

Amendment No. 924

Senate Amendment to Senate Bill No. 490 First Reprint
(BDR 9-488)

Proposed by: Senate Committee on Finance

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

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 490 R1 (§§ 1.5, 2, 3).

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.

VG/NCA



Date: 5/24/2017

S.B. No. 490—Revises provisions relating to the foreclosure of real property.
(BDR 9-488)



SENATE BILL NO. 490—COMMITTEE ON JUDICIARY

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the foreclosure of real property.
(BDR 9-488)

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

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

AN ACT relating to real property; revising provisions relating to the foreclosure of real property; revising provisions relating to the Foreclosure Mediation Program; requiring Home Means Nevada, Inc., or its successor organization, to administer certain functions of the Program; replacing the Account for Foreclosure Mediation with the Account for Foreclosure Mediation Assistance; requiring the Interim Finance committee to administer the Account; providing for the continuation of the Program; requiring the State Controller to transfer money remaining in the Account for Foreclosure Mediation to the Account for Foreclosure Mediation Assistance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth procedures governing the foreclosure of real property upon default. Existing law gives a trustee under a deed of trust the power to sell the property to which the deed of trust applies, subject to certain restrictions, and requires a notice of default and election to sell real property subject to a deed of trust to include an affidavit setting forth certain information concerning the deed of trust. **Section 1.5** of this bill removes the requirement for such an affidavit and **section 1** of this bill replaces the requirement to include such an affidavit in residential foreclosures. (NRS 107.080)

Existing law provides for the establishment of a program for foreclosure mediation 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. (NRS 107.086) Existing law also 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 mediation under certain circumstances. (NRS 107.0865) Existing law also provides that in a judicial foreclosure action concerning owner-occupied property, the mortgagor may elect to participate in the program for foreclosure mediation. (NRS 40.437) The Nevada Supreme Court is required to adopt rules to implement the program for foreclosure mediation, commonly known as the Foreclosure Mediation Program, including designating an entity to serve as the Mediation Administrator. (NRS 40.437, 107.086)

Sections 2, 3, 4 and 5 of this bill revise provisions governing the Foreclosure Mediation Program. **Section 2** removes the provision of existing law that requires the Nevada Supreme

Court to designate an entity to serve as the Mediation Administrator and instead requires Home Means Nevada, Inc., or its successor organization, to administer the Program. **Section 2** requires Home Means Nevada, Inc., or its successor organization, to administer certain functions of the Program, including: (1) providing certain notices to certain grantors of a deed or persons who hold a title of record; (2) under certain circumstances, providing to the trustee a certificate which provides that mediation has been completed or is not required; and (3) serving upon certain persons a copy of a petition to participate in mediation, by certified mail. After mediation, **section 2** requires Home Means Nevada, Inc., or its successor organization, to submit to the district court the terms of any loan modification or settlement agreement. The district court is required to enter an order describing the terms of any such modification or agreement.

Sections 2, 3, 4 and 5 authorize certain grantors of a deed, persons who hold the title of record or mortgagors to petition the court to participate in the Foreclosure Mediation Program. **Sections 2, 3, 4 and 5** require such a person who seeks to participate in the Program to: (1) pay a \$25 filing fee upon filing such a petition; (2) serve a copy of the petition upon certain persons by certified mail, return receipt requested; and (3) pay his or her share of the mediation fee. **Section 2** increases the fee for mediation services from \$400 to ~~(\$600)~~ **\$500**. **Section 2 additionally requires that \$100 of the fee collected for mediation services be deposited into the Account for Foreclosure Mediation Assistance.**

Existing law also creates the Account for Foreclosure Mediation, the money in which may be expended only for the purpose of supporting the Foreclosure Mediation Program. **Existing law provides for the payment of a fee of \$45 for deposit into the Account for Foreclosure Mediation at the time of recording a notice of default and election to sell real property.** (NRS 107.080) **Section 1.5** of this bill: (1) **increases the fee from \$45 to \$95;** (2) replaces the Account for Foreclosure Mediation with the Account for Foreclosure Mediation Assistance; ~~(2)~~ (3) requires the Account to be administered by the Interim Finance Committee; and ~~(3) clarifies~~ (4) **provides** that the money collected for the Program may only be expended for the purpose of supporting the Program ~~++~~ **and the development and maintenance of an Internet portal for a program of foreclosure mediation.** **Section 9** of this bill requires the State Controller to transfer all money remaining in the Account for Foreclosure Mediation to the newly established Account for Foreclosure Mediation Assistance.

Senate Bill No. 512 of the 2015 Legislative Session (S.B. 512) provided that the Foreclosure Mediation Program ends on June 30, 2017. **Sections 8 and 11** of this bill remove the prospective expiration, thereby establishing a permanent Foreclosure Mediation Program. (Chapter 517, Statutes of Nevada 2015, p. 3334)

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. In addition to the requirements set forth in NRS 107.080, 107.085 and 107.086, the power of sale for a residential foreclosure is subject to the following requirements and conditions and must not be executed until:

(a) 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 2 and expires 5 days before the date of sale, failed to make good the deficiency in performance or payment.

