

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 mortgagor in a judicial foreclosure action to elect mediation; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, the trustee under a deed of trust concerning owner-
2 occupied housing has the power to sell the property to which the deed of trust
3 applies, subject to certain restrictions. (NRS 107.080, 107.085, 107.086) Existing
4 law also provides for a judicial foreclosure action under certain circumstances for
5 the recovery of any debt or for the enforcement of any right secured by a mortgage
6 or other lien upon real estate. (NRS 40.430) **Sections 2-16** of this bill establish
7 additional requirements for the foreclosure of owner-occupied housing securing a
8 residential mortgage loan. Under **section 7.5** of this bill, these additional
9 restrictions do not apply to a financial institution that, during its immediately
10 preceding annual reporting period, as established with its primary regulator, has
11 foreclosed on 100 or fewer owner-occupied homes located in this State. Under
12 **section 30** of this bill, these additional restrictions apply only to a notice of default
13 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 dismiss a judicial foreclosure action or 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 judicial foreclosure action concerning owner-occupied property, 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 16.5, 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 filed a case under 11 U.S.C. Chapter 7, 11, 12 or 13 and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case, or granting relief from a stay of foreclosure or trustee’s sale.

Sec. 4. *“Foreclosure prevention alternative” means a modification of a loan secured by the most senior residential mortgage loan on the property or any other loss mitigation option. The term includes, without limitation, a sale in lieu of a foreclosure sale, as defined in NRS 40.4634.*

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

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

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



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1 **Sec. 7.5.** *The provisions of sections 2 to 16, inclusive, of this*
2 *act do not apply to a financial institution, as defined in NRS*
3 *660.045, that, during its immediately preceding annual reporting*
4 *period, as established with its primary regulator, has foreclosed on*
5 *100 or fewer real properties located in this State which constitute*
6 *owner-occupied housing, as defined in NRS 107.086.*

7 **Sec. 7.7.** *The provisions of sections 2 to 16, inclusive, of this*
8 *act must not be construed to authorize a mortgage servicer, a*
9 *mortgagee or a beneficiary of a deed of trust to restrict a borrower*
10 *from pursuing concurrently more than one foreclosure prevention*
11 *alternative.*

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

17 **2.** *In addition to the requirements of NRS 40.430 to 40.4639,*
18 *inclusive, a civil action for a foreclosure sale pursuant to NRS*
19 *40.430 involving a failure to make a payment required by a*
20 *residential mortgage loan is subject to the requirements of sections*
21 *2 to 16, inclusive, of this act.*

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

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

32 **(a)** *The residential mortgage loan is in payment default or*
33 *payment default is reasonably foreseeable.*

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

37 **Sec. 10. 1.** *At least 30 calendar days before recording a*
38 *notice of default and election to sell pursuant to subsection 2 of*
39 *NRS 107.080 or commencing a civil action for a foreclosure sale*
40 *pursuant to NRS 40.430 involving a failure to make a payment*
41 *required by a residential mortgage loan and at least 30 calendar*
42 *days after the borrower's default, the mortgage servicer,*
43 *mortgagee or beneficiary of the deed of trust shall mail, by first-*
44 *class mail, a notice addressed to the borrower at the borrower's*
45 *primary address as indicated in the records of the mortgage*



1 *servicer, mortgagee or beneficiary of the deed of trust, which*
2 *contains:*

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

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

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

15 *(2) The amount of the principal obligation under the*
16 *residential mortgage loan;*

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

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

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

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

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

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

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

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

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

42 *(d) A statement of the foreclosure prevention alternatives*
43 *offered by, or through, the mortgage servicer, mortgagee or*
44 *beneficiary of the deed of trust.*

45 *(e) A statement that the borrower may request:*



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

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

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

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

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

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

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

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

34 **Sec. 11. 1.** *A mortgage servicer, mortgagee, trustee,*
35 *beneficiary of a deed of trust or an authorized agent of such a*
36 *person may not record a notice of default and election to sell*
37 *pursuant to subsection 2 of NRS 107.080 or commence a civil*
38 *action for a foreclosure sale pursuant to NRS 40.430 involving a*
39 *failure to make a payment required by a residential mortgage loan*
40 *until:*

