

**Amendment No. 684**

Assembly Amendment to Senate Bill No. 321 First Reprint (BDR 9-748)

**Proposed by:** Assembly Committee on Judiciary

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

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

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

BFG/BAW



Date: 5/19/2013

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~~ mortgagor in a judicial foreclosure action to elect mediation; 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~~ requirements for the foreclosure ~~which apply only to a residential mortgage loan secured by~~ of owner-occupied housing ~~+~~ securing a residential mortgage loan. Under **section 7.5** of this bill, these additional restrictions do not apply to a ~~credit union~~ financial institution 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 calendar days before recording a notice of default and election to sell or commencing a judicial foreclosure action and at least 30 calendar 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 ~~involving a failure to make payment~~ 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 ~~rescind a~~ ~~be dismissed,~~ **dismiss** a judicial foreclosure action or ~~rescind a~~ ~~be dismissed,~~ **rescind** a 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**.

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

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~~ **16.5**, 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.~~*

1 ~~—3.1~~ Has filed a case under 11 U.S.C. Chapter 7, 11, 12 or 13 and the  
2 bankruptcy court has not entered an order closing or dismissing the bankruptcy  
3 case, or granting relief from a stay of foreclosure or trustee's sale.

4 Sec. 4. "Foreclosure prevention alternative" means a modification of a  
5 loan secured by the most senior residential mortgage ~~for deed of trust~~ loan on  
6 the property ~~[that is the subject of the notice of default and election to sell]~~ or any  
7 other loss mitigation option. The term includes, without limitation, a sale in lieu  
8 of a foreclosure sale, as defined in NRS 40.4634.

9 Sec. 5. "Foreclosure sale" means the exercise of the trustee's power of sale  
10 pursuant to NRS 107.080 or a sale directed by a court pursuant to NRS 40.430.

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

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

25 Sec. 7.5. The provisions of sections 2 to 16, inclusive, of this act do not  
26 apply to a ~~credit union,~~ financial institution, as defined in NRS ~~678.070,~~  
27 660.045, that, during its immediately preceding annual reporting period, as  
28 established with its primary regulator, has foreclosed on 100 or fewer real  
29 properties located in this State which constitute owner-occupied housing, as  
30 defined in NRS 107.086.

31 Sec. 7.7. The provisions of sections 2 to 16, inclusive, of this act must not  
32 be construed to authorize a mortgage servicer, a mortgagee or a beneficiary of a  
33 deed of trust to restrict a borrower from pursuing concurrently more than one  
34 foreclosure prevention alternative.

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

39 2. In addition to the requirements of NRS 40.430 to 40.4639, inclusive, ~~for~~  
40 a civil action for the recovery of any debt, or for the enforcement of any right,  
41 under a foreclosure sale pursuant to NRS 40.430 involving a failure to make a  
42 payment required by a residential mortgage loan ~~secured by a mortgage or other~~  
43 lien upon real estate that is not barred by NRS 40.430 is subject to the  
44 requirements of sections 2 to 16, inclusive, of this act.

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

49 2. A mortgage servicer acts in the best interests of all parties to the loan  
50 pool or investors in the pooling and servicing agreement if the mortgage servicer  
51 agrees to or implements a foreclosure prevention alternative for which both of the  
52 following apply:

1 (a) The residential mortgage loan is in payment default or payment default is  
2 reasonably foreseeable.

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

5 Sec. 10. 1. At least 30 calendar days before recording a notice of default  
6 and election to sell pursuant to subsection 2 of NRS 107.080 or commencing a  
7 civil action for ~~the recovery of any debt, or for the enforcement of any right,~~  
8 ~~under a foreclosure sale pursuant to NRS 40.430 involving a failure to make a~~  
9 ~~payment required by a residential mortgage loan that is not barred by NRS~~  
10 ~~40.430~~ and at least 30 calendar days after the borrower's default, the mortgage  
11 servicer, mortgagee or beneficiary of the deed of trust shall mail, by first-class  
12 mail, a notice addressed to the borrower at the borrower's primary address as  
13 indicated in the records of the mortgage servicer, mortgagee or beneficiary of the  
14 deed of trust, which contains:

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

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

22 (1) The total amount of payment necessary to cure the default and  
23 reinstate the residential mortgage loan or to bring the residential mortgage loan  
24 into current status;

