

Amendment No. 438

Senate Amendment to Senate Bill No. 321

(BDR 9-728)

Proposed by: Senate Committee on Judiciary

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

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

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

MKM/BJF



Date: 4/16/2015

S.B. No. 321—Revises provisions concerning real property. (BDR 9-728)



SENATE BILL NO. 321—SENATORS HARRIS, ROBERSON,
FARLEY, FORD, ATKINSON; AND WOODHOUSE

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning real property. (BDR 9-728)

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; authorizing a mortgagor or a grantor or person who holds title of record with respect to a deed of trust to initiate a mediation with the mortgagee or beneficiary of the deed of trust under certain circumstances; providing for the imposition of a fee for mediation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth procedures governing foreclosures on real property upon default. A trustee under a deed of trust has the power to sell the property to which the deed of trust applies, subject to certain restrictions. One such restriction on the trustee's power of sale upon default with respect to owner-occupied housing is that a trustee must initiate mediation with a grantor of a deed of trust or the person who holds the title of record under which he or she may receive a loan modification. (NRS 107.086)

This bill authorizes a mortgagor under a mortgage secured by owner-occupied housing or a grantor or the person who holds the title of record with respect to a deed of trust concerning owner-occupied housing to initiate the mediation process if: (1) a local housing counseling agency approved by the United States Department of Housing and Urban Development certifies that the mortgagor, grantor or person who holds the title of record has a documented financial hardship and is in imminent risk of default; (2) the mortgagor, grantor or other person files a form with the Mediation Administrator indicating an election to enter into mediation; and (3) the mortgagor, grantor or other person pays his or her share of the fee for the mediation. *Under this bill, if the parties participate in mediation in good faith, the requirement of existing law to participate in mediation before a nonjudicial foreclosure sale of the owner-occupied housing is satisfied.*

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

Section 1. Chapter 107 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A mortgagor under a mortgage secured by owner-occupied housing or a grantor or the person who holds the title of record with respect to any trust agreement which concerns owner-occupied housing may initiate mediation to

1 negotiate a loan modification under the mediation process set forth in NRS
2 107.086 if:

3 (a) A local housing counseling agency approved by the United States
4 Department of Housing and Urban Development certifies that the mortgagor,
5 grantor or person who holds the title of record:

6 (1) Has a documented financial hardship; and

7 (2) Is in imminent risk of default; and

8 (b) The mortgagor, grantor or person who holds the title of record:

9 (1) Submits a form prescribed by the Mediation Administrator indicating
10 an election to enter into mediation pursuant to this section; and

11 (2) Pays to the Mediation Administrator his or her share of the fee
12 established pursuant to subsection 11 of NRS 107.086.

13 2. Upon satisfaction of the requirements of subsection 1, the Mediation
14 Administrator shall notify the mortgage servicer, by certified mail, return receipt
15 requested, of the enrollment of the mortgagor, grantor or person who holds the
16 title of record to participate in mediation pursuant to this section and shall assign
17 the matter to a senior justice, judge, hearing master or other designee and
18 schedule the matter for mediation. The mortgage servicer shall notify the
19 mortgagee or the beneficiary of the deed of trust, as applicable, and every other
20 person with an interest as defined in NRS 107.090, by certified mail, return
21 receipt requested, of the enrollment of the mortgagor, grantor or person who
22 holds the title of record to participate in mediation.

23 3. Each mediation required by this section must be conducted in conformity
24 with the requirements of subsections 5 and 6 of NRS 107.086.

25 4. If the mediator determines that the parties, while acting in good faith, are
26 not able to agree to a loan modification, the mediator shall prepare and submit to
27 the Mediation Administrator a recommendation that the matter be terminated.
28 The Mediation Administrator shall, not later than 30 days after submittal of the
29 mediator's recommendation that the matter be terminated, provide to the
30 mortgage servicer a certificate which provides that the mediation required by this
31 section has been completed in the matter. If the Mediation Administrator provides
32 such a certificate, the requirement for mediation pursuant to NRS 107.086 is
33 satisfied.

34 5. The certificate provided pursuant to subsection 4 must be in the same
35 form as the certificate provided pursuant to subsection 8 of NRS 107.086, and
36 may be recorded in the office of the county recorder in which the trust property is
37 located, or some part thereof, is situated. The recording of the certificate in the
38 office of the county recorder in which the trust property, or some part thereof, is
39 situated shall be deemed to be the recording of the certificate required pursuant
40 to subparagraph (2) of paragraph (d) of subsection 2 of NRS 107.086.

