

ASSEMBLY BILL NO. 259—ASSEMBLYMAN ELLIOT ANDERSON

MARCH 11, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property.
(BDR 9-181)

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 parties required to attend mediation concerning the exercise of the power of sale under a deed of trust securing owner-occupied property; revising provisions governing the foreclosure by sale of a homeowners' association's lien on a unit to require mediation under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the trustee under a deed of trust concerning owner-occupied housing has the power to sell the property to which the deed of trust applies, subject to certain restrictions. (NRS 107.080, 107.085, 107.086) One such restriction requires the trustee under the deed of trust to include with the copy of the notice of default and election to sell which is mailed to the homeowner a notice provided by the Foreclosure Mediation Program Administrator indicating that the grantor or the person who holds the title of record will be enrolled in the Foreclosure Mediation Program upon payment of his or her share of the fee for enrollment in the Program. (NRS 107.080, 107.086) If the homeowner is enrolled in the Program, the beneficiary of the deed of trust or the beneficiary's representative must attend the mediation and bring certain documents to the mediation. If the beneficiary is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary. (NRS 107.086) **Section 1** of this bill: (1) specifically states that, in addition to the beneficiary of the deed of trust or the beneficiary's representative, a person with authority to modify the economic value of the promissory note secured by the deed of trust and negotiate a loan modification, or a representative of such a person, must attend the mediation; and (2) provides that if a representative of that person attends the mediation, the representative must produce a copy of the agreement, or the relevant portion thereof, that authorizes him or her to represent



the person with authority to modify the economic value of the promissory note and negotiate a loan modification.

Under existing law, a homeowners' association has a lien on a unit for certain amounts due to the association. (NRS 116.3116) Existing law authorizes the association to foreclose its lien by sale of the unit through a nonjudicial foreclosure process. (NRS 116.31162-116.31168) **Section 2** of this bill: (1) authorizes a holder of a recorded security interest on a residential unit, or the owner of a residential unit or his or her successor in interest, to be enrolled in the Foreclosure Mediation Program if a homeowners' association records a notice of default and election to sell the unit to enforce its lien; and (2) provides for the mediation of a foreclosure of the association's lien through the Foreclosure Mediation Program in a manner similar to the mediation of a foreclosure of a deed of trust concerning owner-occupied property.

Section 6 of this bill provides that the provisions of this act apply only if the applicable notice of default and election to sell is recorded on or after October 1, 2015.

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

Section 1. NRS 107.086 is hereby amended to read as follows:

107.086 1. Except as otherwise provided in this subsection, in addition to the requirements of NRS 107.085, the exercise of the power of sale pursuant to NRS 107.080 with respect to any trust agreement which concerns owner-occupied housing is subject to the provisions of this section. The provisions of this section do not apply to the exercise of the power of sale if the notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 includes an affidavit and a certification indicating that, pursuant to NRS 107.130, an election has been made to use the expedited procedure for the exercise of the power of sale with respect to abandoned residential property.

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

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

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

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

(3) A notice provided by the Mediation Administrator indicating that the grantor or the person who holds the title of record will be enrolled to participate in mediation pursuant to this section if



1 he or she pays to the Mediation Administrator his or her share of the
2 fee established pursuant to subsection 11; and

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

9 (b) In addition to including the information described in
10 paragraph (a) with the notice of default and election to sell which is
11 mailed to the grantor or the person who holds the title of record as
12 required by subsection 3 of NRS 107.080, provides to the grantor or
13 the person who holds the title of record the information described in
14 paragraph (a) concurrently with, but separately from, the notice of
15 default and election to sell which is mailed to the grantor or the
16 person who holds the title of record as required by subsection 3 of
17 NRS 107.080;

18 (c) Serves a copy of the notice upon the Mediation
19 Administrator; and

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

22 (1) The certificate provided to the trustee by the Mediation
23 Administrator pursuant to subsection 4 or 7 which provides that no
24 mediation is required in the matter; or

25 (2) The certificate provided to the trustee by the Mediation
26 Administrator pursuant to subsection 8 which provides that
27 mediation has been completed in the matter.