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



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

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

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

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

27 4. *A borrower may designate, with consent given in writing, a*
28 *housing counseling agency certified by the United States*
29 *Department of Housing and Urban Development, an attorney or*
30 *any other adviser to discuss with the mortgage servicer, on the*
31 *borrower's behalf, the borrower's financial situation and options*
32 *for the borrower to avoid a foreclosure sale. Contact with a person*
33 *or agency designated by a borrower pursuant to this subsection*
34 *satisfies the requirements of subsection 2. A foreclosure*
35 *prevention alternative offered during any contact with a person or*
36 *agency designated by a borrower pursuant to this subsection is*
37 *subject to the approval of the borrower.*

38 5. *If a mortgage servicer has not contacted a borrower as*
39 *required by subsection 2, a notice of default and election to sell*
40 *may be recorded pursuant to subsection 2 of NRS 107.080 or a*
41 *civil action for a foreclosure sale pursuant to NRS 40.430*
42 *involving a failure to make a payment required by a residential*
43 *mortgage loan may be commenced, if the mortgage servicer has*
44 *taken all the following actions:*



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1 (a) The mortgage servicer attempts to contact the borrower by
2 mailing by first-class mail to the borrower a letter informing the
3 borrower of his or her right to discuss foreclosure prevention
4 alternatives and providing the toll-free telephone number made
5 available by the United States Department of Housing and Urban
6 Development to find a housing counseling agency approved by
7 that Department.

8 (b) After mailing the letter required by paragraph (a), the
9 mortgage servicer attempts to contact the borrower by telephone at
10 least 3 times at different hours on different days. Telephone calls
11 made pursuant to this paragraph must be made to the primary
12 telephone number of the borrower which is on file with the
13 mortgage servicer. A mortgage servicer may attempt to contact a
14 borrower pursuant to this paragraph by using an automated
15 system to dial borrowers if, when the telephone call is answered,
16 the call is connected to a live representative of the mortgage
17 servicer. A mortgage servicer satisfies the requirements of this
18 paragraph if it determines, after attempting to contact a borrower
19 pursuant to this paragraph, that the primary telephone number of
20 the borrower which is on file with the mortgage servicer and any
21 secondary telephone numbers on file with the mortgage servicer
22 have been disconnected.

23 (c) If the borrower does not respond within 14 calendar days
24 after the mortgage servicer satisfies the requirements of paragraph
25 (b), the mortgage servicer sends, by certified mail, return receipt
26 requested, or any other mailing process that requires a signature
27 upon delivery, a letter that includes the information required by
28 paragraph (a).

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

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

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

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

43 (3) A toll-free telephone number for borrowers who wish to
44 discuss with the mortgage servicer options for avoiding a
45 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 a foreclosure sale pursuant to NRS 40.430 involving a failure to make a payment required by a residential mortgage loan must contain a declaration that the mortgage servicer has contacted the borrower as required by subsection 2, has attempted to contact the borrower as required by subsection 5 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, 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:



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

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

7 **Sec. 13.** 1. If a borrower submits an application for a
8 foreclosure prevention alternative offered by, or through, the
9 borrower's mortgage servicer or mortgagee or the beneficiary of
10 the deed of trust, then the mortgage servicer, mortgagee, trustee,
11 beneficiary of the deed of trust or an authorized agent of such a
12 person may not commence a civil action for a foreclosure sale
13 pursuant to NRS 40.430 involving a failure to make a payment
14 required by a residential mortgage loan, record a notice of default
15 and election to sell pursuant to subsection 2 of NRS 107.080 or a
16 notice of sale pursuant to subsection 4 of NRS 107.080, or conduct
17 a foreclosure sale until one of the following has occurred:

18 (a) The borrower fails to submit all the documents or
19 information required to complete the application within 30
20 calendar days after the date of the initial acknowledgment of
21 receipt of the application sent to the borrower pursuant to section
22 12 of this act.

23 (b) The mortgage servicer, mortgagee or beneficiary of the
24 deed of trust makes a written determination that the borrower is
25 not eligible for a foreclosure prevention alternative, and any
26 appeal period pursuant to subsection 5 has expired.

