

Amendment No. 1072

Assembly Amendment to Senate Bill No. 512 First Reprint	(BDR 9-1287)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will ADD a 2/3s majority vote requirement for final passage of S.B. 512 R1 (§ 1).

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.

SJA/JWP



Date: 6/1/2015

S.B. No. 512—Abolishes the Foreclosure Mediation Program. (BDR 9-1287)



SENATE BILL NO. 512—COMMITTEE ON FINANCE

MAY 30, 2015

Referred to Committee on Judiciary

SUMMARY—~~[Abolishes the Foreclosure Mediation Program.]~~ Revises provisions concerning real property. (BDR 9-1287)

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

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

AN ACT relating to real property; authorizing a mortgagor or a grantor or the person who holds title of record with respect to a deed of trust to initiate participation in what is commonly known as the Foreclosure Mediation Program with the mortgagee or beneficiary of the deed of trust under certain circumstances; abolishing the ~~[Foreclosure Mediation]~~ Program ~~[+]~~ as of June 30, 2017; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the establishment of a foreclosure mediation program and generally requires that mediation, unless waived, be conducted as a condition of a judicial foreclosure proceeding or the exercise of a power of sale affecting owner-occupied housing. The Nevada Supreme Court is required to adopt rules to implement the ~~[foreclosure mediation]~~ program. (NRS 40.437, 107.086) Existing law also creates the Account for Foreclosure Mediation, the money in which may be expended only for the purpose of supporting the program. (NRS 107.080)

Section 1 of 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.

Section 10.5 of this bill authorizes the Court Administrator, under certain circumstances, to submit to the Interim Finance Committee a request for an allocation from the Contingency Account created by NRS 353.266 for deposit in the Account for Foreclosure Mediation.

Section 12 of this bill repeals ~~[those]~~ the existing statutes ~~[+]~~ providing for the foreclosure mediation program, effective on June 30, 2017, effectively ending the program on that date. ~~[Sections]~~ Section 1 also expires by limitation on that date. Under sections 1,

27 2.5 and 8.5 of this bill, ~~make~~ December 31, 2016, is the last date on which a homeowner
28 can enroll in the foreclosure mediation program ~~and provide that persons~~ Persons initiating
29 foreclosures after December 1, 2016, need not provide notice of the mediation program.
30 Sections ~~1.5, 2, 3-8 and 9-11~~ 1.5, 2, 3-8, 9, 10 and 11 of this bill make conforming changes.

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

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

3 1. A mortgagor under a mortgage secured by owner-occupied housing or a
4 grantor or the person who holds the title of record with respect to any trust
5 agreement which concerns owner-occupied housing may initiate mediation to
6 negotiate a loan modification under the mediation process set forth in NRS
7 107.086 if, on or before December 31, 2016:

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

11 (1) Has a documented financial hardship; and

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

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

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

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

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

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

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

39 5. The certificate provided pursuant to subsection 4 must be in the same
40 form as the certificate provided pursuant to subsection 8 of NRS 107.086, and
41 may be recorded in the office of the county recorder in which the trust property,
42 or some part thereof, is situated. The recording of the certificate in the office of
43 the county recorder in which the trust property, or some part thereof, is situated

shall be deemed to be the recording of the certificate required pursuant to subparagraph (2) of paragraph (d) of subsection 2 of NRS 107.086.

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

7. 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.

8. As used in this section:

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

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

(2) Serious illness;

(3) Divorce or separation; or

(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 107.080 is hereby amended to read as follows:

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

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

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

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

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

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

(c) The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of the recorder of the county wherein the trust property, or some part thereof, is situated a notice of the breach and of the election to sell or cause to be sold the property to satisfy the obligation

which, except as otherwise provided in this paragraph, includes a notarized affidavit of authority to exercise the power of sale. Except as otherwise provided in subparagraph (5), the affidavit required by this paragraph must state under the penalty of perjury the following information, which must be based on the direct, personal knowledge of the affiant or the personal knowledge which the affiant acquired by a review of the business records of the beneficiary, the successor in interest of the beneficiary or the servicer of the obligation or debt secured by the deed of trust, which business records must meet the standards set forth in NRS 51.135:

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

(2) That the beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee is in actual or constructive possession of the note secured by the deed of trust or that the beneficiary or its successor in interest or the trustee is entitled to enforce the obligation or debt secured by the deed of trust. For the purposes of this subparagraph, if the obligation or debt is an instrument, as defined in subsection 2 of NRS 104.3103, a beneficiary or its successor in interest or the trustee is entitled to enforce the instrument if the beneficiary or its successor in interest or the trustee is:

(I) The holder of the instrument;

(II) A nonholder in possession of the instrument who has the rights of a holder; or

(III) A person not in possession of the instrument who is entitled to enforce the instrument pursuant to a court order issued under NRS 104.3309.

