

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 16 also provides that a signatory to the consent judgment entered in the case entitled *United States of America et al. v. Bank of America Corporation et al.*, who complies with the Settlement Term Sheet under that judgment is deemed to be in compliance with **sections 2-16** and is not liable for a violation of those provisions. **Section 16** further provides that if the consent judgment is modified or amended to permit compliance with the Final Servicing Rules issued by the federal Consumer Financial Protection Bureau to supersede the terms of the Settlement Term Sheet under the consent judgment: (1) a signatory to the consent judgment who complies with the modified or amended Settlement Term Sheet while the consent judgment is in effect is deemed to be in compliance with **sections 2-16** and is not liable for a violation of those provisions; and (2) any mortgage servicer, mortgagee or beneficiary of the deed of trust who complies with the Final Servicing Rules is deemed to be in compliance with **sections 2-16** and is not liable for a violation of those provisions.

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



1 into consent agreements and settlements requiring certain large
2 financial institutions to adopt certain practices when servicing a
3 mortgage loan in default; and

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

6 WHEREAS, All homeowners in the State of Nevada deserve
7 better consumer protections and fair and honest treatment in the
8 servicing of mortgage loans in default; now therefore,
9

10 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
11 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
12

13 **Section 1.** Chapter 107 of NRS is hereby amended by adding
14 thereto the provisions set forth as sections 2 to 16.5, inclusive, of
15 this act.

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

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

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

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

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

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

39 **Sec. 6.** *"Mortgage servicer" means a person who directly*
40 *services a residential mortgage loan, or who is responsible for*
41 *interacting with a borrower, managing a loan account on a daily*
42 *basis, including, without limitation, collecting and crediting*
43 *periodic loan payments, managing any escrow account or*
44 *enforcing the note and security instrument, either as the current*
45 *owner of the promissory note or as the authorized agent of the*



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1 *current owner of the promissory note. The term includes a person*
2 *providing such services by contract as a subservicing agent to a*
3 *master servicer by contract. The term does not include a trustee*
4 *under a deed of trust, or the trustee's authorized agent, acting*
5 *under a power of sale pursuant to a deed of trust.*

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

10 **Sec. 7.5.** *The provisions of sections 2 to 16, inclusive, of this*
11 *act do not apply to a financial institution, as defined in NRS*
12 *660.045, that, during its immediately preceding annual reporting*
13 *period, as established with its primary regulator, has foreclosed on*
14 *100 or fewer real properties located in this State which constitute*
15 *owner-occupied housing, as defined in NRS 107.086.*

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

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

26 **2.** *In addition to the requirements of NRS 40.430 to 40.4639,*
27 *inclusive, a civil action for a foreclosure sale pursuant to NRS*
28 *40.430 involving a failure to make a payment required by a*
29 *residential mortgage loan is subject to the requirements of sections*
30 *2 to 16, inclusive, of this act.*

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

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

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

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



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1 **Sec. 10. 1.** *At least 30 calendar days before recording a*
2 *notice of default and election to sell pursuant to subsection 2 of*
3 *NRS 107.080 or commencing a civil action for a foreclosure sale*
4 *pursuant to NRS 40.430 involving a failure to make a payment*
5 *required by a residential mortgage loan and at least 30 calendar*
6 *days after the borrower's default, the mortgage servicer,*
7 *mortgagee or beneficiary of the deed of trust shall mail, by first-*
8 *class mail, a notice addressed to the borrower at the borrower's*
9 *primary address as indicated in the records of the mortgage*
10 *servicer, mortgagee or beneficiary of the deed of trust, which*
11 *contains:*

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

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

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

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

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

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

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

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

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

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

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

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



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

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

(e) A statement that the borrower may request:

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

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

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

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

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

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

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

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

Sec. 11. 1. A mortgage servicer, mortgagee, trustee, beneficiary of a deed of trust or an authorized agent of such a



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1 *person may not record a notice of default and election to sell*
2 *pursuant to subsection 2 of NRS 107.080 or commence a civil*
3 *action for a foreclosure sale pursuant to NRS 40.430 involving a*
4 *failure to make a payment required by a residential mortgage loan*
5 *until:*

