute owner-occupied housing, as defined in NRS 107.086.*

Sec. 8. 1. *In addition to the requirements of NRS 107.085 and 107.086, the exercise of a trustee’s power of sale pursuant to NRS 107.080 with respect to a deed of trust securing a residential mortgage loan is subject to the provisions of sections 2 to 16, inclusive, of this act.*

2. *In addition to the requirements of NRS 40.430 to 40.4639, inclusive, an action for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan secured by a mortgage or other lien upon real estate*

1 *that is not barred by NRS 40.430 is subject to the requirements of sections 2 to 16,*
2 *inclusive, of this act.*

3 **Sec. 9.** 1. *Any duty of a mortgage servicer to maximize net present value*
4 *under a pooling and servicing agreement is owed to all parties in a loan pool, or*
5 *to all investors under a pooling and servicing agreement, not to any particular*
6 *party in the loan pool or investor under a pooling and servicing agreement.*

7 2. *A mortgage servicer acts in the best interests of all parties to the loan*
8 *pool or investors in the pooling and servicing agreement if the mortgage servicer*
9 *agrees to or implements a foreclosure prevention alternative for which both of the*
10 *following apply:*

11 (a) *The residential mortgage loan is in default or default is reasonably*
12 *foreseeable.*

13 (b) *Anticipated recovery under the foreclosure prevention alternative exceeds*
14 *the anticipated recovery through foreclosure on a net present value basis.*

15 **Sec. 10.** 1. *At least 30 days before recording a notice of default and*
16 *election to sell pursuant to subsection 2 of NRS 107.080 or commencing a civil*
17 *action for the recovery of any debt, or for the enforcement of any right, under a*
18 *residential mortgage loan that is not barred by NRS 40.430 and at least 30 days*
19 *after the borrower's default, the mortgage servicer, mortgagee or beneficiary of*
20 *the deed of trust shall mail, by first-class mail, a notice addressed to the borrower*
21 *at the borrower's primary address as indicated in the records of the mortgage*
22 *servicer, mortgagee or beneficiary of the deed of trust, which contains:*

23 (a) *A statement that if the borrower is a servicemember or a dependent of a*
24 *servicemember, he or she may be entitled to certain protections under the federal*
25 *Servicemembers Civil Relief Act, 50 U.S.C. §§ 501 et seq., regarding the*
26 *servicemember's interest rate and the risk of foreclosure, and counseling for*
27 *covered servicemembers that is available from Military OneSource and the*
28 *United States Armed Forces Legal Assistance or any other similar agency.*

29 (b) *A summary of the borrower's account which sets forth:*

30 (1) *The total amount of payment necessary to cure the default and*
31 *reinstate the residential mortgage loan or to bring the residential mortgage loan*
32 *into current status;*

33 (2) *The amount of the principal obligation under the residential*
34 *mortgage loan;*

35 (3) *The date through which the borrower's obligation under the*
36 *residential mortgage loan is paid;*

37 (4) *The date of the last full payment by the borrower;*

38 (5) *The current interest rate in effect for the residential mortgage loan, if*
39 *the rate is effective for at least 30 days;*

40 (6) *The date on which the interest rate for the residential mortgage loan*
41 *may next reset or adjust, unless the rate changes more frequently than once every*
42 *30 days;*

43 (7) *The amount of the prepayment fee charged under the residential*
44 *mortgage loan, if any;*

45 (8) *A description of any late payment fee charged under the residential*
46 *mortgage loan;*

47 (9) *A telephone number or electronic mail address that the borrower may*
48 *use to obtain information concerning the residential mortgage loan; and*

49 (10) *The names, addresses, telephone numbers and Internet website*
50 *addresses of one or more counseling agencies or programs approved by the*
51 *United States Department of Housing and Urban Development.*

52 (c) *A statement of the facts establishing the right of the mortgage servicer,*
53 *mortgagee or beneficiary of the deed of trust to cause the trustee to exercise the*

1 trustee's power of sale pursuant to NRS 107.080 or to commence a civil action
2 for the recovery of any debt, or for the enforcement of any right, under a
3 residential mortgage loan that is not barred by NRS 40.430.

4 (d) A statement of the foreclosure prevention alternatives offered by, or
5 through, the mortgage servicer, mortgagee or beneficiary of the deed of trust.

6 (e) A statement that the borrower may request:

7 (1) A copy of the borrower's promissory note or other evidence of
8 indebtedness;

9 (2) A copy of the borrower's mortgage or deed of trust;

10 (3) A copy of any assignment, if applicable, of the borrower's mortgage
11 or deed of trust required to demonstrate the right of the mortgage servicer,
12 mortgagee or beneficiary of the deed of trust to cause the trustee to exercise the
13 trustee's power of sale pursuant to NRS 107.080 or to commence a civil action
14 for the recovery of any debt, or for the enforcement of any right, under a
15 residential mortgage loan that is not barred by NRS 40.430; and

16 (4) A copy of the borrower's payment history since the borrower was last
17 less than 60 days past due.

