

SENATE BILL NO. 278—SENATORS FORD AND JONES

MARCH 15, 2013

JOINT SPONSORS: ASSEMBLYMEN HEALEY,
SPIEGEL; AND FRIERSON

Referred to Committee on Judiciary

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

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

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

Legislative Counsel's Digest:

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

Section 2 of this bill establishes the criteria to be used to determine whether real property constitutes abandoned residential property. **Section 4** of this bill authorizes a beneficiary of a deed of trust, the successor in interest of the beneficiary or an agent designated or authorized to act on behalf of the beneficiary or its successor in interest to elect to use an expedited procedure for the exercise of the trustee's power of sale. **Section 4** also authorizes certain persons to enter property to investigate whether the property is abandoned residential property. Under **section 4**, if, after an investigation of the property, the beneficiary or its successor in interest or the agent authorized to act on behalf of the beneficiary or its successor in interest elects to use this expedited procedure, the notice of default and election to sell must include an affidavit setting forth the circumstances and conditions supporting the determination that the property is abandoned residential property. If such an affidavit is included with the notice of default and election to



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sell: (1) **section 5** of this bill authorizes a notice of the sale of the property to be recorded not less than 60 days, rather than 3 months, after the recording of the notice of default and election to sell; and (2) **section 6** of this bill provides that the requirements relating to the Foreclosure Mediation Program are inapplicable and that the trustee may exercise the power of sale by obtaining a certificate from the Mediation Administrator. **Section 4** further authorizes a grantor of a deed of trust or his or her successor in interest to record an affidavit stating that the property is not abandoned residential property and, if such an affidavit is recorded before the recording of the trustee's deed of sale of the property, the notice of default and election to sell and the affidavit to elect the expedited sale procedure are deemed to be withdrawn.

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

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 107 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

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

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

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

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

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

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

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

(4) There are no children enrolled in school residing at the address of the residential real property;



(5) Payments pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits, payments for unemployment compensation or payments for public assistance, as defined in NRS 422.050 and 422A.065, are not currently being mailed to the address of the residential real property;

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

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

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

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

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

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

(V) Assessments owed to a unit-owners' association, as defined in NRS 116.011 or 116B.030, are past due;

(VI) At least two written statements of occupants of neighboring properties indicate a clear intent to abandon the residential real property;

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

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

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

(X) The residential real property is open and unprotected and in reasonable danger of significant damage resulting from exposure to the elements or vandalism; or



1 (XI) *The residential real property contains overgrown or*
2 *dead vegetation.*

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

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

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

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

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

17 **Sec. 3.** 1. *A board of county commissioners or the*
18 *governing body of an incorporated city may establish by ordinance*
19 *a registry of abandoned residential property that contains*
20 *information concerning abandoned residential property located in*
21 *the county or city.*

22 2. *If a beneficiary of a deed of trust, the successor in interest*
23 *of the beneficiary or the trustee includes with a notice of default*
24 *and election to sell recorded pursuant to subsection 2 of NRS*
25 *107.080 the affidavit described in subsection 3 of section 4 of this*
26 *act and the county or city in which the abandoned residential*
27 *property is located has established a registry of abandoned*
28 *residential property, the beneficiary or its successor in interest or*
29 *the trustee must submit a copy of the affidavit to the entity*
30 *maintaining the registry for the county or city in which the*
31 *abandoned residential property is located.*

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

40 **Sec. 4.** 1. *A beneficiary may elect to use an expedited*
41 *procedure for the exercise of the trustee's power of sale pursuant*
42 *to NRS 107.080 if, after an investigation, the beneficiary*
43 *determines that real property is abandoned residential property.*

44 2. *If a beneficiary has a reasonable belief that real property*
45 *may be abandoned residential property, the beneficiary or its agent*



1 *may enter the property to investigate whether the property is*
2 *abandoned residential property. Notwithstanding any other*
3 *provision of law, a beneficiary and its agents who enter property*
4 *pursuant to this subsection are not liable for trespass.*

5 *3. A beneficiary who elects to use an expedited procedure for*
6 *the exercise of the trustee's power of sale pursuant to NRS*
7 *107.080 must include, or cause to be included, with the notice of*
8 *default and election to sell recorded pursuant to subsection 2 of*
9 *NRS 107.080 an affidavit setting forth the facts supporting the*
10 *determination that the real property is abandoned residential*
11 *property. The affidavit required by this subsection must:*