(b) 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

1 *and of the election to sell or cause to be sold the property pursuant to subsection*
2 *2 of NRS 107.080, together with a notarized affidavit of authority to exercise the*
3 *power of sale. The affidavit required by this paragraph must state under penalty*
4 *of perjury the following information, which must be based on the direct, personal*
5 *knowledge of the affiant or the personal knowledge which the affiant acquired by*
6 *a review of the business records of the beneficiary, the successor in interest of the*
7 *beneficiary or the servicer of the obligation or debt secured by the deed of trust,*
8 *which business records must meet the standards set forth in NRS 51.135:*

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

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

21 (I) *The holder of the instrument;*

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

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

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

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

34 (II) *The amount in default;*

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

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

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

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

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

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

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

50 (II) *The personal knowledge which the affiant acquired by a review*
51 *of the business records of the beneficiary, the successor in interest of the*
52 *beneficiary or the servicer of the obligation or debt secured by the deed of trust,*
53 *which business records must meet the standards set forth in NRS 51.135;*

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

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

6 2. The period provided in paragraph (a) of subsection 1, commences on the
7 first day following the day upon which the notice of default and election to sell is
8 recorded in the office of the county recorder of the county in which the property
9 is located and a copy of the notice of default and election to sell is mailed by
10 registered or certified mail, return receipt requested and with postage prepaid, to
11 the grantor or, to the person who holds the title of record on the date the notice of
12 default and election to sell is recorded, at their respective addresses, if known,
13 otherwise to the address of the trust property. In addition to meeting the
14 requirements set forth in subsection 1 and NRS 107.080, the notice of default and
15 election must:

16 (a) If the property is subject to the requirements of NRS 107.400 to 107.560,
17 inclusive, contain the declaration required by subsection 6 of NRS 107.510;

18 (b) If, pursuant to NRS 107.130, an election has been made to use the
19 expedited procedure for the exercise of the power of sale with respect to
20 abandoned residential property, include the affidavit and certification required by
21 subsection 6 of NRS 107.130; and

22 (c) Comply with the provisions of NRS 107.087.

23 3. In addition to providing notice pursuant to the requirements set forth in
24 subsection 4 of NRS 107.080, the trustee, or other person authorized to make the
25 sale under the terms of the deed of trust or transfer in trust with respect to a
26 residential foreclosure, shall, after expiration of the applicable period specified in
27 paragraph (d) of subsection 2 of NRS 107.080, following the recording of the
28 notice of breach and election to sell, and before the making of the sale, comply
29 with the provisions of NRS 107.087.

30 4. In addition to the grounds provided in paragraph (a) of subsection 5 of
31 NRS 107.080, a sale made pursuant to this section must be declared void by any
32 court of competent jurisdiction in the county where the sale took place if the
33 trustee or other person authorized to make the sale does not substantially comply
34 with any applicable provisions set forth in NRS 107.086 and 107.087, and the
35 applicant otherwise complies with subsection 5 of NRS 107.080.

36 5. As used in this section:

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

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

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

43 (b) "Trustee" has the meaning ascribed in NRS 107.080.

44 Sec. 1.5. NRS 107.080 is hereby amended to read as follows:

45 107.080 1. Except as otherwise provided in NRS 106.210, 107.085 and
46 107.086, *and section 1 of this act*, if any transfer in trust of any estate in real
47 property is made after March 29, 1927, to secure the performance of an obligation
48 or the payment of any debt, a power of sale is hereby conferred upon the trustee to
49 be exercised after a breach of the obligation for which the transfer is security.

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

51 (a) ~~Except as otherwise provided in paragraph (b), in~~ In the case of any trust
52 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 51.125:~~

~~—(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 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;~~

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

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

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

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

~~(e)} (d) Not less than 3 months have elapsed after the recording of the notice or, if the notice 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, not less than 60 days have elapsed after the recording of the notice.~~

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

~~(a) Describe~~ describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not

1 occur if the deficiency in performance or payment is made good and any costs, fees
2 and expenses incident to the preparation or recordation of the notice and incident to
3 the making good of the deficiency in performance or payment are paid within the
4 time specified in subsection 2. ~~†~~

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

7 ~~—(c) If, pursuant to NRS 107.130, an election has been made to use the~~
8 ~~expedited procedure for the exercise of the power of sale with respect to abandoned~~
9 ~~residential property, include the affidavit and certification required by subsection 6~~
10 ~~of NRS 107.130; and~~

11 ~~—(d) If the property is a residential foreclosure, comply with the provisions of~~
12 ~~NRS 107.087.†~~

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

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

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

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

30 ~~—(d) If the property is a residential foreclosure, complying with the provisions of~~
31 ~~NRS 107.087.†~~

32 5. Every sale made under the provisions of this section and other sections of
33 this chapter vests in the purchaser the title of the grantor and any successors in
34 interest without equity or right of redemption. Except as otherwise provided in
35 subsection 7, a sale made pursuant to this section must be declared void by any
36 court of competent jurisdiction in the county where the sale took place if:

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

40 (b) Except as otherwise provided in subsection 6, an action is commenced in
41 the county where the sale took place within 30 days after the date on which the
42 trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the
43 county recorder of the county in which the property is located; and

44 (c) A notice of lis pendens providing notice of the pendency of the action is
45 recorded in the office of the county recorder of the county where the sale took place
46 within 5 days after commencement of the action.