18 2. Unless a borrower has exhausted the process described in sections 12 and
19 13 of this act for applying for a foreclosure prevention alternative offered by, or
20 through, the mortgage servicer, mortgagee or beneficiary of the deed of the trust,
21 not later than 5 business days after a notice of default and election to sell is
22 recorded pursuant to subsection 2 of NRS 107.080 or a civil action for the
23 recovery of any debt, or for the enforcement of any right, under a residential
24 mortgage loan that is not barred by NRS 40.430 is commenced, the mortgage
25 servicer, mortgagee or beneficiary of the deed of trust that offers one or more
26 foreclosure prevention alternatives must send to the borrower a written
27 statement:

28 (a) That the borrower may be evaluated for a foreclosure prevention
29 alternative or, if applicable, foreclosure prevention alternatives;

30 (b) Whether an application is required to be submitted by the borrower if the
31 borrower wants to be considered for a foreclosure prevention alternative; and

32 (c) Of the means and process by which a borrower may obtain an application
33 for a foreclosure prevention alternative.

34 Sec. 11. 1. A mortgage servicer, mortgagee, trustee, beneficiary of a deed
35 of trust or an authorized agent of such a person may not record a notice of
36 default and election to sell pursuant to subsection 2 of NRS 107.080 or
37 commence a civil action for the recovery of any debt, or for the enforcement of
38 any right, under a residential mortgage loan that is not barred by NRS 40.430
39 until:

40 (a) The mortgage servicer, mortgagee or beneficiary of the deed of trust has
41 satisfied the requirements of section 10 of this act;

42 (b) Thirty days after initial contact is made with the borrower as required by
43 subsection 2 or 30 days after satisfying the requirements of subsection 5; and

44 (c) The mortgage servicer complies with sections 12 and 13 of this act, if the
45 borrower submits an application for a foreclosure prevention alternative offered
46 by, or through, the mortgage servicer, mortgagee or beneficiary of the deed of
47 trust.

48 2. The mortgage servicer shall contact the borrower in person or by
49 telephone to assess the borrower's financial situation and to explore options for
50 the borrower to avoid a foreclosure sale. During the initial contact, the mortgage
51 servicer shall advise the borrower that he or she has the right to request a
52 subsequent meeting and, if requested, the mortgage servicer must schedule the
53 meeting to occur within 14 days after the request. The assessment of the

1 *borrower's financial situation and discussion of the options to avoid a*
2 *foreclosure sale may occur during the initial contact or at the subsequent meeting*
3 *scheduled for that purpose. In either case, the borrower must be provided the toll-*
4 *free telephone number made available by the United States Department of*
5 *Housing and Urban Development to find a housing counseling agency certified*
6 *by that Department. Any meeting pursuant to this subsection may occur by*
7 *telephone.*

8 *3. The loss mitigation personnel of a mortgage servicer may participate by*
9 *telephone during any contact with a borrower required by this section.*

10 *4. A borrower may designate, with consent given in writing, a housing*
11 *counseling agency certified by the United States Department of Housing and*
12 *Urban Development, an attorney or any other adviser to discuss with the*
13 *mortgage servicer, on the borrower's behalf, the borrower's financial situation*
14 *and options for the borrower to avoid a foreclosure sale. Contact with a person or*
15 *agency designated by a borrower pursuant to this subsection satisfies the*
16 *requirements of subsection 2. A foreclosure prevention alternative offered during*
17 *any contact with a person or agency designated by a borrower pursuant to this*
18 *subsection is subject to the approval of the borrower.*

19 *5. If a mortgage servicer has not contacted a borrower as required by*
20 *subsection 2, a notice of default and election to sell may be recorded pursuant to*
21 *subsection 2 of NRS 107.080 or a civil action for the recovery of any debt, or for*
22 *the enforcement of any right, under a residential mortgage loan that is not barred*
23 *by NRS 40.430 may be commenced, if the mortgage servicer has taken all the*
24 *following actions:*

25 *(a) The mortgage servicer attempts to contact the borrower by mailing by*
26 *first-class mail to the borrower a letter informing the borrower of his or her right*
27 *to discuss foreclosure prevention alternatives and providing the toll-free*
28 *telephone number made available by the United States Department of Housing*
29 *and Urban Development to find a housing counseling agency approved by that*
30 *Department.*

31 *(b) After mailing the letter required by paragraph (a), the mortgage servicer*
32 *attempts to contact the borrower by telephone at least 3 times at different hours*
33 *on different days. Telephone calls made pursuant to this paragraph must be made*
34 *to the primary telephone number of the borrower which is on file with the*
35 *mortgage servicer. A mortgage servicer may attempt to contact a borrower*
36 *pursuant to this paragraph by using an automated system to dial borrowers if,*
37 *when the telephone call is answered, the call is connected to a live representative*
38 *of the mortgage servicer. A mortgage servicer satisfies the requirements of this*
39 *paragraph if it determines, after attempting to contact a borrower pursuant to this*
40 *paragraph, that the primary telephone number of the borrower which is on file*
41 *with the mortgage servicer and any secondary telephone numbers on file with the*
42 *mortgage servicer have been disconnected.*

43 *(c) If the borrower does not respond within 2 weeks after the mortgage*
44 *servicer satisfies the requirements of paragraph (b), the mortgage servicer mails*
45 *by certified mail, return receipt requested, a letter that includes the information*
46 *required by paragraph (a).*

47 *(d) The mortgage servicer provides a means for the borrower to contact the*
48 *mortgage servicer in a timely manner, including, without limitation, a toll-free*
49 *telephone number that will provide access to a live representative during business*
50 *hours.*

51 *(e) The mortgage servicer posts on the homepage of its Internet website, if*
52 *any, a prominent link to the following information:*

1 (1) Options that may be available to borrowers who are unable to afford
2 payments under a residential mortgage loan and who wish to avoid a foreclosure
3 sale, and instructions to such borrowers advising them on steps to take to explore
4 those options.