(3) That the beneficiary or its successor in interest, the servicer of the obligation or debt secured by the deed of trust or the trustee, or an attorney representing any of those persons, has sent to the obligor or borrower of the obligation or debt secured by the deed of trust a written statement of:

(I) The amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of the statement;

(II) The amount in default;

(III) The principal amount of the obligation or debt secured by the deed of trust;

(IV) The amount of accrued interest and late charges;

(V) A good faith estimate of all fees imposed in connection with the exercise of the power of sale; and

(VI) Contact information for obtaining the most current amounts due and the local or toll-free telephone number described in subparagraph (4).

(4) A local or toll-free telephone number that the obligor or borrower of the obligation or debt may call to receive the most current amounts due and a recitation of the information contained in the affidavit.

(5) The date and the recordation number or other unique designation of, and the name of each assignee under, each recorded assignment of the deed of trust. The information required to be stated in the affidavit pursuant to this subparagraph may be based on:

(I) The direct, personal knowledge of the affiant;

(II) The personal knowledge which the affiant acquired by a review of the business records of the beneficiary, the successor in interest of the beneficiary

1 or the servicer of the obligation or debt secured by the deed of trust, which business
2 records must meet the standards set forth in NRS 51.135;

3 (III) Information contained in the records of the recorder of the county
4 in which the property is located; or

5 (IV) The title guaranty or title insurance issued by a title insurer or title
6 agent authorized to do business in this State pursuant to chapter 692A of NRS.

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

12 (d) The beneficiary or its successor in interest or the servicer of the obligation
13 or debt secured by the deed of trust has instructed the trustee to exercise the power
14 of sale with respect to the property.

15 (e) Not less than 3 months have elapsed after the recording of the notice or, if
16 the notice includes an affidavit and a certification indicating that, pursuant to NRS
17 107.130, an election has been made to use the expedited procedure for the exercise
18 of the power of sale with respect to abandoned residential property, not less than 60
19 days have elapsed after the recording of the notice.

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

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

38 (b) If the property is subject to the requirements of NRS 107.400 to 107.560,
39 inclusive, contain the declaration required by subsection 6 of NRS 107.510;

40 (c) If, pursuant to NRS 107.130, an election has been made to use the
41 expedited procedure for the exercise of the power of sale with respect to abandoned
42 residential property, include the affidavit and certification required by subsection 6
43 of NRS 107.130; and

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

46 4. The trustee, or other person authorized to make the sale under the terms of
47 the trust deed or transfer in trust, shall, after expiration of the applicable period
48 specified in paragraph (d) of subsection 2 following the recording of the notice of
49 breach and election to sell, and before the making of the sale, give notice of the
50 time and place thereof by recording the notice of sale and by:

51 (a) Providing the notice to each trustor, any other person entitled to notice
52 pursuant to this section and, if the property is operated as a facility licensed under
53 chapter 449 of NRS, the State Board of Health, by personal service or by mailing

1 the notice by registered or certified mail to the last known address of the trustor and
2 any other person entitled to such notice pursuant to this section;

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

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

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

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

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

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

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

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

31 7. If, in an action brought by the grantor or the person who holds title of
32 record in the district court in and for the county in which the real property is
33 located, the court finds that the beneficiary, the successor in interest of the
34 beneficiary or the trustee did not comply with any requirement of subsection 2, 3 or
35 4, the court must award to the grantor or the person who holds title of record:

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

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

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

42 unless the court finds good cause for a different award. The remedy provided in
43 this subsection is in addition to the remedy provided in subsection 5.

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

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

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

52 (b) Within 20 days after the date of the sale, deliver the trustee's deed upon
53 sale to the successful bidder. Within 10 days after the date of delivery of the deed

by the trustee, the successful bidder shall record the trustee's deed upon sale in the office of the county recorder of the county in which the property is located.