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

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

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

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

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

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



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

8 (a) *The mortgage servicer attempts to contact the borrower by*
9 *mailing by first-class mail to the borrower a letter informing the*
10 *borrower of his or her right to discuss foreclosure prevention*
11 *alternatives and providing the toll-free telephone number made*
12 *available by the United States Department of Housing and Urban*
13 *Development to find a housing counseling agency approved by*
14 *that Department.*

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

30 (c) *If the borrower does not respond within 14 calendar days*
31 *after the mortgage servicer satisfies the requirements of paragraph*
32 *(b), the mortgage servicer sends, by certified mail, return receipt*
33 *requested, or any other mailing process that requires a signature*
34 *upon delivery, a letter that includes the information required by*
35 *paragraph (a).*

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

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

43 (1) *Options that may be available to borrowers who are*
44 *unable to afford payments under a residential mortgage loan and*



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1 *who wish to avoid a foreclosure sale, and instructions to such*
2 *borrowers advising them on steps to take to explore those options.*

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

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

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

12 *6. If the property is subject to the requirements of sections 2*
13 *to 16, inclusive, of this act, a notice of default and election to sell*
14 *recorded pursuant to subsection 2 of NRS 107.080 or a complaint*
15 *commencing a civil action for a foreclosure sale pursuant to NRS*
16 *40.430 involving a failure to make a payment required by a*
17 *residential mortgage loan must contain a declaration that the*
18 *mortgage servicer has contacted the borrower as required by*
19 *subsection 2, has attempted to contact the borrower as required by*
20 *subsection 5 or that no contact was required.*

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

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

30 *(a) A description of the process for considering the*
31 *application, including, without limitation, a statement that:*

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

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

44 *(b) A statement of any deadlines that affect the processing of*
45 *an application for a foreclosure prevention alternative, including,*



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1 *without limitation, the deadline for submitting any missing*
2 *documentation; and*

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

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

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

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

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

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

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

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

38 *(d) The borrower accepts a written offer for a foreclosure*
39 *prevention alternative, but defaults on, or otherwise breaches the*
40 *borrower's obligations under, the foreclosure prevention*
41 *alternative.*

42 *2. Not later than 30 calendar days after the borrower submits*
43 *a complete application for a foreclosure prevention alternative, the*
44 *mortgage servicer shall submit to the borrower a written offer for*
45 *a foreclosure prevention alternative or the written statement of the*



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1 *denial of the application described in subsection 4. The borrower*
2 *must accept or reject the offer within 14 calendar days after the*
3 *borrower receives the offer. If a borrower does not accept a written*
4 *offer for a foreclosure prevention alternative within 14 calendar*
5 *days after the borrower receives the offer for the foreclosure*
6 *prevention alternative, the offer is deemed to be rejected.*

7 *3. If a borrower accepts an offer for a foreclosure prevention*
8 *alternative, the mortgage servicer must provide the borrower with*
9 *a copy of the complete agreement evidencing the foreclosure*
10 *prevention alternative, signed by the mortgagee or beneficiary of*
11 *the deed of trust or an agent or authorized representative of the*
12 *mortgagee or beneficiary.*

13 *4. If a borrower submits a complete application for a*
14 *foreclosure prevention alternative and the borrower's application*
15 *is denied, the mortgage servicer must send to the borrower a*
16 *written statement of:*

17 *(a) The reason or reasons for the denial;*

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

20 *(c) Instructions regarding how to appeal the denial, including,*
21 *without limitation, how to provide evidence that the denial was in*
22 *error.*

23 *5. If a borrower submits a complete application for a*
24 *foreclosure prevention alternative and the borrower's application*
25 *is denied, the mortgage servicer, mortgagee, trustee, beneficiary of*
26 *the deed of trust, or an authorized agent of such a person may not*
27 *commence a civil action for a foreclosure sale pursuant to NRS*
28 *40.430 involving a failure to make a payment required by a*
29 *residential mortgage loan, record a notice of default and election*
30 *to sell pursuant to subsection 2 of NRS 107.080 or a notice of sale*
31 *pursuant to subsection 4 of NRS 107.080, or conduct a foreclosure*
32 *sale until the later of:*