27 (c) The borrower does not accept a written offer for a
28 foreclosure prevention alternative within 14 calendar days after
29 the date on which the offer is received by the borrower.

30 (d) The borrower accepts a written offer for a foreclosure
31 prevention alternative, but defaults on, or otherwise breaches the
32 borrower's obligations under, the foreclosure prevention
33 alternative.

34 2. Not later than 30 calendar days after the borrower submits
35 a complete application for a foreclosure prevention alternative, the
36 mortgage servicer shall submit to the borrower a written offer for
37 a foreclosure prevention alternative or the written statement of the
38 denial of the application described in subsection 4. The borrower
39 must accept or reject the offer within 14 calendar days after the
40 borrower receives the offer. If a borrower does not accept a written
41 offer for a foreclosure prevention alternative within 14 calendar
42 days after the borrower receives the offer for the foreclosure
43 prevention alternative, the offer is deemed to be rejected.

44 3. If a borrower accepts an offer for a foreclosure prevention
45 alternative, the mortgage servicer must provide the borrower with



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1 a copy of the complete agreement evidencing the foreclosure
2 prevention alternative, signed by the mortgagee or beneficiary of
3 the deed of trust or an agent or authorized representative of the
4 mortgagee or beneficiary.

5 4. If a borrower submits a complete application for a
6 foreclosure prevention alternative and the borrower's application
7 is denied, the mortgage servicer must send to the borrower a
8 written statement of:

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

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

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

15 5. If a borrower submits a complete application for a
16 foreclosure prevention alternative and the borrower's application
17 is denied, the mortgage servicer, mortgagee, trustee, beneficiary of
18 the deed of trust, or an authorized agent of such a person may not
19 commence a civil action for a foreclosure sale pursuant to NRS
20 40.430 involving a failure to make a payment required by a
21 residential mortgage loan, record a notice of default and election
22 to sell pursuant to subsection 2 of NRS 107.080 or a notice of sale
23 pursuant to subsection 4 of NRS 107.080, or conduct a foreclosure
24 sale until the later of:

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

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

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

29 (2) If the appeal is successful, 14 calendar days after a first
30 lien loan modification or another foreclosure prevention
31 alternative offered after appeal is rejected by the borrower; and

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

37 6. If the borrower appeals the denial of a complete
38 application for a foreclosure prevention alternative, not later than
39 30 calendar days after the borrower requests the appeal, the
40 mortgage servicer must submit to the borrower a written offer for
41 a foreclosure prevention alternative or a written denial of the
42 appeal. The borrower must accept or reject the offer within 14
43 calendar days after the borrower receives the offer. If a borrower
44 does not accept a written offer for a foreclosure prevention
45 alternative within 14 calendar days after the borrower receives the



1 *written offer for the foreclosure prevention alternative, the offer is*
2 *deemed to be rejected.*

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

4 *(a) Application, processing or other fee for a foreclosure*
5 *prevention alternative; or*

6 *(b) Late fees for periods during which:*

7 *(1) A foreclosure prevention alternative is under*
8 *consideration or a denial is being appealed;*

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

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

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

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

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

24 *9. For purposes of this section, an application is complete*
25 *when a borrower has supplied the mortgage servicer with all*
26 *documents required by the mortgage servicer within the*
27 *reasonable timeframes specified by the mortgage servicer.*

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

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

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

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

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



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(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. 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 without prejudice, 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 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;



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1 (b) If mediation pursuant to NRS 107.086 is required, until the
2 date on which the Mediation Administrator, as defined in NRS
3 107.086, issues the certificate that mediation has been completed
4 in the matter;

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

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

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

13 (2) A written statement of the denial of the application has
14 been submitted to the borrower pursuant to subsection 4 of section
15 13 of this act, and any appeal period pursuant to subsection 5 of
16 section 13 of this act has expired; or