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

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

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

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

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

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

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

12. The fees collected pursuant to ~~paragraphs~~ *paragraph* (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. ~~for 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. ~~for 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) *"Owner-occupied housing" means housing that is occupied by an owner as the owner's primary residence. The term does not include vacant land or any time share or other property regulated under chapter 119A of NRS.*

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

1 The Division of Financial Institutions _____
2 Legal Services _____
3 Your Lender _____
4 Nevada Fair Housing Center _____
5

6 4. The trustee shall cause all social security numbers to be redacted from the
7 copy of the promissory note before it is attached to the notice pursuant to paragraph
8 (b) of subsection 3.

9 5. This section does not prohibit a judicial foreclosure.

10 6. As used in this section, "unfair lending practice" means an unfair lending
11 practice described in NRS 598D.010 to 598D.150, inclusive.

12 **Sec. 2.5.** NRS 107.086 is hereby amended to read as follows:

13 107.086 1. Except as otherwise provided in this subsection ~~H~~ and
14 subsection 4 of section 1 of this act, in addition to the requirements of NRS
15 107.085, the exercise of the power of sale pursuant to NRS 107.080 with respect to
16 any trust agreement which concerns owner-occupied housing and for which a
17 notice of default and election to sell is mailed on or before December 1, 2016, to
18 the grantor or the person who holds the title of record as required by subsection 3
19 of NRS 107.080 is subject to the provisions of this section. The provisions of this
20 section do not apply to the exercise of the power of sale if the notice of default and
21 election to sell recorded pursuant to subsection 2 of NRS 107.080 includes an
22 affidavit and a certification indicating that, pursuant to NRS 107.130, an election
23 has been made to use the expedited procedure for the exercise of the power of sale
24 with respect to abandoned residential property.

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

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

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

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

35 (3) A notice provided by the Mediation Administrator indicating that the
36 grantor or the person who holds the title of record will be enrolled to participate in
37 mediation pursuant to this section if he or she pays to the Mediation Administrator
38 his or her share of the fee established pursuant to subsection 11; and

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

44 (b) In addition to including the information described in paragraph (a) with the
45 notice of default and election to sell which is mailed to the grantor or the person
46 who holds the title of record as required by subsection 3 of NRS 107.080, provides
47 to the grantor or the person who holds the title of record the information described
48 in paragraph (a) concurrently with, but separately from, the notice of default and
49 election to sell which is mailed to the grantor or the person who holds the title of
50 record as required by subsection 3 of NRS 107.080;

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

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

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

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

7 3. If the grantor or the person who holds the title of record elects to waive
8 mediation, he or she shall, not later than 30 days after service of the notice in the
9 manner required by NRS 107.080 ~~or~~ *or December 31, 2016, whichever is earlier,*
10 complete the form required by subparagraph (4) of paragraph (a) of subsection 2
11 and return the form to the trustee and the Mediation Administrator by certified mail,
12 return receipt requested. If the grantor or the person who holds the title of record
13 does not elect to waive mediation, he or she shall, not later than 30 days after the
14 service of the notice in the manner required by NRS 107.080 ~~or~~ *or December 31,*
15 *2016, whichever is earlier,* pay to the Mediation Administrator his or her share of
16 the fee established pursuant to subsection 11. Upon receipt of the share of the fee
17 established pursuant to subsection 11 owed by the grantor or the person who holds
18 title of record, the Mediation Administrator shall notify the trustee, by certified
19 mail, return receipt requested, of the enrollment of the grantor or person who holds
20 the title of record to participate in mediation pursuant to this section and shall
21 assign the matter to a senior justice, judge, hearing master or other designee and
22 schedule the matter for mediation. The trustee shall notify the beneficiary of the
23 deed of trust and every other person with an interest as defined in NRS 107.090, by
24 certified mail, return receipt requested, of the enrollment of the grantor or the
25 person who holds the title of record to participate in mediation. If the grantor or
26 person who holds the title of record is enrolled to participate in mediation pursuant
27 to this section, no further action may be taken to exercise the power of sale until the
28 completion of the mediation.