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

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

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

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

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



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

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

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

(b) Late fees for periods during which:

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

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

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

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

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

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

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

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

2. A single point of contact is responsible for:

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



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

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

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

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

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

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

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

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

33 **Sec. 15. 1.** A civil action for a foreclosure sale pursuant to
34 NRS 40.430 involving a failure to make a payment required by a
35 residential mortgage loan must be dismissed without prejudice,
36 any notice of default and election to sell recorded pursuant to
37 subsection 2 of NRS 107.080 or any notice of sale recorded
38 pursuant to subsection 4 of NRS 107.080 must be rescinded, and
39 any pending foreclosure sale must be cancelled, if:

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

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



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

4 2. *The periods specified in paragraphs (b) and (c) of*
5 *subsection 1 are tolled:*

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

10 (b) *If mediation pursuant to NRS 107.086 is required, until the*
11 *date on which the Mediation Administrator, as defined in NRS*
12 *107.086, issues the certificate that mediation has been completed*
13 *in the matter;*

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

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

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

22 (2) *A written statement of the denial of the application has*
23 *been submitted to the borrower pursuant to subsection 4 of section*
24 *13 of this act, and any appeal period pursuant to subsection 5 of*
25 *section 13 of this act has expired; or*

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

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

39 **Sec. 16. 1.** *If a trustee's deed upon sale has not been*
40 *recorded, a borrower may bring an action for injunctive relief to*
41 *enjoin a material violation of sections 2 to 16, inclusive, of this*
42 *act. If a sheriff has not recorded the certificate of the sale of the*
43 *property, a borrower may obtain an injunction to enjoin a material*
44 *violation of sections 2 to 16, inclusive, of this act. An injunction*
45 *issued pursuant to this subsection remains in place and any*



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1 *foreclosure sale must be enjoined until the court determines that*
2 *the mortgage servicer, mortgagee, beneficiary of the deed of trust*
3 *or an authorized agent of such a person has corrected and*
4 *remedied the violation giving rise to the action for injunctive*
5 *relief. An enjoined person may move to dissolve an injunction*
6 *based on a showing that the material violation has been corrected*
7 *and remedied.*

8 2. *After a trustee's deed upon sale has been recorded or after*
9 *a sheriff has recorded the certificate of the sale of the property, a*
10 *borrower may bring a civil action in the district court in the county*
11 *in which the property is located to recover his or her actual*
12 *economic damages resulting from a material violation of sections*
13 *2 to 16, inclusive, of this act by the mortgage servicer, mortgagee,*
14 *beneficiary of the deed of trust or an authorized agent of such a*
15 *person, if the material violation was not corrected and remedied*
16 *before the recording of the trustee's deed upon sale or the*
17 *recording of the certificate of sale of the property pursuant to NRS*
18 *40.430. If the court finds that the material violation was*
19 *intentional or reckless, or resulted from willful misconduct by a*
20 *mortgage servicer, mortgagee, beneficiary of the deed of trust or*
21 *an authorized agent of such a person, the court may award the*
22 *borrower the greater of treble actual damages or statutory*
23 *damages of \$50,000.*

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

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

34 5. *A signatory to a consent judgment entered in the case*
35 *entitled United States of America et al. v. Bank of America*
36 *Corporation et al., filed in the United States District Court for the*
37 *District of Columbia, case number 1:12-cv-00361 RMC, that is in*
38 *compliance with the relevant terms of the Settlement Term Sheet*
39 *of that consent judgment with respect to the borrower while the*
40 *consent judgment is in effect is deemed to be in compliance with*
41 *sections 2 to 16, inclusive, of this act and is not liable for a*
42 *violation of sections 2 to 16, inclusive, of this act. If, on or after*
43 *October 1, 2013, the consent judgment is modified or amended to*
44 *permit compliance with the relevant provisions of 12 C.F.R. Part*
45 *1024, commonly known as Regulation X, and 12 C.F.R. Part 1026,*