41 6. A noncommercial lender is not excluded from the application of this
42 section.

43 ~~6.7~~ 7. The Mediation Administrator and each mediator who acts pursuant
44 to this section in good faith and without gross negligence are immune from civil
45 liability for those acts.

46 ~~7.7~~ 8. As used in this section:

47 (a) "Financial hardship" means a documented event that would prevent the
48 long-term payment of any debt relating to a mortgage or deed of trust secured by
49 owner-occupied housing, including, without limitation:

50 (1) The death of the borrower or co-borrower;

51 (2) Serious illness;

52 (3) Divorce or separation; or

53 (4) Job loss or a reduction in pay.

(b) *"Imminent risk of default" means the inability of a grantor or the person who holds the title of record to make his or her mortgage payment within the next 90 days.*

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

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

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

Sec. 1.5. NRS 107.086 is hereby amended to read as follows:

107.086 1. Except as otherwise provided in this subsection, and subsection 4 of section 1 of this act, 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 he or she pays to the Mediation Administrator his or her share of the fee established pursuant to subsection 11; and

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

(b) In addition to including the information described in paragraph (a) 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, provides to the grantor or the person who holds the title of record the information described in paragraph (a) concurrently with, but separately from, 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;

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

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

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

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

4 3. If the grantor or the person who holds the title of record elects to waive
5 mediation, he or she shall, not later than 30 days after service of the notice in the
6 manner required by NRS 107.080, complete the form required by subparagraph (4)
7 of paragraph (a) of subsection 2 and return the form to the trustee and the
8 Mediation Administrator by certified mail, return receipt requested. If the grantor or
9 the person who holds the title of record does not elect to waive mediation, he or she
10 shall, not later than 30 days after the service of the notice in the manner required by
11 NRS 107.080, pay to the Mediation Administrator his or her share of the fee
12 established pursuant to subsection 11. Upon receipt of the share of the fee
13 established pursuant to subsection 11 owed by the grantor or the person who holds
14 title of record, the Mediation Administrator shall notify the trustee, by certified
15 mail, return receipt requested, of the enrollment of the grantor or person who holds
16 the title of record to participate in mediation pursuant to this section and shall
17 assign the matter to a senior justice, judge, hearing master or other designee and
18 schedule the matter for mediation. The trustee shall notify the beneficiary of the
19 deed of trust and every other person with an interest as defined in NRS 107.090, by
20 certified mail, return receipt requested, of the enrollment of the grantor or the
21 person who holds the title of record to participate in mediation. If the grantor or
22 person who holds the title of record is enrolled to participate in mediation pursuant
23 to this section, no further action may be taken to exercise the power of sale until the
24 completion of the mediation.

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

34 5. Each mediation required by this section must be conducted by a senior
35 justice, judge, hearing master or other designee pursuant to the rules adopted
36 pursuant to subsection 11. The beneficiary of the deed of trust or a representative
37 shall attend the mediation. The grantor or his or her representative, or the person
38 who holds the title of record or his or her representative, shall attend the mediation.
39 The beneficiary of the deed of trust shall bring to the mediation the original or a
40 certified copy of the deed of trust, the mortgage note and each assignment of the
41 deed of trust or mortgage note. If the beneficiary of the deed of trust is represented
42 at the mediation by another person, that person must have authority to negotiate a
43 loan modification on behalf of the beneficiary of the deed of trust or have access at
44 all times during the mediation to a person with such authority.

45 6. If the beneficiary of the deed of trust or the representative fails to attend the
46 mediation, fails to participate in the mediation in good faith or does not bring to the
47 mediation each document required by subsection 5 or does not have the authority or
48 access to a person with the authority required by subsection 5, the mediator shall
49 prepare and submit to the Mediation Administrator a petition and recommendation
50 concerning the imposition of sanctions against the beneficiary of the deed of trust
51 or the representative. The court may issue an order imposing such sanctions against
52 the beneficiary of the deed of trust or the representative as the court determines

appropriate, including, without limitation, requiring a loan modification in the manner determined proper by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. 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.

15. As used in this section:

(a) "Common-interest community" has the meaning ascribed to it in NRS 116.021.

1 (b) "Mediation Administrator" means the entity so designated pursuant to
2 subsection 11.

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

6 (d) "Obligation" has the meaning ascribed to it in NRS 116.310313.

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

10 (f) "Unit's owner" has the meaning ascribed to it in NRS 116.095.

11 **Sec. 2.** This act becomes effective on July 1, 2015.