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

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

49 6. If the beneficiary of the deed of trust or the representative fails to attend the
50 mediation, fails to participate in the mediation in good faith or does not bring to the
51 mediation each document required by subsection 5 or does not have the authority or
52 access to a person with the authority required by subsection 5, the mediator shall
53 prepare and submit to the Mediation Administrator a petition and recommendation

1 concerning the imposition of sanctions against the beneficiary of the deed of trust
2 or the representative. The court may issue an order imposing such sanctions against
3 the beneficiary of the deed of trust or the representative as the court determines
4 appropriate, including, without limitation, requiring a loan modification in the
5 manner determined proper by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. As used in this section:

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

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

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

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

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

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

Sec. 3. NRS 107.095 is hereby amended to read as follows:

107.095 1. The notice of default required by NRS 107.080 must also be sent by registered or certified mail, return receipt requested and with postage prepaid, to each guarantor or surety of the debt. If the address of the guarantor or surety is unknown, the notice must be sent to the address of the trust property. Failure to give the notice, except as otherwise provided in subsection 3, releases the guarantor or surety from his or her obligation to the beneficiary, but does not affect the validity of a sale conducted pursuant to NRS 107.080 or the obligation of any guarantor or surety to whom the notice was properly given.

2. Failure to give the notice of default required by NRS 107.090, except as otherwise provided in subsection 3, releases the obligation to the beneficiary of any person who has complied with NRS 107.090 and who is or may otherwise be held liable for the debt or other obligation secured by the deed of trust, but such a failure does not affect the validity of a sale conducted pursuant to NRS 107.080 or the obligation of any person to whom the notice was properly given pursuant to this section or to NRS 107.080 or 107.090.

3. A guarantor, surety or other obligor is not released pursuant to this section if:

(a) The required notice is given at least 15 days before the later of:

(1) The expiration of the 15- or 35-day period described in paragraph (a) of subsection 2 of NRS 107.080;

(2) In the case of any trust agreement which concerns owner-occupied housing as defined in NRS ~~107.086~~ 107.080, the expiration of the period described in paragraph (b) of subsection 2 of NRS 107.080; or

(3) Any extension of the applicable period by the beneficiary; or

(b) The notice is rescinded before the sale is advertised.

Sec. 4. NRS 107.450 is hereby amended to read as follows:

107.450 "Residential mortgage loan" means a loan which is primarily for personal, family or household use and which is secured by a mortgage or deed of trust on owner-occupied housing as defined in NRS ~~107.086~~ 107.080.

Sec. 5. NRS 107.460 is hereby amended to read as follows:

107.460 The provisions of NRS 107.400 to 107.560, inclusive, do not apply to a financial institution, as defined in NRS 660.045, that, during its immediately preceding annual reporting period, as established with its primary regulator, has foreclosed on 100 or fewer real properties located in this State which constitute owner-occupied housing, as defined in NRS ~~107.086~~ 107.080.

Sec. 6. NRS 107.480 is hereby amended to read as follows:

107.480 1. In addition to the requirements of NRS 107.085, ~~and 107.086~~, the exercise of a trustee's power of sale pursuant to NRS 107.080 with respect to a

1 deed of trust securing a residential mortgage loan is subject to the provisions of
2 NRS 107.400 to 107.560, inclusive.

3 2. In addition to the requirements of NRS 40.430 to 40.4639, inclusive, a civil
4 action for a foreclosure sale pursuant to NRS 40.430 involving a failure to make a
5 payment required by a residential mortgage loan is subject to the requirements of
6 NRS 107.400 to 107.560, inclusive.

7 **Sec. 7.** NRS 107.550 is hereby amended to read as follows:

8 107.550 1. A civil action for a foreclosure sale pursuant to NRS 40.430
9 involving a failure to make a payment required by a residential mortgage loan must
10 be dismissed without prejudice, any notice of default and election to sell recorded
11 pursuant to subsection 2 of NRS 107.080 or any notice of sale recorded pursuant to
12 subsection 4 of NRS 107.080 must be rescinded, and any pending foreclosure sale
13 must be cancelled, if:

14 (a) The borrower accepts a permanent foreclosure prevention alternative;

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

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

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

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

23 ~~(b) If mediation pursuant to NRS 107.086 is required, until the date on which~~
24 ~~the Mediation Administrator, as defined in NRS 107.086, issues the certificate that~~
25 ~~mediation has been completed in the matter;~~