28 3. If the grantor or the person who holds the title of record
29 elects to waive mediation, he or she shall, not later than 30 days
30 after service of the notice in the manner required by NRS 107.080,
31 complete the form required by subparagraph (4) of paragraph (a) of
32 subsection 2 and return the form to the trustee and the Mediation
33 Administrator by certified mail, return receipt requested. If the
34 grantor or the person who holds the title of record does not elect to
35 waive mediation, he or she shall, not later than 30 days after the
36 service of the notice in the manner required by NRS 107.080, pay to
37 the Mediation Administrator his or her share of the fee established
38 pursuant to subsection 11. Upon receipt of the share of the fee
39 established pursuant to subsection 11 owed by the grantor or the
40 person who holds title of record, the Mediation Administrator shall
41 notify the trustee, by certified mail, return receipt requested, of the
42 enrollment of the grantor or person who holds the title of record to
43 participate in mediation pursuant to this section and shall assign the
44 matter to a senior justice, judge, hearing master or other designee
45 and schedule the matter for mediation. The trustee shall notify the



beneficiary of the deed of trust and every other person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the enrollment of the grantor or the person who holds the title of record to participate in mediation. If the grantor or person who holds the title of record is enrolled to participate in mediation pursuant to this section, no further action may be taken to exercise the power of sale until the completion of the mediation.

4. If the grantor or the person who holds the title of record indicates on the form described in subparagraph (4) of paragraph (a) of subsection 2 an election to waive mediation or fails to pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11, as required by subsection 3, the Mediation Administrator shall, not later than 60 days after the Mediation Administrator receives the form indicating an election to waive mediation or 90 days after the service of the notice in the manner required by NRS 107.080, whichever is earlier, provide to the trustee a certificate which provides that no mediation is required in the matter.

5. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 11. The beneficiary of the deed of trust or a representative, *a person with authority to modify the economic value of the promissory note secured by the deed of trust and negotiate a loan modification or a representative, and the grantor or his or her representative or the person who holds the title of record or his or her representative* shall attend the mediation. ~~The grantor or his or her representative, or the person who holds the title of record or his or her representative, shall attend the mediation.~~ The beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note. If the ~~beneficiary of the deed of trust~~ *person with authority to modify the economic value of the promissory note secured by the deed of trust and negotiate a loan modification* is represented at the mediation by ~~another person, that~~ *a third person, the third person must have authority to bring to the mediation a copy of the agreement, or the relevant portion thereof, which authorizes him or her to represent the person with authority to modify the economic value of the promissory note and* negotiate a loan modification on behalf of the beneficiary of the deed of trust. ~~for have access at all times during the mediation to a person with such authority.~~ *For the purposes of this subsection, if the promissory note secured by a deed of trust is endorsed in blank, the person with authority to modify the economic value of the promissory note and negotiate a loan modification is the person with an*



1 *attached security interest in the promissory note pursuant to*
2 *NRS 104.9203.*

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

18 7. If the grantor or the person who holds the title of record is
19 enrolled to participate in mediation pursuant to this section but fails
20 to attend the mediation, the Mediation Administrator shall, not later
21 than 30 days after the scheduled mediation, provide to the trustee a
22 certificate which states that no mediation is required in the matter.

23 8. If the mediator determines that the parties, while acting in
24 good faith, are not able to agree to a loan modification, the mediator
25 shall prepare and submit to the Mediation Administrator a
26 recommendation that the matter be terminated. The Mediation
27 Administrator shall, not later than 30 days after submittal of the
28 mediator's recommendation that the matter be terminated, provide
29 to the trustee a certificate which provides that the mediation
30 required by this section has been completed in the matter.

31 9. Upon receipt of the certificate provided to the trustee by the
32 Mediation Administrator pursuant to subsection 4, 7 or 8, if the
33 property is located within a common-interest community, the trustee
34 shall notify the unit-owners' association organized under NRS
35 116.3101 of the existence of the certificate.

36 10. During the pendency of any mediation pursuant to this
37 section, a unit's owner must continue to pay any obligation, other
38 than any past due obligation.