47 6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of
48 subsection 4 to the grantor, to the person who holds the title of record on the date
49 the notice of default and election to sell is recorded, to each trustor or to any other
50 person entitled to such notice, the person who did not receive such proper notice
51 may commence an action pursuant to subsection 5 within 90 days after the date of
52 the sale.

7. Upon expiration of the time for commencing an action which is set forth in subsections 5 and 6, any failure to comply with the provisions of this section or any other provision of this chapter does not affect the rights of a bona fide purchaser as described in NRS 111.180.

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

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

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

(c) Reasonable attorney's fees and costs,

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

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

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

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

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

11. Within 5 days after recording the trustee's deed upon sale, the trustee or successful bidder, whoever recorded the trustee's deed upon sale pursuant to subsection 10, shall cause a copy of the trustee's deed upon sale to be posted conspicuously on the property. The failure of a trustee or successful bidder to effect the posting required by this subsection does not affect the validity of a sale of the property to a bona fide purchaser for value without knowledge of the failure.

12. If the successful bidder fails to record the trustee's deed upon sale pursuant to paragraph (b) of subsection 10, 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 10 and for reasonable attorney's fees and the costs of bringing the action.

13. 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)~~ \$95 for deposit in the Account for Foreclosure ~~Mediation,~~ Mediation Assistance, which is hereby created in the State General Fund. The Account must be administered by the ~~Court Administrator,~~ Interim Finance Committee and the money in the Account may be expended only for the purpose of ~~supporting~~ ;

(1) Supporting a program of foreclosure mediation ~~established by Supreme Court Rule;~~ and

(2) The development and maintenance of an Internet portal for a program of foreclosure mediation.

(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.

14. The fees collected pursuant to paragraphs (a) and (b) of subsection 13 must be paid over to the county treasurer by the county recorder on or before the fifth day of each month for the preceding calendar month, and, except as otherwise provided in this subsection, must be placed to the credit of the State General Fund or the Account for Foreclosure Mediation *Assistance* as prescribed pursuant to subsection 13. The county recorder may direct that 1.5 percent of the fees collected by the county recorder be transferred into a special account for use by the office of the county recorder. The county treasurer shall, on or before the 15th day of each month, remit the fees deposited by the county recorder pursuant to this subsection to the State Controller for credit to the State General Fund or the Account as prescribed in subsection 13.

15. 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 13.

16. As used in this section ~~†~~:

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

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

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

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

Sec. 2. NRS 107.086 is hereby amended to read as follows:

107.086 1. Except as otherwise provided in this subsection and subsection 4 of NRS 107.0865, 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 which the grantor or the person who holds the title of record may use to serve notice as required pursuant to subsection 3 if the grantor or person who holds the title does not elect to waive mediation;*

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

~~[(3)]~~ (4) A notice provided by ~~the Mediation Administrator~~ *Home Means Nevada, Inc., or its successor organization*, indicating that the grantor or the person who holds the title of record ~~will be enrolled~~ *may petition the district court* to participate in mediation pursuant to this section if he or she *files such a petition, pays a \$25 filing fee, serves a copy of the petition upon the beneficiary of the deed, Home Means Nevada, Inc., or its successor organization, and the trustee by certified mail, return receipt requested, and* pays to the ~~Mediation Administrator~~ *district court* his or her share of the fee established pursuant to subsection ~~[(1)]~~ *12*; and

~~[(4)]~~ (5) 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~~ *Home Means Nevada, Inc., or its successor organization*, 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~~ *Home Means Nevada, Inc., or its successor organization*;

(d) If the owner-occupied housing is located within a common-interest community, notifies the unit-owners' association of the common-interest community, not later than 10 days after mailing the copy of the notice of default and election to sell as required by subsection 3 of NRS 107.080, that the exercise of the power of sale is subject to the provisions of this section; and

(e) 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~~ *Home Means Nevada, Inc., or its successor organization*, 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~~ *Home Means Nevada, Inc., or its successor organization*, 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, ~~for December 31, 2016, whichever is earlier,~~ complete the form required by subparagraph ~~[(4)]~~ (5) of paragraph (a) of subsection 2 and return the form to the trustee and ~~the Mediation Administrator~~ *Home Means Nevada, Inc., or its successor organization*, 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