26 ~~—(c) If mediation pursuant to NRS 40.437 is required or if~~ a court orders
27 participation in a settlement program, until the date on which the ~~mediation or~~
28 participation in a settlement program is terminated; or

29 ~~(d) (c)~~ If a borrower has submitted an application for a foreclosure
30 prevention alternative, until the date on which:

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

33 (2) A written statement of the denial of the application has been submitted
34 to the borrower pursuant to subsection 4 of NRS 107.530, and any appeal period
35 pursuant to subsection 5 of NRS 107.530 has expired; or

36 (3) If the borrower has appealed the denial of an application for a
37 foreclosure prevention alternative, a written offer for a foreclosure prevention
38 alternative or a written denial of the appeal is submitted to the borrower.

39 3. If, pursuant to subsection 1, a civil action is dismissed, a notice of default
40 and election to sell recorded pursuant to subsection 2 of NRS 107.080 or any notice
41 of sale recorded pursuant to subsection 4 of NRS 107.080 is rescinded, or any
42 pending foreclosure sale is cancelled, the mortgagee or beneficiary of the deed of
43 trust is thereupon restored to its former position and has the same rights as though
44 an action for a judicial foreclosure had not been commenced or a notice of default
45 and election to sell had not been recorded.

46 **Sec. 8.** NRS 2.125 is hereby amended to read as follows:

47 2.125 The Supreme Court may adopt rules providing for voluntary mediation
48 with respect to ~~+~~

49 ~~—1. A homeowner who is not in default but is at risk of default.~~

50 ~~—2. A) a small business whose commercial property is in default. If the~~
51 Supreme Court adopts such rules, the Supreme Court shall consider:

52 ~~(a) 1.~~ The goals and purposes of the mediation process;

~~(e)~~ 3. Any other factor that is relevant in determining whether allowing mediation under the circumstances is in the best interests of the residents, businesses and governmental entities in this State.

40.437 1. ~~[[F]]~~ *A civil action for a foreclosure sale pursuant to NRS 40.430 affecting owner-occupied housing that is commenced in a court of competent jurisdiction ~~[[F]]~~ on or before December 1, 2016, is subject to the provisions of this section.*

~~144~~ 5. If the plaintiff or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not have the authority or access to a person with the authority required by subsection ~~143~~ 4, the mediator shall prepare and submit to the Mediation Administrator and the court a petition and recommendation concerning the imposition of sanctions against the plaintiff or the representative. The court may issue an order imposing such sanctions against the

1 plaintiff or the representative as the court determines appropriate, including,
2 without limitation, requiring a loan modification in the manner determined proper
3 by the court.

4 ~~5-7~~ 6. If the mortgagor elected to enter into mediation and fails to attend the
5 mediation, no mediation is required and the judicial foreclosure action must
6 proceed as if the mortgagor had not elected to enter into mediation.

7 ~~6-7~~ 7. If the mediator determines that the parties, while acting in good faith,
8 are not able to agree to a loan modification, the mediator shall prepare and submit
9 to the court and the Mediation Administrator a recommendation that the mediation
10 be terminated. The court may terminate the mediation and proceed with the judicial
11 foreclosure action.

12 ~~7-7~~ 8. The rules adopted by the Supreme Court pursuant to subsection 11 of
13 NRS 107.086 apply to a mediation conducted pursuant to this section, and the
14 Supreme Court may adopt any additional rules necessary to carry out the provisions
15 of this section.

16 ~~8-9~~ 9. Except as otherwise provided in subsection ~~10-11~~ 11, the provisions of
17 this section do not apply if:

18 (a) The mortgagor has surrendered the property, as evidenced by a letter
19 confirming the 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 agent thereof; or

21 (b) A petition in bankruptcy has been filed with respect to the defendant under
22 11 U.S.C. Chapter 7, 11, 12 or 13 and the bankruptcy court has not entered an order
23 closing or dismissing the case or granting relief from a stay of foreclosure.

24 ~~9-9~~ 10. A noncommercial lender is not excluded from the application of this
25 section.

26 ~~10-11~~ 11. The Mediation Administrator and each mediator who acts pursuant
27 to this section in good faith and without gross negligence are immune from civil
28 liability for those acts.