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

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

30 **Sec. 16.** 1. If a trustee's deed upon sale has not been
31 recorded, a borrower may bring an action for injunctive relief to
32 enjoin a material violation of sections 2 to 16, inclusive, of this
33 act. If a sheriff has not recorded the certificate of the sale of the
34 property, a borrower may obtain an injunction to enjoin a material
35 violation of sections 2 to 16, inclusive, of this act. An injunction
36 issued pursuant to this subsection remains in place and any
37 foreclosure sale must be enjoined until the court determines that
38 the mortgage servicer, mortgagee, beneficiary of the deed of trust
39 or an authorized agent of such a person has corrected and
40 remedied the violation giving rise to the action for injunctive
41 relief. An enjoined person may move to dissolve an injunction
42 based on a showing that the material violation has been corrected
43 and remedied.

44 2. After a trustee's deed upon sale has been recorded or after
45 a sheriff has recorded the certificate of the sale of the property, a



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1 *borrower may bring a civil action in the district court in the county*
2 *in which the property is located to recover his or her actual*
3 *economic damages resulting from a material violation of sections*
4 *2 to 16, inclusive, of this act by the mortgage servicer, mortgagee,*
5 *beneficiary of the deed of trust or an authorized agent of such a*
6 *person, if the material violation was not corrected and remedied*
7 *before the recording of the trustee's deed upon sale or the*
8 *recording of the certificate of sale of the property pursuant to NRS*
9 *40.430. If the court finds that the material violation was*
10 *intentional or reckless, or resulted from willful misconduct by a*
11 *mortgage servicer, mortgagee, beneficiary of the deed of trust or*
12 *an authorized agent of such a person, the court may award the*
13 *borrower the greater of treble actual damages or statutory*
14 *damages of \$50,000.*

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

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

25 5. *A signatory to a consent judgment entered in the case*
26 *entitled United States of America et al. v. Bank of America*
27 *Corporation et al., filed in the United States District Court for the*
28 *District of Columbia, case number 1:12-cv-00361 RMC, that is in*
29 *compliance with the relevant terms of the Settlement Term Sheet*
30 *of that consent judgment with respect to the borrower who brought*
31 *an action pursuant to this section while the consent judgment is in*
32 *effect is not liable for a violation of sections 2 to 16, inclusive, of*
33 *this act. If the consent judgment is modified or amended on or*
34 *after October 1, 2013, to permit compliance with the relevant*
35 *provisions of 12 C.F.R. Part 1024, commonly known as*
36 *Regulation X, and 12 C.F.R. Part 1026, commonly known as*
37 *Regulation Z, as those regulations are amended by the Final*
38 *Servicing Rules issued by the Consumer Financial Protection*
39 *Bureau in 78 Federal Register 10,696 on February 14, 2013, and*
40 *any amendments thereto, to supersede some or all of the relevant*
41 *terms of the Settlement Term Sheet of the consent judgment, a*
42 *signatory who is in compliance with the modified or amended*
43 *Settlement Term Sheet of the consent judgment while the consent*
44 *judgment is in effect is not liable for a violation of sections 2 to 16,*
45 *inclusive, of this act.*



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

4 7. *The rights, remedies and procedures provided by this*
5 *section are in addition to and independent of any other rights,*
6 *remedies or procedures provided by law.*

7 **Sec. 16.5.** *1. No provision of the laws of this State may be*
8 *construed to require a sale in lieu of a foreclosure sale to be an*
9 *arm's length transaction or to prohibit a sale in lieu of a*
10 *foreclosure sale that is not an arm's length transaction.*

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

13 **Sec. 17.** NRS 107.080 is hereby amended to read as follows:

14 107.080 1. Except as otherwise provided in NRS 106.210,
15 107.085 and 107.086, if any transfer in trust of any estate in real
16 property is made after March 29, 1927, to secure the performance of
17 an obligation or the payment of any debt, a power of sale is hereby
18 conferred upon the trustee to be exercised after a breach of the
19 obligation for which the transfer is security.