1 the notice in the manner required by NRS 107.080 , ~~for December 31, 2016,~~
2 ~~whichever is earlier, pay to the Mediation Administrator~~ *petition the district court*
3 *to participate in mediation pursuant to this section, at the time of filing such a*
4 *petition, pay to the clerk of the court a fee of \$25 and his or her share of the fee*
5 established pursuant to subsection ~~11.1~~ *12. The grantor or the person who holds*
6 *the title of record shall serve a copy of the petition, by certified mail, return*
7 *receipt requested, upon the beneficiary of the deed of trust and Home Means*
8 *Nevada., Inc., or its successor organization.* Upon receipt of the ~~share of the fee~~
9 ~~established pursuant to subsection 11.1 owed by the grantor or the person who holds~~
10 ~~title of record,~~ *copy of the petition, the Mediation Administrator* *Home Means*
11 *Nevada., Inc., or its successor organization,* shall notify the trustee ~~11~~ *and every*
12 *other person with an interest as defined in NRS 107.090,* by certified mail, return
13 receipt requested, of the ~~enrollment~~ *petition* of the grantor or person who holds
14 the title of record to participate in mediation pursuant to this section . ~~and~~ *Upon*
15 *receipt of a petition pursuant to this section, the district court* shall assign the
16 matter to a senior justice, judge, hearing master or other designee and schedule the
17 matter for mediation. ~~The trustee shall notify the beneficiary of the deed of trust~~
18 ~~and every other person with an interest as defined in NRS 107.090, by certified~~
19 ~~mail, return receipt requested, of the enrollment of the grantor or the person who~~
20 ~~holds the title of record to participate in mediation.~~ If the grantor or person who
21 holds the title of record ~~is enrolled~~ *satisfies the requirements of this subsection* to
22 participate in mediation pursuant to this section, no further action may be taken to
23 exercise the power of sale until the completion of the mediation.

24 4. If the grantor or the person who holds the title of record indicates on the
25 form described in subparagraph ~~4.4~~ *(5)* of paragraph (a) of subsection 2 an
26 election to waive mediation ~~for~~ *, fails to petition the district court pursuant to*
27 *subsection 3 or* fails to pay to the ~~Mediation Administrator~~ *district court* his or
28 her share of the fee established pursuant to subsection ~~11.1~~ *12* as required by
29 subsection 3, ~~the Mediation Administrator~~ *Home Means Nevada., Inc., or its*
30 *successor organization,* shall, not later than 60 days after ~~the Mediation~~
31 ~~Administrator~~ *Home Means Nevada., Inc., or its successor organization,* receives
32 the form indicating an election to waive mediation or 90 days after the service of
33 the notice in the manner required by NRS 107.080, whichever is earlier, provide to
34 the trustee a certificate which provides that no mediation is required in the matter.

35 5. Each mediation required by this section must be conducted by a senior
36 justice, judge, hearing master or other designee pursuant to the rules adopted
37 pursuant to subsection ~~11.1~~ *12.* The beneficiary of the deed of trust or a
38 representative shall attend the mediation. The grantor or his or her representative, or
39 the person who holds the title of record or his or her representative, shall attend the
40 mediation. The beneficiary of the deed of trust shall bring to the mediation the
41 original or a certified copy of the deed of trust, the mortgage note , ~~and~~ each
42 assignment of the deed of trust or mortgage note ~~11~~ *and any documents created in*
43 *connection with a loan modification.* If the beneficiary of the deed of trust is
44 represented at the mediation by another person, that person must have authority to
45 negotiate a loan modification on behalf of the beneficiary of the deed of trust or
46 have access at all times during the mediation to a person with such authority.

47 6. If the beneficiary of the deed of trust or the representative fails to attend the
48 mediation, fails to participate in the mediation in good faith or does not bring to the
49 mediation each document required by subsection 5 or does not have the authority or
50 access to a person with the authority required by subsection 5, the mediator shall
51 prepare and submit to the ~~Mediation Administrator~~ *district court* a ~~petition and~~
52 recommendation concerning the imposition of sanctions against the beneficiary of
53 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~~ *district court shall dismiss the petition. Home Means Nevada, Inc., or its successor organization*, 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~~ *district court* a recommendation that the ~~matter be terminated.~~ *petition be dismissed. The court may dismiss the petition and if the petition is dismissed, transmit a copy of the order of dismissal to* ~~The Mediation Administrator~~ *Home Means Nevada, Inc., or its successor organization. Home Means Nevada, Inc., or its successor organization*, shall, not later than 30 days after ~~submission of the mediator's recommendation that the matter be terminated,~~ *receipt of such an order*, provide to the trustee a certificate which provides that the mediation required by this section has been completed in the matter.

9. *If the parties agree to a loan modification or settlement, the mediator shall notify the district court. Upon receipt of such notification, the court shall enter an order describing the terms of any loan modification or settlement agreement.*

10. Upon receipt of the certificate provided to the trustee by ~~the Mediation Administrator~~ *Home Means Nevada, Inc., or its successor organization*, pursuant to subsection 4, 7 or 8, if the property is located within a common-interest community, the trustee shall, not later than 10 days after receipt of the certificate, notify the unit-owners' association of the existence of the certificate.