12 *(a) Be signed and verified by the beneficiary;*

13 *(b) State that, upon information and belief of the beneficiary*
14 *after investigation by the beneficiary or its agent, the property is*
15 *abandoned residential property; and*

16 *(c) State the conditions or circumstances supporting the*
17 *determination that the property is abandoned residential property.*
18 *Photographic or other documentary evidence in support of such*
19 *conditions or circumstances must be attached to the affidavit.*

20 *4. If the notice of default and election to sell recorded*
21 *pursuant to subsection 2 of NRS 107.080 includes an affidavit*
22 *indicating that, pursuant to this section, an election has been*
23 *made to use the expedited procedure for the exercise of the power*
24 *of sale with respect to abandoned residential property, before the*
25 *recording of the trustee's deed upon sale pursuant to subsection 9*
26 *of NRS 107.080, the grantor or a successor in interest of the*
27 *grantor may record in the office of the county recorder in*
28 *the county where the property is situated an affidavit stating that*
29 *the property is not abandoned residential property, unless the*
30 *grantor or the successor in interest of the grantor has surrendered*
31 *the property as evidenced by a document signed by the grantor or*
32 *successor confirming the surrender or by the delivery of the keys*
33 *to the property to the beneficiary. Upon the recording of such an*
34 *affidavit:*

35 *(a) The grantor or the successor in interest must mail by*
36 *registered or certified mail, return receipt requested, to the*
37 *beneficiary and the trustee a copy of the affidavit; and*

38 *(b) The notice of default and election to sell and the affidavit*
39 *described in subsection 3 are deemed to be withdrawn.*

40 *5. As used in this section, "beneficiary" means the*
41 *beneficiary of the deed of trust or the successor in interest of the*
42 *beneficiary or any person designated or authorized to act on*
43 *behalf of the beneficiary or its successor in interest.*



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

107.080 1. Except as otherwise provided in NRS 106.210, 107.085 and 107.086, if any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

2. The power of sale must not be exercised, however, until:

(a) Except as otherwise provided in paragraph (b), in the case of any trust agreement coming into force:

(1) On or after July 1, 1949, and before July 1, 1957, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period of 15 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment; or

(2) On or after July 1, 1957, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period of 35 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment.

(b) In the case of any trust agreement which concerns owner-occupied housing as defined in NRS 107.086, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period that commences in the manner and subject to the requirements described in subsection 3 and expires 5 days before the date of sale, failed to make good the deficiency in performance or payment.

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

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

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



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

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

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

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

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

(d) Not less than 3 months have elapsed after the recording of the notice ~~or~~ *or, if the notice includes an affidavit indicating that, pursuant to section 4 of this act, an election has been made to use the expedited procedure for the exercise of the power of sale with respect to abandoned residential property, not less than 60 days have elapsed after the recording of the notice.*

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

(a) Describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the deficiency in



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1 performance or payment is made good and any costs, fees and
2 expenses incident to the preparation or recordation of the notice and
3 incident to the making good of the deficiency in performance or
4 payment are paid within the time specified in subsection 2; ~~and~~

5 (b) *If, pursuant to section 4 of this act, an election has been*
6 *made to use the expedited procedure for the exercise of the power*
7 *of sale with respect to abandoned residential property, include the*
8 *affidavit required by subsection 3 of section 4 of this act; and*

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

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

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

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

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

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

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

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



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

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

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

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

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

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

(c) Reasonable attorney's fees and costs, unless the court finds good cause for a different award. The remedy provided in this subsection is in addition to the remedy provided in subsection 5.

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

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

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

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



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

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

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

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

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

14 (b) A fee of \$45 for deposit in the Account for Foreclosure
15 Mediation, which is hereby created in the State General Fund. The
16 Account must be administered by the Court Administrator, and the
17 money in the Account may be expended only for the purpose of
18 supporting a program of foreclosure mediation established by
19 Supreme Court Rule.