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

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

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

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

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

43 (c) The beneficiary, the successor in interest of the beneficiary
44 or the trustee first executes and causes to be recorded in the office of
45 the recorder of the county wherein the trust property, or some part



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thereof, is situated a notice of the breach and of the election to sell or cause to be sold the property to satisfy the obligation which, except as otherwise provided in this paragraph, includes a notarized affidavit of authority to exercise the power of sale stating, based on personal knowledge and under the penalty of perjury:

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

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

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

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

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

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

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

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

3. The 15- or 35-day period provided in paragraph (a) of subsection 2, or the period provided in paragraph (b) of subsection 2, commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor or, to the person who holds the title of record on the date the notice of default and election to sell is



1 recorded, and, if the property is operated as a facility licensed under
2 chapter 449 of NRS, to the State Board of Health, at their respective
3 addresses, if known, otherwise to the address of the trust property.
4 The notice of default and election to sell must:

5 (a) Describe the deficiency in performance or payment and may
6 contain a notice of intent to declare the entire unpaid balance due if
7 acceleration is permitted by the obligation secured by the deed of
8 trust, but acceleration must not occur if the deficiency in
9 performance or payment is made good and any costs, fees and
10 expenses incident to the preparation or recordation of the notice and
11 incident to the making good of the deficiency in performance or
12 payment are paid within the time specified in subsection 2; ~~and~~

13 (b) *If the property is subject to the requirements of sections 2*
14 *to 16, inclusive, of this act, contain the declaration required by*
15 *subsection 6 of section 11 of this act; and*

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

18 4. The trustee, or other person authorized to make the sale
19 under the terms of the trust deed or transfer in trust, shall, after
20 expiration of the 3-month period following the recording of the
21 notice of breach and election to sell, and before the making of the
22 sale, give notice of the time and place thereof by recording
23 the notice of sale and by:

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

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

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

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

41 5. Every sale made under the provisions of this section and
42 other sections of this chapter vests in the purchaser the title of the
43 grantor and any successors in interest without equity or right of
44 redemption. A sale made pursuant to this section must be declared



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1 void by any court of competent jurisdiction in the county where the
2 sale took place if:

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

6 (b) Except as otherwise provided in subsection 6, an action is
7 commenced in the county where the sale took place within ~~190~~ 45
8 days after the date of the sale; and

9 (c) A notice of lis pendens providing notice of the pendency of
10 the action is recorded in the office of the county recorder of the
11 county where the sale took place within ~~130~~ 15 days after
12 commencement of the action.

13 6. If proper notice is not provided pursuant to subsection 3 or
14 paragraph (a) of subsection 4 to the grantor, to the person who holds
15 the title of record on the date the notice of default and election to
16 sell is recorded, to each trustor or to any other person entitled to
17 such notice, the person who did not receive such proper notice may
18 commence an action pursuant to subsection 5 within ~~1120~~ 60 days
19 after the date on which the person received actual notice of the sale.

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

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

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

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

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

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

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



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(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



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1 the State Controller for credit to the State General Fund or the
2 Account as prescribed in subsection 11.

3 13. The beneficiary, the successor in interest of the beneficiary
4 or the trustee who causes to be recorded the notice of default and
5 election to sell shall not charge the grantor or the successor in
6 interest of the grantor any portion of any fee required to be paid
7 pursuant to subsection 11.

8 14. As used in this section:

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

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

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

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

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

19 ***1. If a civil action for a foreclosure sale pursuant to NRS***
20 ***40.430 affecting owner-occupied housing is commenced in a court***
21 ***of competent jurisdiction:***

22 ***(a) The copy of the complaint served on the mortgagor must***
23 ***include a separate document containing:***

24 ***(1) Contact information which the mortgagor may use to***
25 ***reach a person with authority to negotiate a loan modification on***
26 ***behalf of the plaintiff;***

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

30 ***(3) A notice provided by the Mediation Administrator***
31 ***indicating that the mortgagor has the right to seek mediation***
32 ***pursuant to this section; and***

33 ***(4) A form upon which the mortgagor may indicate an***
34 ***election to enter into mediation or to waive mediation pursuant to***
35 ***this section and one envelope addressed to the plaintiff and one***
36 ***envelope addressed to the Mediation Administrator, which the***
37 ***mortgagor may use to comply with the provisions of subsection 2;***
38 ***and***