~~10.~~ 11. 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.~~ 12. 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)~~ (b) Requiring each party to a mediation to provide such information as the mediator determines necessary.

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

~~(e)~~ (d) Establishing a total fee of not more than ~~\$400-\$600~~ *\$500* that may be charged and collected by the ~~Mediation Administrator~~ *district court* 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. *On or before the first Monday of each month, the clerk of the district court shall pay over to the county treasurer an amount equal to \$100 of each fee charged and collected pursuant to this paragraph. The county treasurer shall remit quarterly all such amounts turned over to the county treasurer to the State Controller for deposit to the Account for Foreclosure Mediation Assistance created by paragraph (b) of subsection 13 of NRS 107.080.*

~~12.1~~ (e) *Prescribing a form supplied by the district court to file a petition to participate in mediation pursuant to this section.*

13. Except as otherwise provided in subsection ~~14.1~~ 15, 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.

~~13.1~~ 14. A noncommercial lender is not excluded from the application of this section.

~~14.1~~ 15. ~~The Mediation Administrator and each~~ Each mediator who acts pursuant to this section in good faith and without gross negligence are immune from civil liability for those acts.

~~15.1~~ 16. *Home Means Nevada, Inc., or its successor organization, shall, at least once each calendar quarter, submit to the Interim Finance Committee a report:*

(a) *Concerning the status of the Account for Foreclosure Mediation Assistance; and*

(b) *Any other information required by the Interim Finance Committee.*

17. *The Administrator of the Division of Internal Audits of the Office of Finance shall cause to be conducted, not less than annually, an audit of Home Means Nevada, Inc., or its successor organization.*

18. 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)~~ (c) "Obligation" has the meaning ascribed to it in NRS 116.310313.

~~(e)~~ (d) "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)~~ (e) "Unit-owners' association" has the meaning ascribed to it in NRS 116.011.

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

Sec. 3. NRS 107.0865 is hereby amended to read as follows:

107.0865 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 negotiate a loan modification under the mediation process set forth in NRS 107.086 if: ~~1. on or before December 31, 2016;~~

(a) 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:

(1) Has a documented financial hardship; and

(2) Is in imminent risk of default; and

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

(1) ~~Submits a form prescribed by the Mediation Administrator~~ *Files a petition with the district court* indicating an election to enter into mediation pursuant to this section; ~~and~~

(2) *At the time of filing such a petition, pays to the clerk of the court a fee of \$25;*

(3) Pays to the ~~Mediation Administrator~~ *district court* his or her share of the fee established pursuant to subsection ~~12~~ *12* of NRS 107.086 ~~;~~ *and*

(4) *Serves a copy of the petition upon Home Means Nevada, Inc., or its successor organization, and the beneficiary of the deed of trust, by certified mail, return receipt requested.*

2. Upon ~~satisfaction of the requirements of~~ receipt of a copy of a petition pursuant to subsection 1, ~~the Mediation Administrator~~ *Home Means Nevada, Inc., or its successor organization*, shall notify the mortgage servicer, by certified mail, return receipt requested, of the ~~enrollment~~ *petition* of the mortgagor, grantor or person who holds the title of record to participate in mediation pursuant to this section. ~~and~~ *Upon receipt of a copy of a petition pursuant to subsection 1, the district court* shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. ~~The mortgage servicer~~ *Home Means Nevada, Inc., or its successor organization*, shall notify ~~the mortgagee or the beneficiary of the deed of trust, as applicable, and~~ every other person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the ~~enrollment~~ *petition* of the mortgagor, grantor or person who holds the title of record to participate in mediation.

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

4. 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~~ *district court* a recommendation that the ~~matter be terminated~~ *petition be dismissed. The court may dismiss the petition and transmit a copy of the order of dismissal to* ~~The Mediation Administrator~~ *Home Means Nevada, Inc., or its successor organization. Home Means Nevada, Inc., or its successor organization* shall, not later than 30 days after ~~submission of the mediator's recommendation that the matter be terminated~~ *receipt of the order of dismissal*, provide to the mortgage servicer a certificate which provides that the mediation required by this section has been completed in the matter. If ~~the Mediation Administrator~~ *Home Means Nevada, Inc., or its successor organization*, provides such a certificate, the requirement for mediation pursuant to NRS 107.086 is satisfied.

5. The certificate provided pursuant to subsection 4 must be in the same form as the certificate provided pursuant to subsection 8 of NRS 107.086, and may be recorded in the office of the county recorder in which the trust property, or some part thereof, is situated. The recording of the certificate in the office of 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 (e) of subsection 2 of NRS 107.086.