29 ~~11-11~~ 12. As used in this section:

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

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

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

33 **Sec. 9.** Section 2 of Senate Bill 306 of this session is hereby amended to read
34 as follows:

35 Sec. 2. NRS 116.31162 is hereby amended to read as follows:

36 116.31162 1. Except as otherwise provided in subsection 5 ~~1-6~~ or
37 ~~7-7~~ 6, in a condominium, in a planned community, in a cooperative where
38 the owner's interest in a unit is real estate under NRS 116.1105, or in a
39 cooperative where the owner's interest in a unit is personal property under
40 NRS 116.1105 and the declaration provides that a lien may be foreclosed
41 under NRS 116.31162 to 116.31168, inclusive, the association may
42 foreclose its lien by sale after all of the following occur:

43 (a) The association has mailed by certified or registered mail, return
44 receipt requested, to the unit's owner or his or her successor in interest, at
45 his or her address, if known, and at the address of the unit, a notice of
46 delinquent assessment which states the amount of the assessments and other
47 sums which are due in accordance with subsection 1 of NRS 116.3116, a
48 description of the unit against which the lien is imposed and the name of
49 the record owner of the unit.

50 (b) Not less than 30 days after mailing the notice of delinquent
51 assessment pursuant to paragraph (a), the association or other person
52 conducting the sale has executed and caused to be recorded, with the county
53 recorder of the county in which the common-interest community or any part

of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the total amount of the deficiency in payment, with a separate statement of:

(I) The amount of the association's lien that is prior to the first security interest on the unit pursuant to subsection 3 of NRS 116.3116 as of the date of the notice;

(II) The amount of the lien described in sub-subparagraph (I) that is attributable to assessments based on the periodic budget adopted by the association pursuant to NRS 116.3115 as of the date of the notice;

(III) The amount of the lien described in sub-subparagraph (I) that is attributable to amounts described in NRS 116.310312 as of the date of the notice; and

(IV) The amount of the lien described in sub-subparagraph (I) that is attributable to the costs of enforcing the association's lien as of the date of the notice.

(3) State that:

(I) If the holder of the first security interest on the unit does not satisfy the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116, the association may foreclose its lien by sale and that the sale may extinguish the first security interest as to the unit; and

(II) If, not later than 5 days before the date of the sale, the holder of the first security interest on the unit satisfies the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116 and, not later than 2 days before the date of the sale, a record of such satisfaction is recorded in the office of the recorder of the county in which the unit is located, the association may foreclose its lien by sale but the sale may not extinguish the first security interest as to the unit.

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

(5) 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 unit's owner or his or her successor in interest, or the holder of a recorded security interest on the unit, has, for a period which commences in the manner and subject to the requirements described in subsection 3 and which expires 5 days before the date of sale, failed to pay the assessments and other sums that are due to the association in accordance with subsection 1 of NRS 116.3116.

(e) The association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, an affidavit

1 which states, based on the direct, personal knowledge of the affiant, the
2 personal knowledge which the affiant acquired by a review of a trustee sale
3 guarantee or a similar product or the personal knowledge which the affiant
4 acquired by a review of the business records of the association or other
5 person conducting the sale, which business records must meet the standards
6 set forth in NRS 51.135, the following:

7 (1) The name of each holder of a security interest on the unit to
8 which the notice of default and election to sell and the notice of sale was
9 mailed, as required by subsection 2 of NRS 116.31163 and paragraph (d) of
10 subsection 1 of NRS 116.311635; and

11 (2) The address at which the notices were mailed to each such
12 holder of a security interest.

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

16 3. The period of 90 days described in paragraph (c) of subsection 1
17 begins on the first day following:

18 (a) The date on which the notice of default and election to sell is
19 recorded; or

20 (b) The date on which a copy of the notice of default and election to
21 sell is mailed by certified or registered mail, return receipt requested, to the
22 unit's owner or his or her successor in interest at his or her address, if
23 known, and at the address of the unit,

24 ➡ whichever date occurs later.