5 (2) A list of financial documents the borrower should collect and be
6 prepared to present to the mortgage servicer when discussing options to avoid a
7 foreclosure sale.

8 (3) A toll-free telephone number for borrowers who wish to discuss with
9 the mortgage servicer options for avoiding a foreclosure sale.

10 (4) The toll-free telephone number made available by the United States
11 Department of Housing and Urban Development to find a housing counseling
12 agency certified by that Department.

13 6. If the property is subject to the requirements of sections 2 to 16, inclusive,
14 of this act, a notice of default and election to sell recorded pursuant to subsection
15 2 of NRS 107.080 or a complaint commencing a civil action for the recovery of
16 any debt, or for the enforcement of any right, under a residential mortgage loan
17 that is not barred by NRS 40.430, must contain a declaration that the mortgage
18 servicer has contacted the borrower as required by subsection 2, has attempted to
19 contact the grantor or the person who holds title of record as required by
20 subsection 5 of this act or that no contact was required.

21 Sec. 12. 1. Not later than 5 days after receiving an application for a
22 foreclosure prevention alternative or any document in connection with such an
23 application, a mortgage servicer, mortgagee or beneficiary of the deed of trust
24 shall send to the borrower written acknowledgment of the receipt of the
25 application or document.

26 2. The mortgage servicer, mortgagee or beneficiary of the deed of trust shall
27 include in the initial acknowledgment of receipt of an application for a
28 foreclosure prevention alternative:

29 (a) A description of the process for considering the application, including,
30 without limitation, an estimate of when a decision on the application will be made
31 and the length of time the borrower will have to consider an offer for a
32 foreclosure prevention alternative;

33 (b) A statement of any deadlines that affect the processing of an application
34 for a foreclosure prevention alternative, including, without limitation, the
35 deadline for submitting any missing documentation; and

36 (c) A statement of the expiration dates for any documents submitted by the
37 borrower.

38 3. If a borrower submits an application for a foreclosure prevention
39 alternative but does not initially submit all the documents or information
40 required to complete the application, the mortgage servicer must:

41 (a) Include in the initial acknowledgment of receipt of the application
42 required by subsection 2 a statement of any deficiencies in the borrower's
43 application; and

44 (b) Allow the borrower not less than 30 calendar days to submit any
45 documents or information required to complete the application.

46 Sec. 13. 1. If a borrower submits an application for a foreclosure
47 prevention alternative offered by, or through, the borrower's mortgage servicer or
48 mortgagee or the beneficiary of the deed of trust, then the mortgage servicer,
49 mortgagee, trustee, beneficiary of the deed of trust or an authorized agent of such
50 a person may not commence a civil action for the recovery of any debt, or for the
51 enforcement of any right, under a residential mortgage loan that is not barred by
52 NRS 40.430, record a notice of default and election to sell pursuant to subsection

1 2 of NRS 107.080 or a notice of sale pursuant to subsection 4 of NRS 107.080, or
2 conduct a foreclosure sale until one of the following has occurred:

3 (a) The borrower fails to submit all the documents or information required to
4 complete the application within 30 calendar days after the date of the initial
5 acknowledgment of receipt of the application sent to the borrower pursuant to
6 section 12 of this act.

7 (b) The mortgage servicer or beneficiary of the deed of trust makes a written
8 determination that the borrower is not eligible for a foreclosure prevention
9 alternative, and any appeal period pursuant to subsection 4 has expired.

10 (c) The borrower does not accept a written offer for a foreclosure prevention
11 alternative within 14 days after the date of the offer.

12 (d) The borrower accepts a written offer for a foreclosure prevention
13 alternative, but defaults on, or otherwise breaches the borrower's obligations
14 under, the foreclosure prevention alternative.

15 2. If a borrower accepts an offer for a foreclosure prevention alternative,
16 the mortgage servicer must provide the borrower with a copy of the complete
17 agreement evidencing the foreclosure prevention alternative, signed by the
18 mortgagee or beneficiary of the deed of trust or an agent or authorized
19 representative of the mortgagee or beneficiary.

20 3. If a borrower submits a complete application for a foreclosure prevention
21 alternative and the borrower's application is denied, the mortgage servicer must
22 send to the borrower a written statement of:

23 (a) The reason or reasons for the denial;

24 (b) The amount of time the borrower has to request an appeal of the denial,
25 which must be not less than 30 days; and

26 (c) Instructions regarding how to appeal the denial, including, without
27 limitation, how to provide evidence that the denial was in error.