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

7. ~~The Mediation Administrator~~ *Home Means Nevada, Inc., or its successor organization*, 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) (d) "Owner-occupied housing" has the meaning ascribed to it in NRS 107.086.~~

Sec. 3.5. 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, the expiration of the period described in paragraph ~~(b)~~ (a) of subsection ~~2~~ 1 of ~~NRS 107.080~~ **section 1 of this act**; 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 107.550 is hereby amended to read as follows:

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

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

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

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

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

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

(b) If mediation pursuant to NRS 107.086 is required, until the date on which ~~{the Mediation Administrator, as defined in NRS 107.086}~~ *Home Means Nevada, Inc., or its successor organization*, issues the certificate pursuant to NRS 107.086 that mediation has been completed in the matter;

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

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

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

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

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

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

Sec. 5. NRS 40.437 is hereby amended to read as follows:

40.437 1. An action 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 an 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}~~ *Home Means Nevada, Inc., or its successor organization*, indicating that the mortgagor ~~{will be enrolled}~~ *may petition the court* to participate in mediation pursuant to this section if he or she pays to the ~~{Mediation Administrator}~~ *court* his or her share of the fee established pursuant to subsection ~~{11}~~ *12* of NRS 107.086; 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}~~ *Home Means Nevada, Inc., or its successor organization*, 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}~~ *Home Means Nevada, Inc., or its successor organization*.

3. If the mortgagor elects to waive mediation, he or she shall, not later than the date on which an answer to the complaint is due, ~~{for 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 does not elect to waive mediation, he or she shall, not later than the date on which an answer to the complaint is due, pay to the ~~Mediation Administrator~~ court his or her share of the fee established pursuant to subsection ~~HHH~~ 12 of NRS 107.086. Upon receipt of the share of the fee established pursuant to subsection ~~HHH~~ 12 of NRS 107.086 owed by the mortgagor, the ~~Mediation Administrator~~ court shall notify the plaintiff, by certified mail, return receipt requested, of the ~~enrollment~~ grant of the petition of the mortgagor 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. Upon the plaintiff's receipt of such notice, 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 participate in mediation. The judicial foreclosure action must be stayed until the completion of the mediation. If the mortgagor indicates on the form required by subparagraph (4) of paragraph (a) of subsection 2 of his or her election to waive mediation or fails to pay the ~~Mediation Administrator~~ court his or her share of the fee established pursuant to subsection ~~HHH~~ 12 of NRS 107.086, as required by this subsection, no mediation is required in the action and the action pursuant to NRS 40.430 must proceed.

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 ~~HHH~~ 12 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 is enrolled to participate in mediation pursuant to this section but fails to attend the mediation, no mediation is required and the judicial foreclosure action must proceed as if the mortgagor had elected to waive 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 ~~HHH~~ 12 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~~ 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)~~ “Mortgagor” includes the grantor of a deed of trust or the person who holds the title of record to the real property.

~~(c)~~ (b) “Noncommercial lender” has the meaning ascribed to it in NRS 107.086.

~~(d)~~ (c) “Owner-occupied housing” has the meaning ascribed to it in NRS 107.086.

Sec. 5.5. NRS 100.091 is hereby amended to read as follows:

100.091 1. For each loan requiring the deposit of money to an escrow account, loan trust account or other impound account for the payment of taxes, assessments, rental or leasehold payments, insurance premiums or other obligations related to the encumbered property, the lender shall:

(a) Require contributions in an amount reasonably necessary to pay the obligations as they become due.

(b) Unless money in the account is insufficient, pay in a timely manner the obligations as they become due.

(c) At least annually, analyze the account. The analysis of each account must be performed to determine whether sufficient money is contributed to the account on a monthly basis to pay for the projected disbursements from the account. At least 30 days before the effective date of any increased contribution to the account based on the analysis, a statement must be sent to the borrower showing the method of determining the amount of money held in the account, the amount of projected disbursements from the account and the amount of the reserves which may be held in accordance with federal guidelines.

2. If, upon completion of the analysis, it is determined that an account is not sufficiently funded to pay from the normal payment the items when due on the account, the lender shall offer the borrower the opportunity to correct the deficiency by making one lump-sum payment or by making increased monthly contributions, in an amount required by the lender. The lender shall not declare a default on the account solely because the borrower is unable to pay the amount of the deficiency in one lump sum.

3. Except for payments made by a borrower for a lender to recover previous deficiencies in contributions to the account pursuant to subsection 2, the borrower is entitled pursuant to subsection 4 to the amount by which the borrower's contributions to the account exceed the amount reasonably necessary to pay the annual obligations due from the account, together with interest thereon at the rate established pursuant to NRS 99.040.

4. If, upon completion of the analysis, it is determined that the amount of money held by the lender in the account, together with anticipated future monthly contributions to the account to be credited to the account before the dates items are due on the account, exceed the amount of money required to pay the items when due, the lender shall, not later than 30 days after completion of its annual review of the account, notify the borrower:

(a) Of the amount by which the contributions and interest earned pursuant to subsection 3 exceed the amount reasonably necessary to pay the annual obligations due from the account; and

(b) That the borrower may, not later than 20 days after receipt of the notice, specify that the lender:

(1) Repay the excess money and interest promptly to the borrower;

(2) Apply the excess money and interest to the outstanding principal balance; or

(3) Retain the excess money and interest in the account.