25 (2) The amount of the principal obligation under the residential  
26 mortgage loan;

27 (3) The date through which the borrower's obligation under the  
28 residential mortgage loan is paid;

29 (4) The date of the last ~~full~~ payment by the borrower;

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

32 (6) The date on which the interest rate for the residential mortgage loan  
33 may next reset or adjust, unless the rate changes more frequently than once every  
34 30 calendar days;

35 (7) The amount of the prepayment fee charged under the residential  
36 mortgage loan, if any;

37 (8) A description of any late payment fee charged under the residential  
38 mortgage loan;

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

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

44 (c) A statement of the facts establishing the right of the mortgage servicer,  
45 mortgagee or beneficiary of the deed of trust to cause the trustee to exercise the  
46 trustee's power of sale pursuant to NRS 107.080 or to commence a civil action  
47 for the recovery of any debt, or for the enforcement of any right, under a  
48 residential mortgage loan that is not barred by NRS 40.430.

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

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

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

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

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

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

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

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

(b) Whether ~~that~~ a complete application is required to be submitted by the borrower if the borrower wants to be considered for a foreclosure prevention alternative; and

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

Sec. 11. 1. A mortgage servicer, mortgagee, trustee, beneficiary of a deed of trust or an authorized agent of such a person may not record a notice of default and election to sell pursuant to subsection 2 of NRS 107.080 or commence a civil action for ~~the recovery of any debt, or for the enforcement of any right, under~~ a foreclosure sale pursuant to NRS 40.430 involving a failure to make a payment required by a residential mortgage loan ~~that is not barred by NRS 40.430~~ until:

(a) The mortgage servicer, mortgagee or beneficiary of the deed of trust has satisfied the requirements of subsection 1 of section 10 of this act;

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

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

2. The mortgage servicer shall contact the borrower in person or by telephone to assess the borrower's financial situation and to explore options for the borrower to avoid a foreclosure sale. During the initial contact, the mortgage servicer shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgage servicer must schedule the meeting to occur within 14 calendar days after the request. The assessment of the borrower's financial situation and discussion of the options to avoid a foreclosure sale may occur during the initial contact or at the subsequent meeting scheduled for that purpose. In either case, the borrower must be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development to find a housing counseling agency certified

1 by that Department. Any meeting pursuant to this subsection may occur by  
2 telephone.

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

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

14 5. If a mortgage servicer has not contacted a borrower as required by  
15 subsection 2, a notice of default and election to sell may be recorded pursuant to  
16 subsection 2 of NRS 107.080 or a civil action for ~~the recovery of any debt, or for~~  
17 ~~the enforcement of any right, under~~ a foreclosure sale pursuant to NRS 40.430  
18 involving a failure to make a payment required by a residential mortgage loan  
19 ~~that is not barred by NRS 40.430~~ may be commenced, if the mortgage servicer  
20 has taken all the following actions:

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

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

39 (c) If the borrower does not respond within ~~12 weeks~~ 14 calendar days after  
40 the mortgage servicer satisfies the requirements of paragraph (b), the mortgage  
41 servicer ~~mails~~ sends, by certified mail, return receipt requested, or any other  
42 mailing process that requires a signature upon delivery, a letter that includes the  
43 information required by paragraph (a).

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

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

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



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

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

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

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

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

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

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

(1) The mortgage servicer, mortgagee or beneficiary must either deny the application for a foreclosure prevention alternative or submit a written offer for a foreclosure prevention alternative within 30 calendar days after the borrower submits a complete application for a foreclosure prevention alternative; and

(2) If the mortgage servicer, mortgagee or beneficiary submits to the borrower a written offer for a foreclosure prevention alternative, the borrower must accept or reject the offer within 14 calendar days after the borrower receives the offer, and the offer is deemed to be rejected if the borrower does not accept or reject the offer within 14 calendar days after the borrower receives the offer;

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

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

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

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

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

Sec. 13. 1. If a borrower submits an application for a foreclosure prevention alternative offered by, or through, the borrower's mortgage servicer or