28 4. If a borrower submits a complete application for a foreclosure prevention
29 alternative and the borrower's application is denied, the mortgage servicer,
30 mortgagee, trustee, beneficiary of the deed of trust, or an authorized agent of
31 such a person may not commence a civil action for the recovery of any debt, or
32 for the enforcement of any right, under a residential mortgage loan that is not
33 barred by NRS 40.430, record a notice of default and election to sell pursuant to
34 subsection 2 of NRS 107.080 or a notice of sale pursuant to subsection 4 of NRS
35 107.080, or conduct a foreclosure sale until the later of:

36 (a) Thirty-one days after the borrower is sent the written statement required
37 by subsection 3; and

38 (b) If the borrower appeals the denial, the later of:

39 (1) Fifteen days after the denial of the appeal;

40 (2) If the appeal is successful, 14 days after a first lien loan modification
41 or another foreclosure prevention alternative offered after appeal is declined by
42 the borrower; and

43 (3) If the appeal is successful and a first lien loan modification or
44 another foreclosure prevention alternative is offered and accepted, the date on
45 which the borrower fails to timely submit the first payment or otherwise breaches
46 the terms of the offer.

47 5. A mortgage servicer shall not charge or collect any:

48 (a) Application, processing or other fee for a foreclosure prevention
49 alternative; or

50 (b) Late fees for periods during which:

51 (1) A foreclosure prevention alternative is under consideration or a
52 denial is being appealed;

1 (2) *The borrower is making timely payments under a foreclosure*
2 *prevention alternative; or*

3 (3) *A foreclosure prevention alternative is being evaluated or exercised.*

4 6. *A mortgage servicer is not required to evaluate an application from a*
5 *borrower who has already been evaluated or afforded a fair opportunity to be*
6 *evaluated for a foreclosure prevention alternative before October 1, 2013, or who*
7 *has been evaluated or afforded a fair opportunity to be evaluated consistent with*
8 *the requirements of this section, unless:*

9 (a) *There has been a material change in the borrower's financial*
10 *circumstances since the date of the borrower's previous application; and*

11 (b) *That change is documented by the borrower and submitted to the*
12 *mortgage servicer.*

13 7. *For purposes of this section, an application is complete when a borrower*
14 *has supplied the mortgage servicer with all documents required by the mortgage*
15 *servicer within the reasonable timeframes specified by the mortgage servicer.*

16 Sec. 14. 1. *If a borrower requests a foreclosure prevention alternative, the*
17 *mortgage servicer must promptly establish a single point of contact and provide to*
18 *the borrower one or more direct means of communication with the single point of*
19 *contact.*

20 2. *A single point of contact is responsible for:*

21 (a) *Communicating the process by which a borrower may apply for an*
22 *available foreclosure prevention alternative and the deadline for any required*
23 *submissions to be considered for the foreclosure prevention alternatives.*

24 (b) *Coordinating receipt of all documents associated with the available*
25 *foreclosure prevention alternatives and notifying the borrower of any missing*
26 *documents necessary to complete an application for a foreclosure prevention*
27 *alternative.*

28 (c) *Having access to current information and personnel sufficient to timely,*
29 *accurately and adequately inform the borrower of the current status of the*
30 *foreclosure prevention alternative.*

31 (d) *Ensuring that the borrower is considered for all foreclosure prevention*
32 *alternatives offered by, or through, the mortgage servicer and for which the*
33 *borrower is or may be eligible.*

34 (e) *Having access to a person or persons with the ability and authority to stop*
35 *the foreclosure process when necessary.*

36 3. *A single point of contact must remain assigned to the borrower's account*
37 *until the mortgage servicer determines that all foreclosure prevention alternatives*
38 *offered by, or through, the mortgage servicer have been exhausted or the*
39 *borrower's account becomes current.*

40 4. *The mortgage servicer shall ensure that a single point of contact refers*
41 *and transfers a borrower to an appropriate supervisor upon request of the*
42 *borrower, if the single point of contact has a supervisor.*

43 5. *If the responsibilities of a single point of contact are performed by a team*
44 *of personnel, the mortgage servicer must ensure that each member of the team is*
45 *knowledgeable about the borrower's situation and current status in the process of*
46 *seeking a foreclosure prevention alternative.*

47 6. *As used in this section, "single point of contact" means a person or team*
48 *of personnel each of whom has the ability and authority to perform the*
49 *responsibilities described in this section.*

50 Sec. 15. 1. *The mortgage servicer, mortgagee or beneficiary of the deed of*
51 *trust shall cause to be dismissed with prejudice a civil action commenced for the*
52 *recovery of any debt, or for the enforcement of any right, under a residential*
53 *mortgage loan that is not barred by NRS 40.430, or cause to be withdrawn any*

1 *notice of default and election to sell recorded pursuant to subsection 2 of NRS*
2 *107.080 or any notice of sale recorded pursuant to subsection 4 of NRS 107.080,*
3 *and shall cancel any pending foreclosure sale, if:*

4 *(a) The borrower accepts a permanent foreclosure prevention alternative;*

5 *(b) A notice of sale is not recorded within 9 months after the notice of default*
6 *and election to sell is recorded pursuant to subsection 2 of NRS 107.080; or*

7 *(c) A foreclosure sale is not conducted within 90 days after a notice of sale is*
8 *recorded pursuant to subsection 4 of NRS 107.080.*

9
10 *2. If, pursuant to subsection 1, a civil action is dismissed, a notice of default*
11 *and election to sell recorded pursuant to subsection 2 of NRS 107.080 or any*
12 *notice of sale recorded pursuant to subsection 4 of NRS 107.080 is withdrawn, or*
13 *any pending foreclosure sale is cancelled, the mortgagee or beneficiary of the*
14 *deed of trust is thereupon restored to its former position and has the same rights*
15 *as though an action for a judicial foreclosure had not been commenced or a*
16 *notice of default and election to sell had not been recorded.*