39 11. The Supreme Court shall adopt rules necessary to carry out
40 the provisions of this section. The rules must, without limitation,
41 include provisions:

42 (a) Designating an entity to serve as the Mediation
43 Administrator pursuant to this section. The entities that may be so
44 designated include, without limitation, the Administrative Office of



1 the Courts, the district court of the county in which the property is
2 situated or any other judicial entity.

3 (b) Ensuring that mediations occur in an orderly and timely
4 manner.

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

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

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

15 12. Except as otherwise provided in subsection 14, the
16 provisions of this section do not apply if:

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

22 (b) A petition in bankruptcy has been filed with respect to the
23 grantor or the person who holds the title of record under chapter 7,
24 11, 12 or 13 of Title 11 of the United States Code and the
25 bankruptcy court has not entered an order closing or dismissing the
26 case or granting relief from a stay of foreclosure.

27 13. A noncommercial lender is not excluded from the
28 application of this section.

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

32 15. As used in this section:

33 (a) “Common-interest community” has the meaning ascribed to
34 it in NRS 116.021.

35 (b) “Mediation Administrator” means the entity so designated
36 pursuant to subsection 11.

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

41 (d) “Obligation” has the meaning ascribed to it in
42 NRS 116.310313.

43 (e) “Owner-occupied housing” means housing that is occupied
44 by an owner as the owner’s primary residence. The term does not



1 include vacant land or any time share or other property regulated
2 under chapter 119A of NRS.

3 (f) *"Promissory note" has the meaning ascribed to it in*
4 *NRS 104.9102.*

5 (g) *"Unit's owner" has the meaning ascribed to it in*
6 *NRS 116.095.*

7 **Sec. 2.** Chapter 116 of NRS is hereby amended by adding
8 thereto a new section to read as follows:

9 *1. In addition to the requirements of this section and NRS*
10 *116.31162 to 116.31168, inclusive, a foreclosure by sale of the*
11 *association's lien on a residential unit is subject to the provisions*
12 *of this section.*

13 *2. The association shall not foreclose by sale its lien on a*
14 *residential unit unless the association:*

15 (a) *Mails by certified or registered mail, return receipt*
16 *requested, to each holder of a security interest on the residential*
17 *unit recorded more than 10 days before mailing a notice which*
18 *contains the information set forth in paragraph (b) and records in*
19 *the office of the recorder of the county in which the residential*
20 *unit, or some part thereof, is situated proof that the notice was*
21 *mailed;*

22 (b) *Includes with the notice mailed pursuant to paragraph (a)*
23 *and the notice of default and election to sell which is mailed to the*
24 *unit's owner or his or her successor in interest as required by*
25 *subsection 3 of NRS 116.31162:*

26 (1) *Contact information which the holder of the security*
27 *interest and the unit's owner or his or her successor in interest*
28 *may use to reach a person with authority to negotiate a payment*
29 *plan or modification of the amounts due to the association on*
30 *behalf of the association;*

31 (2) *A notice provided by the Mediation Administrator*
32 *indicating that the holder of the security interest and the unit's*
33 *owner or his or her successor in interest will be enrolled to*
34 *participate in mediation pursuant to this section if the holder of*
35 *the security interest or the unit's owner pays to the Mediation*
36 *Administrator the fee established pursuant to subsection 9; and*

37 (3) *A form upon which the holder of the security interest or*
38 *the unit's owner or his or her successor in interest may indicate an*
39 *election to waive mediation pursuant to this section and one*
40 *envelope addressed to the association and one envelope addressed*
41 *to the Mediation Administrator, which the holder of the security*
42 *interest or the unit's owner or his or her successor in interest may*
43 *use to comply with the provisions of subsection 3;*

44 (c) *In addition to including the information described in*
45 *paragraph (b) with the notice of default and election to sell which*



1 *is mailed to the unit's owner or his or her successor in interest as*
2 *required by subsection 3 of NRS 116.31162, provides to the unit's*
3 *owner or his or her successor in interest the information described*
4 *in paragraph (b) concurrently with, but separately from, the notice*
5 *of default and election to sell which is mailed to the unit's owner*
6 *or his or her successor in interest as required by subsection 3 of*
7 *NRS 116.31162;*