1 mortgagee or the beneficiary of the deed of trust, then the mortgage servicer,  
2 mortgagee, trustee, beneficiary of the deed of trust or an authorized agent of such  
3 a person may not commence a civil action for ~~the recovery of any debt, or for the~~  
4 ~~enforcement of any right, under~~ a foreclosure sale pursuant to NRS 40.430  
5 involving a failure to make a payment required by a residential mortgage loan,  
6 ~~that is not barred by NRS 40.430,~~ record a notice of default and election to sell  
7 pursuant to subsection 2 of NRS 107.080 or a notice of sale pursuant to  
8 subsection 4 of NRS 107.080, or conduct a foreclosure sale until one of the  
9 following has occurred:

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

14 (b) The mortgage servicer, mortgagee or beneficiary of the deed of trust  
15 makes a written determination that the borrower is not eligible for a foreclosure  
16 prevention alternative, and any appeal period pursuant to subsection ~~44~~ 5 has  
17 expired.

18 (c) The borrower does not accept a written offer for a foreclosure prevention  
19 alternative within 14 calendar days after the date ~~off~~ on which the offer ~~is~~  
20 received by the borrower.

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

24 2. Not later than 30 calendar days after the borrower submits a complete  
25 application for a foreclosure prevention alternative, the mortgage servicer shall  
26 submit to the borrower a written offer for a foreclosure prevention alternative or  
27 the written statement of the denial of the application described in subsection 4.  
28 The borrower must accept or reject the offer within 14 calendar days after the  
29 borrower receives the offer. If a borrower does not accept a written offer for a  
30 foreclosure prevention alternative within 14 calendar days after the borrower  
31 receives the offer for the foreclosure prevention alternative, the offer is deemed to  
32 be rejected.

33 3. If a borrower accepts an offer for a foreclosure prevention alternative,  
34 the mortgage servicer must provide the borrower with a copy of the complete  
35 agreement evidencing the foreclosure prevention alternative, signed by the  
36 mortgagee or beneficiary of the deed of trust or an agent or authorized  
37 representative of the mortgagee or beneficiary.

38 ~~3.4~~ 4. If a borrower submits a complete application for a foreclosure  
39 prevention alternative and the borrower's application is denied, the mortgage  
40 servicer must send to the borrower a written statement of:

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

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

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

46 ~~4.4~~ 5. If a borrower submits a complete application for a foreclosure  
47 prevention alternative and the borrower's application is denied, the mortgage  
48 servicer, mortgagee, trustee, beneficiary of the deed of trust, or an authorized  
49 agent of such a person may not commence a civil action for ~~the recovery of any~~  
50 ~~debt, or for the enforcement of any right, under~~ a foreclosure sale pursuant to  
51 NRS 40.430 involving a failure to make a payment required by a residential  
52 mortgage loan, ~~that is not barred by NRS 40.430,~~ record a notice of default and  
53 election to sell pursuant to subsection 2 of NRS 107.080 or a notice of sale

1 pursuant to subsection 4 of NRS 107.080, or conduct a foreclosure sale until the  
2 later of:

3 (a) Thirty-one calendar days after the borrower is sent the written statement  
4 required by subsection ~~3+~~ 4; and

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

6 (1) Fifteen calendar days after the denial of the appeal;

7 (2) If the appeal is successful, 14 calendar days after a first lien loan  
8 modification or another foreclosure prevention alternative offered after appeal is  
9 ~~declined~~ rejected by the borrower; and

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

14 ~~5+~~ 6. If the borrower appeals the denial of a complete application for a  
15 foreclosure prevention alternative, not later than 30 calendar days after the  
16 borrower requests the appeal, the mortgage servicer must submit to the borrower  
17 a written offer for a foreclosure prevention alternative or a written denial of the  
18 appeal. The borrower must accept or reject the offer within 14 calendar days after  
19 the borrower receives the offer. If a borrower does not accept a written offer for a  
20 foreclosure prevention alternative within 14 calendar days after the borrower  
21 receives the written offer for the foreclosure prevention alternative, the offer is  
22 deemed to be rejected.

23 7. A mortgage servicer shall not charge or collect any:

24 (a) Application, processing or other fee for a foreclosure prevention  
25 alternative; or

26 (b) Late fees for periods during which:

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

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

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

32 ~~6+~~ 8. A mortgage servicer is not required to evaluate an application from  
33 a borrower who has already been evaluated or afforded a fair opportunity to be  
34 evaluated for a foreclosure prevention alternative before October 1, 2013, or who  
35 has been evaluated or afforded a fair opportunity to be evaluated consistent with  
36 the requirements of this section, unless:

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

39 (b) That change is documented by the borrower and submitted to the  
40 mortgage servicer.