17 **Sec. 16. 1.** *If a trustee's deed upon sale has not been recorded pursuant*
18 *to subsection 9 of NRS 107.080, a borrower may bring an action for injunctive*
19 *relief to enjoin a material violation of sections 2 to 16, inclusive, of this act. If a*
20 *sheriff has not recorded the sale of the property pursuant to subsection 5 of NRS*
21 *40.430, a borrower may obtain an injunction to enjoin a material violation of*
22 *sections 2 to 16, inclusive, of this act. An injunction issued pursuant to this*
23 *subsection remains in place and any foreclosure sale must be enjoined until the*
24 *court determines that the mortgage servicer, mortgagee, beneficiary of the deed*
25 *of trust or an authorized agent of such a person has corrected and remedied the*
26 *violation giving rise to the action for injunctive relief. An enjoined entity may*
27 *move to dissolve an injunction based on a showing that the material violation has*
28 *been corrected and remedied.*

29 *2. After a trustee's deed upon sale has been recorded pursuant to subsection*
30 *9 of NRS 107.080 or after a sheriff has recorded the sale of the property pursuant*
31 *to subsection 5 of NRS 40.430, a borrower may bring a civil action in the district*
32 *court in the county in which the property is located to recover his or her actual*
33 *economic damages resulting from a material violation of sections 2 to 16,*
34 *inclusive, of this act by the mortgage servicer, mortgagee, beneficiary of the deed*
35 *of trust or an authorized agent of such a person, if the material violation was not*
36 *corrected and remedied before the recording of the trustee's deed upon sale*
37 *pursuant to subsection 9 of NRS 107.080 or the recording of the sale of the*
38 *property pursuant to subsection 5 of NRS 40.430. If the court finds that the*
39 *material violation was intentional or reckless, or resulted from willful misconduct*
40 *by a mortgage servicer, mortgagee, beneficiary of the deed of trust or an*
41 *authorized agent of such a person, the court may award the borrower the greater*
42 *of treble actual damages or statutory damages of \$50,000.*

43 *3. A mortgage servicer, mortgagee, beneficiary of the deed of trust or an*
44 *authorized agent of such a person is not liable for any violation of sections 2 to*
45 *16, inclusive, of this act that it has corrected and remedied, or that has been*
46 *corrected and remedied on its behalf by a third party, before the recording of the*
47 *trustee's deed upon sale pursuant to subsection 9 of NRS 107.080 or the*
48 *recording of the sale of the property pursuant to subsection 5 of NRS 40.430.*

49 *4. A violation of sections 2 to 16, inclusive, of this act does not affect the*
50 *validity of a sale to a bona fide purchaser for value and any of its encumbrancers*
51 *for value without notice.*

52 *5. A signatory to a consent judgment entered in the case entitled United*
53 *States of America et al. v. Bank of America Corporation et al., filed in the United*
States District Court for the District of Columbia, case number 1:12-cv-00361

RMC, that is in compliance with the relevant terms of the Settlement Term Sheet of that consent judgment with respect to the borrower who brought an action pursuant to this section while the consent judgment is in effect is not liable for a violation of sections 2 to 16, inclusive, of this act.

6. A court may award a prevailing borrower costs and reasonable attorney's fees in an action brought pursuant to this section.

7. A material violation of sections 2 to 16, inclusive, of this act is a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

8. The rights, remedies and procedures provided by this section are in addition to and independent of any other rights, remedies or procedures provided by law.

Sec. 17. 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.

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 the property is subject to the requirements of sections 2 to 16, inclusive, of this act, the declaration required by subsection 6 of section 11 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 3-month period 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

1 notice on an Internet website and publishing a statement in a newspaper in the
2 manner required by subsection 3 of NRS 119A.560; and

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

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

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

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

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

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

24 7. If, in an action brought by the grantor or the person who holds title of
25 record in the district court in and for the county in which the real property is
26 located, the court finds that the beneficiary, the successor in interest of the
27 beneficiary or the trustee did not comply with any requirement of subsection 2, 3 or
28 4, the court must award to the grantor or the person who holds title of record:

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

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

34 (c) Reasonable attorney's fees and costs,

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

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

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

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

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

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

51 (a) Is liable in a civil action to any party that is a senior lienholder against the
52 property that is the subject of the sale in a sum of up to \$500 and for reasonable
53 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:

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

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

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

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

Sec. 18. Chapter 40 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If an action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate that is not barred by NRS 40.430 is commenced in a court of competent jurisdiction:

(a) The copy of the complaint served on the defendant must include a separate document containing:

(1) Contact information which the defendant may use to reach a person with authority to negotiate a loan modification on behalf of the plaintiff;

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

1 (3) *A notice provided by the Mediation Administrator indicating that the*
2 *plaintiff has the right to seek mediation pursuant to this section; and*

3 (4) *A form upon which the defendant may indicate an election to enter*
4 *into mediation or to waive mediation pursuant to this section and one envelope*
5 *addressed to the plaintiff and one envelope addressed to the Mediation*
6 *Administrator, which the grantor or the person who holds the title of record may*
7 *use to comply with the provisions of subsection 2; and*

8 (b) *The plaintiff must submit a copy of the complaint to the Mediation*
9 *Administrator.*