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

41 ***2. The mortgagor shall, not later than the date on which an***
42 ***answer to the complaint is due, complete the form required by***
43 ***subparagraph (4) of paragraph (a) of subsection 1 and file the***
44 ***form with the court and return a copy of the form to the plaintiff***
45 ***by certified mail, return receipt requested. If the mortgagor***



1 *indicates on the form an election to enter into mediation, the*
2 *plaintiff shall notify any person with an interest as defined in NRS*
3 *107.090, by certified mail, return receipt requested, of the election*
4 *of the mortgagor to enter into mediation and file the form with the*
5 *Mediation Administrator, who shall assign the matter to a senior*
6 *justice, judge, hearing master or other designee and schedule the*
7 *matter for mediation. The judicial foreclosure action must be*
8 *stayed until the completion of the mediation. If the mortgagor*
9 *indicates on the form an election to waive mediation or fails to file*
10 *the form with the court and return a copy of the form to the*
11 *plaintiff as required by this subsection, no mediation is required in*
12 *the action.*

13 3. *Each mediation required by this section must be conducted*
14 *by a senior justice, judge, hearing master or other designee*
15 *pursuant to the rules adopted pursuant to subsection 8 of NRS*
16 *107.086. The plaintiff or a representative, and the mortgagor or*
17 *his or her representative, shall attend the mediation. If the*
18 *plaintiff is represented at the mediation by another person, that*
19 *person must have authority to negotiate a loan modification on*
20 *behalf of the plaintiff or have access at all times during the*
21 *mediation to a person with such authority.*

22 4. *If the plaintiff or the representative fails to attend the*
23 *mediation, fails to participate in the mediation in good faith or*
24 *does not have the authority or access to a person with the*
25 *authority required by subsection 3, the mediator shall prepare and*
26 *submit to the Mediation Administrator and the court a petition and*
27 *recommendation concerning the imposition of sanctions against*
28 *the plaintiff or the representative. The court may issue an order*
29 *imposing such sanctions against the plaintiff or the representative*
30 *as the court determines appropriate, including, without limitation,*
31 *requiring a loan modification in the manner determined proper by*
32 *the court.*

33 5. *If the mortgagor elected to enter into mediation and fails to*
34 *attend the mediation, no mediation is required and the judicial*
35 *foreclosure action must proceed as if the mortgagor had not*
36 *elected to enter into mediation.*

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

43 7. *The rules adopted by the Supreme Court pursuant to*
44 *subsection 8 of NRS 107.086 apply to a mediation conducted*
45 *pursuant to this section, and the Supreme Court may adopt any*



1 *additional rules necessary to carry out the provisions of this*
2 *section.*

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

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

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

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

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

18 *11. As used in this section:*

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

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

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

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

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

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

41 3. At any time not later than 5 business days before the date of
42 sale directed by the court, if the deficiency resulting in the action for
43 the recovery of the debt has arisen by failure to make a payment
44 required by the mortgage or other lien, the deficiency may be made
45 good by payment of the deficient sum and by payment of any costs,



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1 fees and expenses incident to making the deficiency good. If a
2 deficiency is made good pursuant to this subsection, the sale may
3 not occur.

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

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

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

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

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

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

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

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

30 (f) For the exercise of any right or remedy authorized by chapter
31 104 of NRS or by the Uniform Commercial Code as enacted in any
32 other state.

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

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

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

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



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1 debt or other right secured by a senior mortgage or other senior lien
2 on the property.

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

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

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

10 (n) Pursuant to NRS 40.507 or 40.508.

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

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

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

17 40.433 As used in NRS 40.430 to 40.459, inclusive, *and*
18 *section 18 of this act*, unless the context otherwise requires, a
19 "mortgage or other lien" includes a deed of trust, but does not
20 include a lien which arises pursuant to chapter 108 of NRS, pursuant
21 to an assessment under chapter 116, 117, 119A or 278A of NRS or
22 pursuant to a judgment or decree of any court of competent
23 jurisdiction.

24 **Sec. 21.** (Deleted by amendment.)

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

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

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

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

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

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

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

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

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

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

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

42 **Sec. 31.** (Deleted by amendment.)