25 4. An association may not mail to a unit's owner or his or her
26 successor in interest a letter of its intent to mail a notice of delinquent
27 assessment pursuant to paragraph (a) of subsection 1, mail the notice of
28 delinquent assessment or take any other action to collect a past due
29 obligation from a unit's owner or his or her successor in interest unless:

30 (a) Not earlier than 60 days after the obligation becomes past due, the
31 association mails to the address on file for the unit's owner:

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

34 (2) A proposed repayment plan; and

35 (3) A notice of the right to contest the past due obligation at a
36 hearing before the executive board and the procedures for requesting such a
37 hearing; and

38 (b) Within 30 days after the date on which the information described in
39 paragraph (a) is mailed, the past due obligation has not been paid in full or
40 the unit's owner or his or her successor in interest has not entered into a
41 repayment plan or requested a hearing before the executive board. If the
42 unit's owner or his or her successor in interest requests a hearing or enters
43 into a repayment plan within 30 days after the date on which the
44 information described in paragraph (a) is mailed and is unsuccessful at the
45 hearing or fails to make a payment under the repayment plan within 10 days
46 after the due date, the association may take any lawful action pursuant to
47 subsection 1 to enforce its lien.

48 5. The association may not foreclose a lien by sale if the association
49 has not mailed a copy of the notice of default and election to sell and a copy
50 of the notice of sale to each holder of a security interest on the unit in the
51 manner and subject to the requirements set forth in subsection 2 of NRS
52 116.31163 and paragraph (d) of subsection 1 of 116.311635.

6. 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.

~~17—The association may not foreclose a lien by sale if the association has received notice pursuant to NRS 107.086 that the unit is subject to foreclosure mediation pursuant to that section, unless:~~

~~—(a) The trustee of record has recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph (e) of subsection 2 of NRS 107.086; or~~

~~—(b) The unit's owner has failed to pay to the association any amounts enforceable as assessments pursuant to subsection 1 of NRS 116.3116 that become due during the pendency of foreclosure mediation pursuant to NRS 107.086, other than past due obligations as described in subsection 10 of NRS 107.086.]~~

Sec. 10. Section 8.5 of Senate Bill 306 of this session is hereby amended to read as follows:

Sec. 8.5. Chapter 657 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A bank, credit union, savings bank, savings and loan association, thrift company or other financial institution which is licensed, registered or otherwise authorized to do business in this State and which is the mortgagee or beneficiary of a deed of trust under a residential mortgage loan shall provide to the Division of Financial Institutions the name, street address and any other contact information of a person to whom ~~†~~:

~~—(a) A borrower or a representative of a borrower must send any document, record or notification necessary to facilitate a mediation conducted pursuant to NRS 40.437 or 107.086.~~

~~—(b) A†~~ a unit-owners' association must send any notice required to be given pursuant to NRS 116.3116 to 116.31168, inclusive.

2. The Division of Financial Institutions shall maintain on its Internet website the information provided to the Division pursuant to subsection 1 and provide a prominent display of, or a link to, the information described in subsection 1, on the home page of its Internet website.

3. As used in this section ~~†~~:

~~—(a) "Borrower" means a person who is a mortgagor or grantor of a deed of trust under a residential mortgage loan.~~

~~—(b) "Residential†~~, "residential mortgage loan" means a loan which is primarily for personal, family or household use and which is secured by a mortgage or deed of trust on owner-occupied housing as defined in NRS ~~107.086.]~~ **107.080.**

Sec. 10.5. If the Court Administrator determines that money in the Account for Foreclosure Mediation created by NRS 107.080 is not sufficient to support the mediation process set forth in NRS 107.086, as amended by section 2.5 of this act, and the mediation process set forth in section 1 of this act, the Court Administrator may submit to the Interim Finance Committee a request for an allocation from the Contingency Account created by NRS 353.266 for deposit in the Account for Foreclosure Mediation for such purpose.

1 **Sec. 11.** Any balance remaining in the Account for Foreclosure Mediation
2 created by NRS 107.080 that has not been committed for expenditure before June
3 30, 2017, must be reverted to the State General Fund.

4 **Sec. 12.** NRS 40.437 and 107.086 are hereby repealed.

5 **Sec. 13.** 1. This section and sections 2.5, ~~and~~ 8.5, 10.5 and 11 of this act
6 become effective ~~on~~ upon passage and approval.

7 2. Section 1 of this act becomes effective upon passage and approval and
8 expires by limitation on June 30, 2017.