10 2. *The defendant shall, not later than the date on which an answer to the*
11 *complaint is due, complete the form required by subparagraph (4) of paragraph*
12 *(a) of subsection 1 and file the form with the court and return a copy of the form*
13 *to the plaintiff by certified mail, return receipt requested. If the plaintiff indicates*
14 *on the form an election to enter into mediation, the plaintiff shall notify any*
15 *person with an interest as defined in NRS 107.090, by certified mail, return*
16 *receipt requested, of the election of the defendant to enter into mediation and file*
17 *the form with the Mediation Administrator, who shall assign the matter to a*
18 *senior justice, judge, hearing master or other designee and schedule the matter*
19 *for mediation. The judicial foreclosure action must be stayed until the completion*
20 *of the mediation. If the defendant indicates on the form an election to waive*
21 *mediation or fails to file the form with the court and return a copy of the form to*
22 *the plaintiff as required by this subsection, no mediation is required in the action.*

23 3. *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 8 of NRS 107.086. The plaintiff or a representative, and*
26 *the defendant or his or her representative, shall attend the mediation. The*
27 *plaintiff shall bring to the mediation the original or a certified copy of the*
28 *mortgage or deed of trust, the mortgage note and each assignment of the*
29 *mortgage or deed of trust or mortgage note. If the plaintiff is represented at the*
30 *mediation by another person, that person must have authority to negotiate a loan*
31 *modification on behalf of the plaintiff or have access at all times during the*
32 *mediation to a person with such authority.*

33 4. *If the plaintiff or the representative fails to attend the mediation, fails to*
34 *participate in the mediation in good faith or does not bring to the mediation each*
35 *document required by subsection 3 or does not have the authority or access to a*
36 *person with the authority required by subsection 3, the mediator shall prepare*
37 *and submit to the Mediation Administrator and the court a petition and*
38 *recommendation concerning the imposition of sanctions against the beneficiary*
39 *of the deed of trust or the representative. The court may issue an order imposing*
40 *such sanctions against the plaintiff 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 5. *If the defendant elected to enter into mediation and fails to attend the*
44 *mediation, no mediation is required and the judicial foreclosure action must*
45 *proceed as if the plaintiff had not elected to enter into mediation.*

46 6. *If the mediator determines that the parties, while acting in good faith, are*
47 *not able to agree to a loan modification, the mediator shall prepare and submit to*
48 *the court and the Mediation Administrator a recommendation that the mediation*
49 *be terminated. The court may terminate the mediation and proceed with the*
50 *judicial foreclosure action.*

51 7. *The rules adopted by the Supreme Court pursuant to subsection 8 of NRS*
52 *107.086 apply to a mediation conducted pursuant to this section, and the*

1 *Supreme Court may adopt any additional rules necessary to carry out the*
2 *provisions of this section.*

3 *8. Except as otherwise provided in subsection 10, the provisions of this*
4 *section do not apply if:*

5 *(a) The defendant has surrendered the property, as evidenced by a letter*
6 *confirming the surrender or delivery of the keys to the property to the trustee, the*
7 *beneficiary of the deed of trust or the mortgagee, or an authorized agent thereof;*
8 *or*

9 *(b) A petition in bankruptcy has been filed with respect to the defendant*
10 *under 11 U.S.C. Chapter 7, 11, 12 or 13 and the bankruptcy court has not entered*
11 *an order closing or dismissing the case or granting relief from a stay of*
12 *foreclosure.*

13 *9. A noncommercial lender is not excluded from the application of this*
14 *section.*

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

18 *11. As used in this section:*

19 *(a) "Mediation Administrator" has the meaning ascribed to it in NRS*
20 *107.086.*

21 *(b) "Noncommercial lender" has the meaning ascribed to it in NRS 107.086.*

22 *(c) "Owner-occupied housing" has the meaning ascribed to it in NRS*
23 *107.086.*

24 **Sec. 19.** NRS 40.430 is hereby amended to read as follows:

25 40.430 1. Except in cases where a person proceeds under subsection 2 of
26 NRS 40.495 or subsection 1 of NRS 40.512, and except as otherwise provided in
27 NRS 118C.220, there may be but one action for the recovery of any debt, or for the
28 enforcement of any right secured by a mortgage or other lien upon real estate. That
29 action must be in accordance with the provisions of NRS 40.430 to 40.459,
30 inclusive ~~H~~, and section 18 of this act. In that action, the judgment must be
31 rendered for the amount found due the plaintiff, and the court, by its decree or
32 judgment, may direct a sale of the encumbered property, or such part thereof as is
33 necessary, and apply the proceeds of the sale as provided in NRS 40.462.

34 2. This section must be construed to permit a secured creditor to realize upon
35 the collateral for a debt or other obligation agreed upon by the debtor and creditor
36 when the debt or other obligation was incurred.

37 3. At any time not later than 5 business days before the date of sale directed
38 by the court, if the deficiency resulting in the action for the recovery of the debt has
39 arisen by failure to make a payment required by the mortgage or other lien, the
40 deficiency may be made good by payment of the deficient sum and by payment of
41 any costs, fees and expenses incident to making the deficiency good. If a deficiency
42 is made good pursuant to this subsection, the sale may not occur.