41 ~~7+~~ 9. For purposes of this section, an application is complete when a  
42 borrower has supplied the mortgage servicer with all documents required by the  
43 mortgage servicer within the reasonable timeframes specified by the mortgage  
44 servicer.

45 Sec. 14. 1. If a borrower requests a foreclosure prevention alternative, the  
46 mortgage servicer must promptly establish a single point of contact and provide to  
47 the borrower one or more direct means of communication with the single point of  
48 contact.

49 2. A single point of contact is responsible for:

50 (a) Communicating the process by which a borrower may apply for an  
51 available foreclosure prevention alternative and the deadline for any required  
52 submissions to be considered for the foreclosure prevention alternatives.

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

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

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

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

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

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

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

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

Sec. 15. 1. ~~1. The mortgage servicer, mortgagee or beneficiary of the deed of trust shall cause to:~~ A civil action for a foreclosure sale pursuant to NRS 40.430 involving a failure to make a payment required by a residential mortgage loan must be dismissed ~~with~~ without prejudice, ~~as a civil action commenced for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan that is not barred by NRS 40.430, or cause to be withdrawn,~~ any notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 or any notice of sale recorded pursuant to subsection 4 of NRS 107.080 ~~must be rescinded, and shall cancel~~ any pending foreclosure sale ~~must be cancelled, if:~~

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

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

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

2. The periods specified in paragraphs (b) and (c) of subsection 1 are 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 foreclosure or trustee's sale;

(b) If mediation pursuant to NRS 107.086 is required, until the date on which the Mediation Administrator, as defined in NRS 107.086, issues the certificate that mediation has been completed in the matter;

(c) If mediation pursuant to section 18 of this act is required or if a court orders participation in a settlement program, until the date on which the mediation or participation in a settlement program is terminated; or

(d) If a borrower has submitted an application for a foreclosure prevention alternative, until the date on which:

(1) A written offer for a foreclosure prevention alternative is submitted to the borrower;

(2) A written statement of the denial of the application has been submitted to the borrower pursuant to subsection 4 of section 13 of this act, and any appeal period pursuant to subsection 5 of section 13 of this act has expired; or

(3) If the borrower has appealed the denial of an application for a foreclosure prevention alternative, a written offer for a foreclosure prevention alternative or a written denial of the appeal is submitted to the borrower.

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

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

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

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

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

5. *A signatory to a consent judgment entered in the case entitled United 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. If the consent judgment is modified or amended on or after October 1, 2013, to permit compliance with the relevant provisions of 12 C.F.R. Part 1024, commonly known as Regulation X, and 12 C.F.R. Part 1026, commonly known as Regulation Z, as those regulations are amended by the Final Servicing Rules issued by the Consumer Financial Protection Bureau in 78 Federal Register 10,696 on February 14, 2013, and any amendments thereto, to supersede some or all of the relevant terms of the Settlement Term Sheet of the consent judgment, a signatory who is in compliance with the modified or amended Settlement Term Sheet of the consent judgment 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. *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. 16.5. 1. No provision of the laws of this State may be construed to require a sale in lieu of a foreclosure sale to be an arm's length transaction or to prohibit a sale in lieu of a foreclosure sale that is not an arm's length transaction.*

*2. As used in this section, "sale in lieu of a foreclosure sale" has the meaning ascribed to it in NRS 40.4634.*

**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

1 and expires 5 days before the date of sale, failed to make good the deficiency in  
2 performance or payment.

3 (c) The beneficiary, the successor in interest of the beneficiary or the trustee  
4 first executes and causes to be recorded in the office of the recorder of the county  
5 wherein the trust property, or some part thereof, is situated a notice of the breach  
6 and of the election to sell or cause to be sold the property to satisfy the obligation  
7 which, except as otherwise provided in this paragraph, includes a notarized  
8 affidavit of authority to exercise the power of sale stating, based on personal  
9 knowledge and under the penalty of perjury:

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

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

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

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

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

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

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

34 (d) Not less than 3 months have elapsed after the recording of the notice.