5. If the borrower fails to specify the disposition of the excess money and interest as provided in paragraph (b) of subsection 4, the lender shall maintain the excess money and interest in the account.

6. If any payment on the loan is delinquent at the time of the analysis, the lender shall retain any excess money and interest in the account and apply the excess money and interest in the account toward payment of the delinquency.

7. A lender who violates any provision of subsections 4, 5 and 6 is liable to the borrower for a civil penalty of not more than \$1,000.

8. The provisions of this section apply exclusively to:

(a) A loan secured by a single family residence, as that term is defined in ~~NRS 107.080~~ **section 1 of this act**; and

(b) A unit in a common-interest community that is used exclusively for residential use, as those terms are defined in chapter 116 of NRS.

9. As used in this section:

(a) "Borrower" means any person who receives a loan secured by real property and who is required to make advance contributions for the payment of taxes, insurance premiums or other expenses related to the property.

(b) "Lender" means any person who makes loans secured by real property and who requires advance contributions for the payment of taxes, insurance premiums or other expenses related to the property.

Sec. 6. NRS 116.31162 is hereby amended to read as follows:

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

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

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), 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, 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 which states, based on the direct, personal knowledge of the affiant, the personal knowledge which the affiant acquired by a review of a trustee sale guarantee or a similar product or the personal knowledge which the affiant acquired by a review of the business records of the association or other person conducting the sale, which business records must meet the standards set forth in NRS 51.135, the following:

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

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

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

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

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

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

14 ➤ whichever date occurs later.

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

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

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

24 (2) A proposed repayment plan; and

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

28 (b) Within 30 days after the date on which the information described in
29 paragraph (a) is mailed, the past due obligation has not been paid in full or the
30 unit's owner or his or her successor in interest has not entered into a repayment
31 plan or requested a hearing before the executive board. If the unit's owner or his or
32 her successor in interest requests a hearing or enters into a repayment plan within
33 30 days after the date on which the information described in paragraph (a) is mailed
34 and is unsuccessful at the hearing or fails to make a payment under the repayment
35 plan within 10 days after the due date, the association may take any lawful action
36 pursuant to subsection 1 to enforce its lien.

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

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

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

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

49 7. The association may not foreclose a lien by sale if the association has
50 received notice pursuant to NRS 107.086 that the unit is subject to foreclosure
51 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 ~~10.11~~ **11** of NRS 107.086.

Sec. 7. Section 10.5 of chapter 517, Statutes of Nevada 2015, at page 3334, is hereby amended to read as follows:

Sec. 10.5. If the ~~Court Administrator~~ **Interim Finance Committee** determines that money in the Account for Foreclosure Mediation **Assistance** 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~~ **Home Means Nevada, Inc., or its successor organization**, 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 **Assistance** for such purpose.

Sec. 8. Section 13 of chapter 517, Statutes of Nevada 2015, at page 3334, is hereby amended to read as follows:

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

2. Section 1 of this act becomes effective upon passage and approval .

~~and expires by limitation on June 30, 2017.~~

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

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

Sec. 9. The State Controller shall transfer to the Account for Foreclosure Mediation Assistance created by NRS 107.080, as amended by section 1.5 of this act, as soon as practicable on or after the effective date of this act, all money remaining in the Account for Foreclosure Mediation created by NRS 107.080 that has not been committed for expenditure.

Sec. 10. 1. The amendatory provisions of this act apply to any person who:

(a) Otherwise could have enrolled in the Foreclosure Mediation Program after December 31, 2016, or was mailed a notice of default and election to sell after December 2, 2016; and

(b) Received a notice of default required by NRS 107.080 before the effective date of this act. Such a person shall have until the date 30 days after the effective date of this act to enroll in the Foreclosure Mediation Program.

2. The amendatory provisions of sections 1 and 1.5 of this act apply only to a notice of default and election to sell which is recorded pursuant to NRS 107.080, as amended by section 1.5 of this act, on or after the effective date of this act.

Sec. 11. Sections 1.5, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of chapter 517, Statutes of Nevada 2015, at pages 3317, 3322, 3327, 3328, 3330, 3333 and 3334, are hereby repealed.

Sec. 12. This act becomes effective upon passage and approval.

TEXT OF REPEALED SECTIONS

Section 1.5 of chapter 517, Statutes of Nevada 2015, at page 3317:

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~~ 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 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;
- (III) Information contained in the records of the recorder of the county in which the property is located; or
- (IV) The title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS.

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

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

(e) Not less than 3 months have elapsed after the recording of the notice or, if the notice 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, not less than 60 days have elapsed after the recording of the notice.