9 3. Sections ~~1.1, 1.5, 2, and~~ 3 to 8, inclusive, ~~and~~ 9 ~~to~~ 10 and 12 ~~of~~
10 this act become effective on June 30, 2017.

11 4. Section 10.5 of this act expires by limitation on June 30, 2017.

TEXT OF REPEALED SECTIONS

40.437 Additional requirements for action affecting owner-occupied housing: Notice; form; election of mediation; rules concerning mediation; applicability.

1. A civil action for a foreclosure sale pursuant to NRS 40.430 affecting owner-occupied housing that is commenced in a court of competent jurisdiction on or before December 1, 2016, is subject to the provisions of this section.

2. In a civil action described in subsection 1:

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

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

(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 mortgagor has the right to seek mediation pursuant to this section; and

(4) A form upon which the mortgagor may indicate an election to enter into mediation or to waive mediation pursuant to this section and one envelope addressed to the plaintiff and one envelope addressed to the Mediation Administrator, which the mortgagor may use to comply with the provisions of subsection 3; and

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

3. The mortgagor shall, not later than the date on which an answer to the complaint is due or December 31, 2016, whichever is earlier, complete the form required by subparagraph (4) of paragraph (a) of subsection 2 and file the form with the court and return a copy of the form to the plaintiff by certified mail, return receipt requested. If the mortgagor indicates on the form an election to enter into mediation, the plaintiff shall notify any person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the election of the mortgagor to enter into mediation and file the form with the Mediation Administrator, who shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. The judicial foreclosure action must be stayed until the completion of the mediation. If the mortgagor indicates on the form an election to waive mediation or fails to file the form with the court and return a copy of the form to the plaintiff as required by this subsection, no mediation is required in the action.

4. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 11 of NRS 107.086. The plaintiff or a representative, and the mortgagor or his or her representative, shall attend the mediation. If the plaintiff is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the plaintiff or have access at all times during the mediation to a person with such authority.

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

6. If the mortgagor elected to enter into mediation and fails to attend the mediation, no mediation is required and the judicial foreclosure action must proceed as if the mortgagor had not elected to enter into mediation.

7. 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 court and the Mediation Administrator a recommendation that the mediation be terminated. The court may terminate the mediation and proceed with the judicial foreclosure action.

8. The rules adopted by the Supreme Court pursuant to subsection 11 of NRS 107.086 apply to a mediation conducted pursuant to this section, and the Supreme Court may adopt any additional rules necessary to carry out the provisions of this section.

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

(a) The mortgagor 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 defendant under 11 U.S.C. Chapter 7, 11, 12 or 13 and the bankruptcy court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure.

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

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

12. As used in this section:

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

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

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

107.086 Additional requirements for sale of owner-occupied housing: Notice; form; enrollment in mediation; election to waive mediation; adoption of rules concerning mediation; applicability.

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 and for which a notice of default and election to sell is mailed on or before December 1, 2016, to the grantor or the person who holds the title of record as required by subsection 3 of NRS 107.080 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

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

3. If the grantor or the person who holds the title of record elects to waive mediation, he or she shall, not later than 30 days after service of the notice in the manner required by NRS 107.080 or December 31, 2016, whichever is earlier, complete the form required by subparagraph (4) of paragraph (a) of subsection 2 and return the form to the trustee and the Mediation Administrator by certified mail, return receipt requested. If the grantor or the person who holds the title of record does not elect to waive mediation, he or she shall, not later than 30 days after the service of the notice in the manner required by NRS 107.080 or December 31, 2016, whichever is earlier, pay to the Mediation Administrator his or her share of the fee established pursuant to subsection 11. Upon receipt of the share of the fee established pursuant to subsection 11 owed by the grantor or the person who holds title of record, the Mediation Administrator shall notify the trustee, by certified mail, return receipt requested, of the enrollment of the grantor or person who holds

the title of record to participate in mediation pursuant to this section and shall assign the matter to a senior justice, judge, hearing master or other designee 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 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 is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust or have access at all times during the mediation to a person with such authority.

6. If the beneficiary of the deed of trust or the representative fails to attend the mediation, fails to participate in the mediation in good faith or does not bring to the mediation each document required by subsection 5 or does not have the authority or access to a person with 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 beneficiary of the deed of trust or the representative. The court may issue an order imposing such sanctions against 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.

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

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

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

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

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