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

30 12. The fees collected pursuant to paragraphs (a) and (b) of
31 subsection 11 must be paid over to the county treasurer by the
32 county recorder on or before the fifth day of each month for the
33 preceding calendar month, and, except as otherwise provided in this
34 subsection, must be placed to the credit of the State General Fund or
35 the Account for Foreclosure Mediation as prescribed pursuant to
36 subsection 11. The county recorder may direct that 1.5 percent of
37 the fees collected by the county recorder be transferred into a special
38 account for use by the office of the county recorder. The county
39 treasurer shall, on or before the 15th day of each month, remit the
40 fees deposited by the county recorder pursuant to this subsection to
41 the State Controller for credit to the State General Fund or the
42 Account as prescribed in subsection 11.

43 13. The beneficiary, the successor in interest of the beneficiary
44 or the trustee who causes to be recorded the notice of default and
45 election to sell shall not charge the grantor or the successor in



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1 interest of the grantor any portion of any fee required to be paid
2 pursuant to subsection 11.

3 14. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

39 (4) A form upon which the grantor or the person who holds
40 the title of record may indicate an election to enter into mediation or
41 to waive mediation pursuant to this section and one envelope
42 addressed to the trustee and one envelope addressed to the
43 Mediation Administrator, which the grantor or the person who holds
44 the title of record may use to comply with the provisions of
45 subsection 3;



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

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

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

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

3. The grantor or the person who holds the title of record shall, not later than 30 days after service of the notice in the manner required by NRS 107.080, complete the form required by subparagraph (4) of paragraph (a) of subsection 2 and return the form to the trustee by certified mail, return receipt requested. If the grantor or the person who holds the title of record indicates on the form an election to enter into mediation, the trustee shall notify the beneficiary of the deed of trust and every other person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the election of the grantor or the person who holds the title of record 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. No further action may be taken to exercise the power of sale until the completion of the mediation. If the grantor or the person who holds the title of record indicates on the form an election to waive mediation or fails to return the form to the trustee as required by this subsection, the trustee shall execute an affidavit attesting to that fact under penalty of perjury and serve a copy of the affidavit, together with the waiver of mediation by the grantor or the person who holds the title of record, or proof of service on the grantor or the person who holds the title of record of the notice required by subsection 2 of this section and subsection 3 of NRS 107.080, upon the Mediation Administrator. Upon receipt of the affidavit and the waiver or proof of service, the Mediation Administrator shall provide to the trustee a certificate which provides that no mediation is required in the matter.

4. 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. The beneficiary of the deed of trust or a representative shall attend the mediation. The grantor or a representative shall attend the mediation if the grantor elected to enter into mediation, or the person who holds the title of record or a representative shall attend the mediation if the person who holds the title of record elected to enter into mediation. The



1 beneficiary of the deed of trust shall bring to the mediation the
2 original or a certified copy of the deed of trust, the mortgage note
3 and each assignment of the deed of trust or mortgage note. If the
4 beneficiary of the deed of trust is represented at the mediation by
5 another person, that person must have authority to negotiate a loan
6 modification on behalf of the beneficiary of the deed of trust or have
7 access at all times during the mediation to a person with such
8 authority.

9 5. If the beneficiary of the deed of trust or the representative
10 fails to attend the mediation, fails to participate in the mediation in
11 good faith or does not bring to the mediation each document
12 required by subsection 4 or does not have the authority or access to
13 a person with the authority required by subsection 4, the mediator
14 shall prepare and submit to the Mediation Administrator a petition
15 and recommendation concerning the imposition of sanctions against
16 the beneficiary of the deed of trust or the representative. The court
17 may issue an order imposing such sanctions against the beneficiary
18 of the deed of trust or the representative as the court determines
19 appropriate, including, without limitation, requiring a loan
20 modification in the manner determined proper by the court.

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

25 7. If the mediator determines that the parties, while acting in
26 good faith, are not able to agree to a loan modification, the mediator
27 shall prepare and submit to the Mediation Administrator a
28 recommendation that the matter be terminated. The Mediation
29 Administrator shall provide to the trustee a certificate which
30 provides that the mediation required by this section has been
31 completed in the matter.

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

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

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

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



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

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

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

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

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

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

11. 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.

12. As used in this section:

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

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

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

Sec. 7. This act becomes effective on July 1, 2013.