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

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

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

(c) If, 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, include the affidavit and certification required by subsection 6 of NRS 107.130; and

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

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

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

known address of the trustor and any other person entitled to such notice pursuant to this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~—(e)~~ 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.

Section 2 of chapter 517, Statutes of Nevada 2015, at page 3322:

Sec. 2. NRS 107.085 is hereby amended to read as follows:

107.085 1. With regard to a transfer in trust of an estate in real property to secure the performance of an obligation or the payment of a debt, the provisions of this section apply to the exercise of a power of sale pursuant to NRS 107.080 only if:

(a) The trust agreement becomes effective on or after October 1, 2003, and, on the date the trust agreement is made, the trust agreement is subject to the provisions of § 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1602(bb), and the regulations adopted by the Board of Governors of the Federal Reserve System pursuant thereto, including, without limitation, 12 C.F.R. § 226.32; or

(b) The trust agreement concerns owner-occupied housing as defined in NRS ~~107.086~~ **107.080**.

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

(a) In the manner required by subsection 3, not later than 60 days before the date of the sale, the trustee causes to be served upon the grantor or the person who holds the title of record a notice in the form described in subsection 3; and

(b) If an action is filed in a court of competent jurisdiction claiming an unfair lending practice in connection with the trust agreement, the date of the sale is not less than 30 days after the date the most recent such action is filed.

3. The notice described in subsection 2 must be:

(a) Served upon the grantor or the person who holds the title of record:

(1) Except as otherwise provided in subparagraph (2), by personal service or, if personal service cannot be timely effected, in such other manner as a court determines is reasonably calculated to afford notice to the grantor or the person who holds the title of record; or

(2) If the trust agreement concerns owner-occupied housing as defined in NRS ~~107.086~~ **107.080**:

(I) By personal service;

(II) If the grantor or the person who holds the title of record is absent from his or her place of residence or from his or her usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the grantor or the person who holds the title of record at his or her place of residence or place of business; or

(III) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the trust property, delivering a copy to a person there residing if the person can be found and mailing a copy to the

grantor or the person who holds the title of record at the place where the trust property is situated; and

(b) In substantially the following form, with the applicable telephone numbers and mailing addresses provided on the notice and, except as otherwise provided in subsection 4, a copy of the promissory note attached to the notice:

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME!

Your home loan is being foreclosed. In not less than 60 days your home may be sold and you may be forced to move. For help, call:

Consumer Credit Counseling _____
 The Attorney General _____
 The Division of Mortgage Lending _____
 The Division of Financial Institutions _____
 Legal Services _____
 Your Lender _____
 Nevada Fair Housing Center _____

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

5. This section does not prohibit a judicial foreclosure.

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

Section 3 of chapter 517, Statutes of Nevada 2015, at page 3327:

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.

Section 4 of chapter 517, Statutes of Nevada 2015, at page 3327:

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**.

Section 5 of chapter 517, Statutes of Nevada 2015, at page 3327:

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**.

Section 6 of chapter 517, Statutes of Nevada 2015, at page 3327:

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

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

Section 7 of chapter 517, Statutes of Nevada 2015, at page 3328:

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

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

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

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

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

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

(a) If a borrower has filed a case under 11 U.S.C. Chapter 7, 11, 12 or 13, until the bankruptcy court enters an order closing or dismissing the

bankruptcy case or granting relief from a stay of foreclosure or trustee's sale;

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

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

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

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

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

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

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

Section 8 of chapter 517, Statutes of Nevada 2015, at page 3328:

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

2.125 The Supreme Court may adopt rules providing for voluntary mediation with respect to ~~1-~~

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

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

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

~~(b)~~ 2. The necessity, efficiency and desirability of allowing mediation for the various types of commercial property; and

~~(c)~~ 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.

Section 9 of chapter 517, Statutes of Nevada 2015, at page 3330:

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

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

116.31162 1. Except as otherwise provided in subsection 5 ~~1-6~~ or ~~17-1~~ 6, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the

association may foreclose its lien by sale after all of the following occur:

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

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), 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, 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 which states, based on the direct, personal knowledge of the affiant, the personal knowledge which the affiant acquired by a review of a trustee sale guarantee or a similar product or the personal knowledge which the affiant acquired by a review of the business records of the association or other person conducting the sale, which business records must meet the standards set forth in NRS 51.135, the following:

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

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

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

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

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

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

— whichever date occurs later.

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

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

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

(2) A proposed repayment plan; and

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

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

5. The association may not foreclose a lien by sale if the association has not mailed a copy of the notice of default and election to sell and a copy of the notice of sale to each holder of a security interest on the unit in the manner and subject to the requirements set forth in subsection 2 of NRS 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 (c) 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.~~

Section 10 of chapter 517, Statutes of Nevada 2015, at page 3333:

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 116.3118, 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.**

Section 11 of chapter 517, Statutes of Nevada 2015, at page 3334:

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

Section 12 of chapter 517, Statutes of Nevada 2015, at page 3334:

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