43 4. A sale directed by the court pursuant to subsection 1 must be conducted in
44 the same manner as the sale of real property upon execution, by the sheriff of the
45 county in which the encumbered land is situated, and if the encumbered land is
46 situated in two or more counties, the court shall direct the sheriff of one of the
47 counties to conduct the sale with like proceedings and effect as if the whole of the
48 encumbered land were situated in that county.

49 5. Within 30 days after a sale of property is conducted pursuant to this
50 section, the sheriff who conducted the sale shall record the sale of the property in
51 the office of the county recorder of the county in which the property is located.

52 6. As used in this section, an "action" does not include any act or proceeding:

(a) To appoint a receiver for, or obtain possession of, any real or personal collateral for the debt or as provided in NRS 32.015.

(b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property.

(c) To enforce a mortgage or other lien upon any real or personal collateral located outside of the State which does not, except as required under the laws of that jurisdiction, result in a personal judgment against the debtor.

(d) For the recovery of damages arising from the commission of a tort, including a recovery under NRS 40.750, or the recovery of any declaratory or equitable relief.

(e) For the exercise of a power of sale pursuant to NRS 107.080.

(f) For the exercise of any right or remedy authorized by chapter 104 of NRS or by the Uniform Commercial Code as enacted in any other state.

(g) For the exercise of any right to set off, or to enforce a pledge in, a deposit account pursuant to a written agreement or pledge.

(h) To draw under a letter of credit.

(i) To enforce an agreement with a surety or guarantor if enforcement of the mortgage or other lien has been automatically stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a federal bankruptcy court under any other provision of the United States Bankruptcy Code for not less than 120 days following the mailing of notice to the surety or guarantor pursuant to subsection 1 of NRS 107.095.

(j) To collect any debt, or enforce any right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other right secured by a senior mortgage or other senior lien on the property.

(k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt.

(l) For filing a claim pursuant to chapter 147 of NRS or to enforce such a claim which has been disallowed.

(m) Which does not include the collection of the debt or realization of the collateral securing the debt.

(n) Pursuant to NRS 40.507 or 40.508.

(o) Which is exempted from the provisions of this section by specific statute.

(p) To recover costs of suit, costs and expenses of sale, attorneys' fees and other incidental relief in connection with any action authorized by this subsection.

Sec. 20. NRS 40.433 is hereby amended to read as follows:

40.433 As used in NRS 40.430 to 40.459, inclusive, *and section 18 of this act*, unless the context otherwise requires, a "mortgage or other lien" includes a deed of trust, but does not include a lien which arises pursuant to chapter 108 of NRS, pursuant to an assessment under chapter 116, 117, 119A or 278A of NRS or pursuant to a judgment or decree of any court of competent jurisdiction.

Sec. 21. ~~NRS 645A.010 is hereby amended to read as follows:~~

~~645A.010 As used in this chapter, unless the context otherwise requires:~~

~~1. "Commissioner" means the Commissioner of Mortgage Lending.~~

~~2. "Construction control" has the meaning ascribed to it in NRS 627.050.~~

~~3. "Division" means the Division of Mortgage Lending of the Department of Business and Industry.~~

~~4. "Escrow" means any transaction wherein one person, for the purpose of effecting the sale, transfer, encumbering or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be~~

~~delivered by such third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor or any agent or employee of any of the latter. The term includes [the collection of payments and the performance of related services by a third person in connection with a loan secured by a lien on real property and] the performance of the services of a construction control.~~

~~5. "Escrow agency" means:~~

~~(a) Any person who employs one or more escrow agents; or~~

~~(b) An escrow agent who administers escrows on his or her own behalf.~~

~~6. "Escrow agent" means any person engaged in the business of administering escrows for compensation.] (Deleted by amendment.)~~

~~Sec. 22. [Chapter 645F of NRS is hereby amended by adding thereto the provisions set forth as sections 23 to 29, inclusive, of this act.] (Deleted by amendment.)~~

~~Sec. 23. [As used in sections 23 to 29, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 24 to 27, inclusive, of this act have the meanings ascribed to them in those sections.] (Deleted by amendment.)~~

~~Sec. 24. ["Licensee" means a person licensed as a residential mortgage loan servicer pursuant to sections 23 to 29, inclusive, of this act.] (Deleted by amendment.)~~

~~Sec. 25. ["Residential mortgage loan" means a loan which is primarily for personal, family or household use and which is secured by a mortgage, deed of trust or other equivalent, consensual security interest on a dwelling located in this State or residential real property located in this State upon which is constructed or intended to be constructed a dwelling. As used in this section, "dwelling" has the meaning ascribed to it in NRS 645B.0112.] (Deleted by amendment.)~~

~~Sec. 26. ["Residential mortgage loan servicer" means a person or institution that directly or indirectly services residential mortgage loans.] (Deleted by amendment.)~~

~~Sec. 27. ["Service" means the collection or remittance, or the right to collect or remit, for any lender, mortgage banker, note owner, note holder, or for the person's own account, any payment of principal, interest or an amount to be placed into escrow, including, without limitation, any amount for the payment of hazard insurance or taxes on a residential mortgage loan, in accordance with the terms of the residential mortgage loan, a mortgage servicing agreement for a residential mortgage loan or an agreement with the mortgagor of a residential mortgage loan.] (Deleted by amendment.)~~