8 *(d) Serves a copy of the notice upon the Mediation*
9 *Administrator; and*

10 *(e) Causes to be recorded in the office of the recorder of the*
11 *county in which the unit, or some part thereof, is situated:*

12 *(1) The certificate provided to the association by the*
13 *Mediation Administrator pursuant to subsection 4 or 7 which*
14 *provides that no mediation is required in the matter; or*

15 *(2) The certificate provided to the association by the*
16 *Mediation Administrator pursuant to subsection 8 which provides*
17 *that mediation has been completed in the matter.*

18 *3. If the holder of the security interest or the unit's owner or*
19 *his or her successor in interest elects to waive mediation, he or she*
20 *shall, not later than 30 days after the mailing of the notice*
21 *described in paragraph (a) of subsection 2 or the mailing of the*
22 *notice of default and election to sell as required by subsection 3 of*
23 *NRS 116.31162, complete the form required by subparagraph (3)*
24 *of paragraph (b) of subsection 2 and return the form to the*
25 *association and the Mediation Administrator by certified mail,*
26 *return receipt requested. If the holder of the security interest or*
27 *the unit's owner or his or her successor in interest does not elect*
28 *to waive mediation, the holder of the security interest or the unit's*
29 *owner or his or her successor shall, not later than 30 days after*
30 *the mailing of the notice described in paragraph (a) of subsection*
31 *2 or the mailing of the notice of default and election to sell as*
32 *required by subsection 3 of NRS 116.31162, pay to the Mediation*
33 *Administrator the fee established pursuant to subsection 9. Upon*
34 *receipt of the fee established pursuant to subsection 9 owed by the*
35 *holder of the security interest or the unit's owner or his or her*
36 *successor in interest, the Mediation Administrator shall notify the*
37 *association, by certified mail, return receipt requested, of the*
38 *enrollment of the holder of the first security interest or the unit's*
39 *owner or his or her successor in interest to participate in*
40 *mediation pursuant to this section and shall assign the matter to a*
41 *senior justice, judge, hearing master or other designee and*
42 *schedule the matter for mediation. The holder of the security*
43 *interest on a unit, or the unit's owner or his or her successor in*
44 *interest, who pays the fee established pursuant to subsection 9,*
45 *shall notify every person with an interest, as defined in*



NRS 107.090, by certified mail, return receipt requested, of the enrollment of the holder of the security interest or the unit's owner or his or her successor in interest to participate in mediation. If the holder of the security interest or a unit's owner or his or her successor in interest is enrolled to participate in mediation pursuant to this section, no further action may be taken to foreclose the association's lien by sale until the completion of the mediation.

4. If each holder of a security interest on the unit and the unit's owner or his or her successor in interest:

(a) Indicates an election to waive mediation, on the form described in subparagraph (3) of paragraph (b) of subsection 2 as required by subsection 3, the Mediation Administrator shall, not later than 60 days after the Mediation Administrator receives the form indicating an election to waive mediation, provide to the association a certificate which provides that no mediation is required in the matter.

(b) Fails to pay to the Mediation Administrator the fee established pursuant to subsection 9, as required by subsection 3, within 90 days after the mailing of the notice described in paragraph (a) of subsection 2 or 90 days after the mailing of the notice of default and election to sell as required by subsection 3 of NRS 116.31162, as applicable, the Mediation Administrator shall provide to the association a certificate which provides that no mediation is required in the matter.

5. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 9. Except as otherwise provided in this subsection, the holder of the security interest and the unit's owner or his or her successor in interest shall attend the mediation. The holder of the security interest or the unit's owner or successor in interest of a unit's owner who elects to waive mediation or who fails to pay the fee established pursuant to subsection 9 is not required to attend the mediation. The association or a representative shall attend the mediation. If the association is represented at the mediation by another person, that person must have authority to negotiate a payment plan or a modification of the amounts due to the association on behalf of the association.