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1 commonly known as Regulation Z, as those regulations are
2 amended by the Final Servicing Rules issued by the Consumer
3 Financial Protection Bureau in 78 Federal Register 10,696 on
4 February 14, 2013, and any amendments thereto, to supersede
5 some or all of the relevant terms of the Settlement Term Sheet of
6 the consent judgment:

7 (a) A signatory who is in compliance with the modified or
8 amended Settlement Term Sheet of the consent judgment while the
9 consent judgment is in effect is deemed to be in compliance with
10 sections 2 to 16, inclusive, of this act and is not liable for a
11 violation of sections 2 to 16, inclusive, of this act.

12 (b) Any mortgage servicer, mortgagee or beneficiary of the
13 deed of trust or an authorized agent of such a person who
14 complies with the relevant provisions of 12 C.F.R. Part 1024,
15 commonly known as Regulation X, and 12 C.F.R. Part 1026,
16 commonly known as Regulation Z, as those regulations are
17 amended by the Final Servicing Rules issued by the Consumer
18 Financial Protection Bureau in 78 Federal Register 10,696 on
19 February 14, 2013, and any amendments thereto, is deemed to be
20 in compliance with sections 2 to 16, inclusive, of this act and is not
21 liable for a violation of sections 2 to 16, inclusive, of this act.

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

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

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

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

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

35 107.080 1. Except as otherwise provided in NRS 106.210,
36 107.085 and 107.086, if any transfer in trust of any estate in real
37 property is made after March 29, 1927, to secure the performance of
38 an obligation or the payment of any debt, a power of sale is hereby
39 conferred upon the trustee to be exercised after a breach of the
40 obligation for which the transfer is security.

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

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

44 (1) On or after July 1, 1949, and before July 1, 1957, the
45 grantor, the person who holds the title of record, a beneficiary under



1 a subordinate deed of trust or any other person who has a
2 subordinate lien or encumbrance of record on the property has, for a
3 period of 15 days, computed as prescribed in subsection 3, failed to
4 make good the deficiency in performance or payment; or

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 5 within ~~120~~ 60 days after the date on which the person received actual notice of the sale.

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



1 court must award to the grantor or the person who holds title of
2 record:

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (b) A fee of \$45 for deposit in the Account for Foreclosure
40 Mediation, which is hereby created in the State General Fund. The
41 Account must be administered by the Court Administrator, and the
42 money in the Account may be expended only for the purpose of
43 supporting a program of foreclosure mediation established by
44 Supreme Court Rule.



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

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

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

14. As used in this section:

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

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

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

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

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

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

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



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

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

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

10 (4) A form upon which the mortgagor may indicate an
11 election to enter into mediation or to waive mediation pursuant to
12 this section and one envelope addressed to the plaintiff and one
13 envelope addressed to the Mediation Administrator, which the
14 mortgagor may use to comply with the provisions of subsection 2;
15 and

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

18 2. The mortgagor shall, not later than the date on which an
19 answer to the complaint is due, complete the form required by
20 subparagraph (4) of paragraph (a) of subsection 1 and file the
21 form with the court and return a copy of the form to the plaintiff
22 by certified mail, return receipt requested. If the mortgagor
23 indicates on the form an election to enter into mediation, the
24 plaintiff shall notify any person with an interest as defined in NRS
25 107.090, by certified mail, return receipt requested, of the election
26 of the mortgagor to enter into mediation and file the form with the
27 Mediation Administrator, who shall assign the matter to a senior
28 justice, judge, hearing master or other designee and schedule the
29 matter for mediation. The judicial foreclosure action must be
30 stayed until the completion of the mediation. If the mortgagor
31 indicates on the form an election to waive mediation or fails to file
32 the form with the court and return a copy of the form to the
33 plaintiff as required by this subsection, no mediation is required in
34 the action.