~~Sec. 28. [The provisions of sections 23 to 29, inclusive, do not apply to:~~

~~1. Any person doing business under the laws of this State, any other state or the United States relating to banks, savings banks, trust companies, savings and loan associations, industrial loan companies, credit unions, thrift companies or insurance companies, including, without limitation, a subsidiary or a holding company of such a bank, company, association or union.~~

~~2. A real estate investment trust, as defined in 26 U.S.C. § 856, unless the business conducted in this State is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.~~

~~3. Agencies and instrumentalities of the United States and of this State and its political subdivisions, including the Public Employees' Retirement System.~~

~~4. A nonprofit agency or organization that qualifies as a tax exempt organization pursuant to 26 U.S.C. § 501(c)(3).~~

~~5. Any person doing any act under an order of any court.} (Deleted by amendment.)~~

Sec. 29. ~~{1. No person shall service a residential mortgage loan with respect to property located in this State without first obtaining a license as a residential mortgage loan servicer from the Commissioner.~~

~~2. An application for a license as a residential mortgage loan servicer must:~~

~~(a) Be on a form prescribed by the Commissioner;~~

~~(b) Include all information required to complete the application; and~~

~~(c) Include a complete set of the fingerprints of the applicant or, if the applicant is not a natural person, a complete set of the fingerprints of each person who will have an interest in the residential mortgage loan servicer as a principal, partner, officer, director, trustee, member or shareholder, and written permission authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.~~

~~3. The Commissioner shall adopt regulations:~~

~~(a) Establishing the information required to be provided in an application for the issuance or renewal of a license as a residential mortgage loan servicer.~~

~~(b) Establishing the requirements for the issuance and renewal of a license as a residential mortgage loan servicer, including, without limitation, requirements:~~

~~(1) For an investigation of the background and history of an applicant for the issuance of a license as a residential mortgage loan servicer, and each person who will have an interest in the residential mortgage loan servicer as a principal, partner, officer, director, trustee, member or shareholder, to determine whether the applicant is suitable for a license as a residential mortgage loan servicer;~~

~~(2) For the appropriate initial minimum net worth of an applicant and the appropriate minimum net worth that must be maintained by a residential mortgage loan servicer; and~~

~~(3) For the deposit with the Commissioner of a surety bond in an amount determined by the Commissioner or an appropriate substitute for a surety bond and for the maintenance of such a surety bond or substitute for a surety bond.~~

~~(c) Establishing a standard for determining whether an applicant is suitable for a license as a residential mortgage loan servicer.~~

~~(d) Establishing the grounds for the issuance, renewal or denial of a license as a residential mortgage loan servicer.~~

~~(e) Imposing a reasonable fee for application and licensure as a residential mortgage loan servicer which must not exceed the actual cost to the Division of administering and enforcing the provisions of sections 23 to 29, inclusive, of this act.~~

~~(f) Imposing any requirements on a residential mortgage loan servicer as the Commissioner deems necessary and appropriate for the protection of consumers in this State.~~

~~(g) Defining and prohibiting improper and fraudulent business practices in connection with the servicing of residential mortgage loans.~~

~~(h) Establishing procedures for the examination and investigation of licensees.~~

~~(i) Establishing the grounds and procedures for the suspension or revocation of a license as a residential mortgage loan servicer or the imposition of any other penalty determined to be appropriate by the Commissioner.~~

~~(j) To carry out the provisions of sections 23 to 29, inclusive, of this act.~~

~~4. A licensee shall service residential mortgage loans in compliance with all federal laws and regulations governing the servicing of residential mortgage loans and the provisions of sections 23 to 29, inclusive, of this act and any regulations adopted pursuant thereto.~~

~~5. For the purposes of this section, a person is a member or shareholder of an applicant for a license as a residential mortgage loan servicer or a licensee if:~~

~~(a) The person owns, or has the power to vote directly or indirectly, any percentage of a class of voting shares or voting interests of an applicant or licensee, if the applicant or licensee has 20 or fewer members or shareholders.~~

~~(b) The person owns, or has the power to vote directly or indirectly, 10 percent or more of a class of voting shares or voting interests of an applicant or licensee, if the applicant or licensee has more than 20 members or shareholders.~~

~~(Deleted by amendment.)~~

Sec. 30. 1. Sections 2 to 16, inclusive, of this act apply only with respect to trust agreements for which a notice of default is recorded on or after October 1, 2013, and to a judicial foreclosure action commenced on or after October 1, 2013.

2. The amendatory provisions of section 17 of this act apply only with respect to trust agreements for which a notice of default is recorded on or after October 1, 2013.

3. The amendatory provisions of section 18 of this act apply only to an action commenced on or after October 1, 2013.

Sec. 31. ~~[NRS 645F.265 is hereby repealed.] (Deleted by amendment.)~~

†

TEXT OF REPEALED SECTION

~~**645F.265 Registration of certain persons and institutions engaged in business of servicing mortgage loans required.** A person or institution engaged in the business of servicing mortgage loans that intends to conduct business in this State for the purpose of servicing mortgage loans secured by a lien on real property located in this State shall register with the Commissioner on a form prescribed by the Commissioner. The form must:~~

- ~~1. Identify the state in which the institution is domiciled;~~
- ~~2. Identify the principal place of business of the institution; and~~
- ~~3. Provide such other information as the Commissioner may require.]~~