35 3. The 15- or 35-day period provided in paragraph (a) of subsection 2, or the  
36 period provided in paragraph (b) of subsection 2, commences on the first day  
37 following the day upon which the notice of default and election to sell is recorded  
38 in the office of the county recorder of the county in which the property is located  
39 and a copy of the notice of default and election to sell is mailed by registered or  
40 certified mail, return receipt requested and with postage prepaid to the grantor or, to  
41 the person who holds the title of record on the date the notice of default and  
42 election to sell is recorded, and, if the property is operated as a facility licensed  
43 under chapter 449 of NRS, to the State Board of Health, at their respective  
44 addresses, if known, otherwise to the address of the trust property. The notice of  
45 default and election to sell must:

46 (a) Describe the deficiency in performance or payment and may contain a  
47 notice of intent to declare the entire unpaid balance due if acceleration is permitted  
48 by the obligation secured by the deed of trust, but acceleration must not occur if the  
49 deficiency in performance or payment is made good and any costs, fees and  
50 expenses incident to the preparation or recordation of the notice and incident to the  
51 making good of the deficiency in performance or payment are paid within the time  
52 specified in subsection 2; ~~and~~



(b) *If the property is subject to the requirements of sections 2 to 16, inclusive, of this act, contain 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 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 ~~100~~ 45 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 ~~120~~ 15 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~~ 60 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:

(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 any a civil 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]~~ a foreclosure sale pursuant to NRS 40.430 affecting owner-occupied housing is commenced in a court of competent jurisdiction:

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

(1) Contact information which the ~~defendant~~ mortgagor 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;

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

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

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

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

3. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 8 of NRS 107.086. The plaintiff or a representative, and the ~~defendant~~ mortgagor or his or her representative, shall attend the mediation. ~~[The plaintiff shall bring to the mediation the original or a certified~~

~~copy of the mortgage or deed of trust, the mortgage note and each assignment of the mortgage or deed of trust or mortgage note.~~ If the plaintiff is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the plaintiff or have access at all times during the mediation to a person with such authority.

4. If the plaintiff or the representative fails to attend the mediation, fails to participate in the mediation in good faith ~~for does not bring to the mediation each document required by subsection 3,~~ or does not have the authority or access to a person with the authority required by subsection 3, the mediator shall prepare and submit to the Mediation Administrator and the court a petition and recommendation concerning the imposition of sanctions against the ~~beneficiary of the deed of trust~~ plaintiff or the representative. The court may issue an order imposing such sanctions against the plaintiff or the representative as the court determines appropriate, including, without limitation, requiring a loan modification in the manner determined proper by the court.

5. If the ~~defendant~~ mortgagor elected to enter into mediation and fails to attend the mediation, no mediation is required and the judicial foreclosure action must proceed as if the ~~plaintiff~~ mortgagor had not elected to enter into mediation.

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

7. The rules adopted by the Supreme Court pursuant to subsection 8 of NRS 107.086 apply to a mediation conducted pursuant to this section, and the Supreme Court may adopt any additional rules necessary to carry out the provisions of this section.

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

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

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

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

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

11. As used in this section:

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

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

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

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

40.430 1. Except in cases where a person proceeds under subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, and except as otherwise provided in NRS 118C.220, there may be but one action for the recovery of any debt, or for the

1 enforcement of any right secured by a mortgage or other lien upon real estate. That  
2 action must be in accordance with the provisions of NRS 40.430 to 40.459,  
3 inclusive **H**, and **section 18 of this act**. In that action, the judgment must be  
4 rendered for the amount found due the plaintiff, and the court, by its decree or  
5 judgment, may direct a sale of the encumbered property, or such part thereof as is  
6 necessary, and apply the proceeds of the sale as provided in NRS 40.462.

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

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

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

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

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

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

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

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

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

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

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

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

41 (h) To draw under a letter of credit.

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

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

51 (k) Relating to any proceeding in bankruptcy, including the filing of a proof of  
52 claim, seeking relief from an automatic stay and any other action to determine the  
53 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.** (Deleted by amendment.)

**Sec. 22.** (Deleted by amendment.)

**Sec. 23.** (Deleted by amendment.)

**Sec. 24.** (Deleted by amendment.)

**Sec. 25.** (Deleted by amendment.)

**Sec. 26.** (Deleted by amendment.)

**Sec. 27.** (Deleted by amendment.)

**Sec. 28.** (Deleted by amendment.)

**Sec. 29.** (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.** (Deleted by amendment.)