35 3. Each mediation required by this section must be conducted
36 by a senior justice, judge, hearing master or other designee
37 pursuant to the rules adopted pursuant to subsection 8 of NRS
38 107.086. The plaintiff or a representative, and the mortgagor or
39 his or her representative, shall attend the mediation. If the
40 plaintiff is represented at the mediation by another person, that
41 person must have authority to negotiate a loan modification on
42 behalf of the plaintiff or have access at all times during the
43 mediation to a person with such authority.

44 4. If the plaintiff or the representative fails to attend the
45 mediation, fails to participate in the mediation in good faith or



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1 *does not have the authority or access to a person with the*
2 *authority required by subsection 3, the mediator shall prepare and*
3 *submit to the Mediation Administrator and the court a petition and*
4 *recommendation concerning the imposition of sanctions against*
5 *the plaintiff or the representative. The court may issue an order*
6 *imposing such sanctions against the plaintiff or the representative*
7 *as the court determines appropriate, including, without limitation,*
8 *requiring a loan modification in the manner determined proper by*
9 *the court.*

10 5. *If the mortgagor elected to enter into mediation and fails to*
11 *attend the mediation, no mediation is required and the judicial*
12 *foreclosure action must proceed as if the mortgagor had not*
13 *elected to enter into mediation.*

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

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

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

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

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

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

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

40 11. *As used in this section:*

41 (a) *“Mediation Administrator” has the meaning ascribed to it*
42 *in NRS 107.086.*

43 (b) *“Noncommercial lender” has the meaning ascribed to it in*
44 *NRS 107.086.*



1 (c) *“Owner-occupied housing” has the meaning ascribed to it*
2 *in NRS 107.086.*

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

4 40.430 1. Except in cases where a person proceeds under
5 subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, and
6 except as otherwise provided in NRS 118C.220, there may be but
7 one action for the recovery of any debt, or for the enforcement of
8 any right secured by a mortgage or other lien upon real estate. That
9 action must be in accordance with the provisions of NRS 40.430 to
10 40.459, inclusive ~~H~~, *and section 18 of this act.* In that action, the
11 judgment must be rendered for the amount found due the plaintiff,
12 and the court, by its decree or judgment, may direct a sale of the
13 encumbered property, or such part thereof as is necessary, and apply
14 the proceeds of the sale as provided in NRS 40.462.

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

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

27 4. A sale directed by the court pursuant to subsection 1 must be
28 conducted in the same manner as the sale of real property upon
29 execution, by the sheriff of the county in which the encumbered
30 land is situated, and if the encumbered land is situated in two or
31 more counties, the court shall direct the sheriff of one of the
32 counties to conduct the sale with like proceedings and effect as if
33 the whole of the encumbered land were situated in that county.

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

38 6. As used in this section, an “action” does not include any act
39 or proceeding:

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

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



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

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

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

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

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

(h) To draw under a letter of credit.

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

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

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

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

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

(n) Pursuant to NRS 40.507 or 40.508.

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

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

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

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



- 1 pursuant to a judgment or decree of any court of competent
2 jurisdiction.
- 3 **Sec. 21.** (Deleted by amendment.)
- 4 **Sec. 22.** (Deleted by amendment.)
- 5 **Sec. 23.** (Deleted by amendment.)
- 6 **Sec. 24.** (Deleted by amendment.)
- 7 **Sec. 25.** (Deleted by amendment.)
- 8 **Sec. 26.** (Deleted by amendment.)
- 9 **Sec. 27.** (Deleted by amendment.)
- 10 **Sec. 28.** (Deleted by amendment.)
- 11 **Sec. 29.** (Deleted by amendment.)
- 12 **Sec. 30.** 1. Sections 2 to 16, inclusive, of this act apply only
13 with respect to trust agreements for which a notice of default is
14 recorded on or after October 1, 2013, and to a judicial foreclosure
15 action commenced on or after October 1, 2013.
- 16 2. The amendatory provisions of section 17 of this act apply
17 only with respect to trust agreements for which a notice of default is
18 recorded on or after October 1, 2013.
- 19 3. The amendatory provisions of section 18 of this act apply
20 only to an action commenced on or after October 1, 2013.
- 21 **Sec. 31.** (Deleted by amendment.)