6. If the association or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not have the authority required by subsection 5, the mediator shall prepare and submit to the Mediation Administrator a petition and recommendation concerning the imposition of sanctions against the association or the representative. The court may issue



1 an order imposing such sanctions against the association or the
2 representative as the court determines appropriate, including,
3 without limitation, requiring a payment plan or a modification of
4 the amounts due to the association in the manner determined
5 proper by the court.

6 7. If the holder of the security interest or the unit's owner or
7 successor in interest to a unit's owner is enrolled to participate in
8 mediation pursuant to this section but fails to attend the
9 mediation, the Mediation Administrator shall, not later than 30
10 days after the scheduled mediation, provide to the association a
11 certificate which states that no mediation is required in the matter.

12 8. If the mediator determines that the parties, while acting in
13 good faith, are not able to agree to a payment plan or a
14 modification of the amounts due to the association, the mediator
15 shall prepare and submit to the Mediation Administrator a
16 recommendation that the matter be terminated. The Mediation
17 Administrator shall, not later than 30 days after submittal of the
18 mediator's recommendation that the matter be terminated, provide
19 to the association a certificate which provides that the mediation
20 required by this section has been completed in the matter.

21 9. The Supreme Court shall adopt rules necessary to carry
22 out the provisions of this section. The rules must, without
23 limitation, include provisions:

24 (a) Designating an entity to serve as the Mediation
25 Administrator pursuant to this section. The entities that may be so
26 designated include, without limitation, the Court Administrator,
27 the district court of the county in which the residential unit is
28 situated or any other judicial entity.

29 (b) Ensuring that mediations occur in an orderly and timely
30 manner.

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

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

36 (e) Establishing a fee of not more than \$200 per party that may
37 be charged and collected by the Mediation Administrator for
38 mediation services pursuant to this section.

39 10. If the unit's owner or his or her successor in interest has
40 surrendered the residential unit, as evidenced by a letter
41 confirming the surrender or delivery of the keys to the property to
42 the association, to the trustee or the beneficiary of a deed of trust
43 secured by the residential unit, to a mortgagee, or to an authorized
44 agent thereof, an association is not required to comply with the



provisions of paragraph (b) of subsection 2 and the other provisions of this section do not apply to that unit's owner.

11. The provisions of this section do not apply if a petition in bankruptcy has been filed with respect to the unit's owner or the successor in interest of a unit's owner under chapter 7, 11, 12 or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure.

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

13. As used in this section:

(a) "Mediation Administrator" means the entity so designated pursuant to subsection 9.

(b) "Residential unit" means an attached or detached unit intended or designed to be occupied by one family.

Sec. 3. NRS 116.12075 is hereby amended to read as follows:

116.12075 1. The provisions of this chapter do not apply to a nonresidential condominium except to the extent that the declaration for the nonresidential condominium provides that:

(a) This entire chapter applies to the condominium;

(b) Only the provisions of NRS 116.001 to 116.2122, inclusive, and 116.3116 to 116.31168, inclusive, **and section 2 of this act** apply to the condominium; or

(c) Only the provisions of NRS 116.3116 to 116.31168, inclusive, **and section 2 of this act** apply to the condominium.

2. If this entire chapter applies to a nonresidential condominium, the declaration may also require, subject to NRS 116.1112, that:

(a) Notwithstanding NRS 116.3105, any management, maintenance operations or employment contract, lease of recreational or parking areas or facilities and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(b) Notwithstanding NRS 116.1104 and subsection 3 of NRS 116.311, purchasers of units must execute proxies, powers of attorney or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

Sec. 4. NRS 116.31068 is hereby amended to read as follows:

116.31068 1. Except as otherwise provided in subsection 3, an association shall deliver any notice required to be given by the association under this chapter to any mailing or electronic mail address a unit's owner designates. Except as otherwise provided in subsection 3, if a unit's owner has not designated a mailing or



1 electronic mail address to which a notice must be delivered, the
2 association may deliver notices by:

3 (a) Hand delivery to each unit's owner;

4 (b) Hand delivery, United States mail, postage paid, or
5 commercially reasonable delivery service to the mailing address of
6 each unit;

7 (c) Electronic means, if the unit's owner has given the
8 association an electronic mail address; or

9 (d) Any other method reasonably calculated to provide notice to
10 the unit's owner.

11 2. The ineffectiveness of a good faith effort to deliver notice by
12 an authorized means does not invalidate action taken at or without a
13 meeting.

14 3. The provisions of this section do not apply:

15 (a) To a notice required to be given pursuant to NRS 116.3116
16 to 116.31168, inclusive ~~§~~, *and section 2 of this act*; or

17 (b) If any other provision of this chapter specifies the manner in
18 which a notice must be given by an association.

19 **Sec. 5.** NRS 116.31162 is hereby amended to read as follows:

20 116.31162 1. Except as otherwise provided in subsection 5 or
21 6, in a condominium, in a planned community, in a cooperative
22 where the owner's interest in a unit is real estate under NRS
23 116.1105, or in a cooperative where the owner's interest in a unit is
24 personal property under NRS 116.1105 and the declaration provides
25 that a lien may be foreclosed under NRS 116.31162 to 116.31168,
26 inclusive, *and section 2 of this act*, the association may foreclose its
27 lien by sale after all of the following occur:

28 (a) The association has mailed by certified or registered mail,
29 return receipt requested, to the unit's owner or his or her successor
30 in interest, at his or her address, if known, and at the address of the
31 unit, a notice of delinquent assessment which states the amount of
32 the assessments and other sums which are due in accordance with
33 subsection 1 of NRS 116.3116, a description of the unit against
34 which the lien is imposed and the name of the record owner of the
35 unit.

36 (b) Not less than 30 days after mailing the notice of delinquent
37 assessment pursuant to paragraph (a), the association or other person
38 conducting the sale has executed and caused to be recorded, with the
39 county recorder of the county in which the common-interest
40 community or any part of it is situated, a notice of default and
41 election to sell the unit to satisfy the lien which must contain the
42 same information as the notice of delinquent assessment and which
43 must also comply with the following:

44 (1) Describe the deficiency in payment.



(2) State the name and address of the person authorized by the association to enforce the lien by sale.

(3) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

(d) The association has caused to be recorded in the office of the recorder of the county in which the unit, or some part thereof, is situated the certificate provided to the association by the Mediation Administrator pursuant to subsection 4, 7 or 8.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association.

3. The period of 90 days begins on the first day following:

(a) The date on which the notice of default is recorded; or

(b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit, whichever date occurs later.

4. An association may not mail to a unit's owner or his or her successor in interest a letter of its intent to mail a notice of delinquent assessment pursuant to paragraph (a) of subsection 1, mail the notice of delinquent assessment or take any other action to collect a past due obligation from a unit's owner or his or her successor in interest unless, not earlier than 60 days after the obligation becomes past due, the association mails to the address on file for the unit's owner:

(a) A schedule of the fees that may be charged if the unit's owner fails to pay the past due obligation;

(b) A proposed repayment plan; and

(c) A notice of the right to contest the past due obligation at a hearing before the executive board and the procedures for requesting such a hearing.

5. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:



(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

6. The association may not foreclose a lien by sale if:

(a) The unit is owner-occupied housing encumbered by a deed of trust;

(b) The beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee has recorded a notice of default and election to sell with respect to the unit pursuant to subsection 2 of NRS 107.080; and

(c) The trustee of record has not recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph (d) of subsection 2 of NRS 107.086.

➡ As used in this subsection, "owner-occupied housing" has the meaning ascribed to it in NRS 107.086.

7. As used in this section, "Mediation Administrator" has the meaning ascribed to it in section 2 of this act.

Sec. 6. 1. The amendatory provisions of section 1 of this act apply only if a notice of default and election to sell is recorded pursuant to NRS 107.080 on or after October 1, 2015.

2. The amendatory provisions of section 2 of this act apply only if a notice of default and election to sell is recorded pursuant to NRS 116.31162 on or after October 1, 2015.

